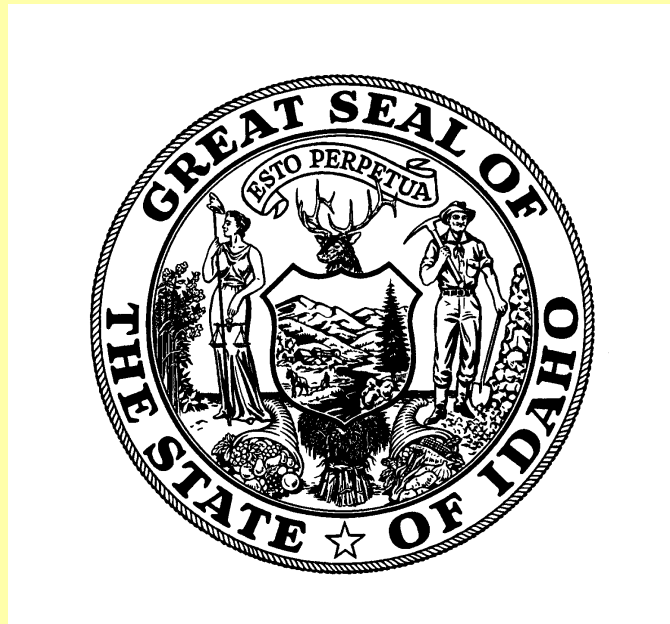


# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**House Revenue & Taxation Committee**  
**63rd Idaho Legislature**  
**Second Regular Session**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2016*

**HOUSE REVENUE & TAXATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**2016 Legislative Session**

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**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1501**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 245 through 250](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670 or email [Cynthia.adrian@tax.idaho.gov](mailto:Cynthia.adrian@tax.idaho.gov).

DATED this 2nd day of December 2015.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 016 is being promulgated to provide guidance regarding the definition of Idaho gross income and how it is calculated.

Rule 171 is being amended to modify the definition of real property, modify the list of nonqualifying property for the Idaho capital gains deduction and modify the procedure when property is distributed by an S corporation or partnership.

Rule 291 is being amended to provide guidance regarding items allowed as a deduction to owners of an interest in a pass-through entity when the tax is paid by the entity.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, **Vol. 15-7, pages 72-73.**

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1501**

**016. IDAHO GROSS INCOME.**  
Sections 63-3011 and 63-3030, Idaho Code

**01. In General.** Gross income means all income from whatever source derived, unless specifically excluded by the Internal Revenue Code. ( )

**02. Gross Income from Pass-Through Entities.** Gross income includes an owner's share of a pass-through entity's gross income pursuant to sections 702(c) and 1366(c) of the Internal Revenue Code, and federal Treasury Regulation Section 1.61-13 (citing Part I, Subchapter J, Chapter 1 of the Internal Revenue Code). ( )

**03. Gross Income from Idaho Sources.** Gross income from Idaho sources is that portion of total gross income derived from or related to sources within Idaho. Income derived from or related to sources within Idaho is determined pursuant to this rule and Rules 260 through 286 of these rules. ( )

**04. Idaho Source Gross Income from a Pass-Through Entity.** ( )

**a. Partnership.** The amount of a partner's gross income from Idaho sources is: ( )

**i.** The partner's distributive share of partnership gross income included in the partnership's

apportionable income multiplied by the Idaho apportionment factor of the partnership; and ( )

ii. The partner's distributive share of gross income allocated to Idaho. ( )

b. S Corporation. The amount of a shareholder's gross income from Idaho sources is: ( )

i. The shareholder's pro rata share of the S corporation gross income included in the S corporation's apportionable income multiplied by the Idaho apportionment factor of the S corporation; and ( )

ii. The shareholder's pro rata share of gross income allocated to Idaho. ( )

c. Trust or Estate. The Idaho source portion of the income that constitutes gross income pursuant to federal Treasury Regulation Section 1.61-13 and Part I, Subchapter J, Chapter 1 of the Internal Revenue Code, is the amount of such income that would be Idaho source if received directly by the individual. ( )

**05. Examples.** ( )

a. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that transacts business only in Idaho. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is fifty thousand dollars (\$50,000). ( )

b. A taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of ordinary loss passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. However, the taxpayer's distributive share of the partnership's gross income determined under Section 61 of the Internal Revenue Code is fifty thousand dollars (\$50,000). The taxpayer's gross income from Idaho sources from the partnership is twenty-five thousand dollars (\$25,000). ( )

c. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, none of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed outside of Idaho. ( )

d. A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed in Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, all of the guaranteed payments are included in the partner's gross income from Idaho sources because the services were performed in Idaho. ( )

e. A nonresident taxpayer's federal adjusted gross income includes three hundred thousand dollars (\$300,000) of guaranteed payments for services performed outside of Idaho received from a partnership that has a fifty percent (50%) Idaho apportionment factor. As provided in Section 63-3026A(3)(a)(i)(2), Idaho Code, the first two hundred and fifty thousand dollars (\$250,000) of guaranteed payments are sourced as compensation for services. Since the services were performed outside of Idaho, two hundred and fifty thousand dollars (\$250,000) of the guaranteed payments are not included in the partner's gross income from Idaho sources. However, twenty-five thousand dollars (\$25,000) of the guaranteed payments in excess of two hundred and fifty thousand dollars (\$250,000) are included in the partner's gross income from Idaho sources based on the apportionment factor of the partnership. ( )

f. A nonresident taxpayer's federal adjusted gross income includes ten thousand dollars (\$10,000) of nonbusiness gross income passed through from a partnership that has a fifty percent (50%) Idaho apportionment factor. If the partnership's nonbusiness income is allocated to Idaho, ten thousand dollars (\$10,000) of the nonbusiness gross income is included in the partner's gross income from Idaho sources. If the partnership's nonbusiness income is allocated to a state other than Idaho, none of the nonbusiness gross income is included in the partner's gross income from Idaho sources. ( )

0167. -- 024. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).**

Section 63-3022H, Idaho Code.

**01. Tangible Personal Property.** Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. (4-7-11)

**02. Real Property.** Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. ~~Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, real property does not include intangible property or severable property rights.~~ See Subsection 171.05 of this rule for examples of nonqualifying property. (4-4-13)( )

**03. Gain from Forfeited Rights and Payments.** Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. (4-7-11)

**04. Timber.** As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

**a.** Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

**b.** Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

**05. Nonqualifying Property.** Nonqualifying property includes: (4-4-13)

**a.** Real or tangible personal property not having an Idaho situs. (4-4-13)

**b.** Tangible personal property not used by a revenue-producing enterprise. (4-4-13)

**c.** Intangible property. Some examples of intangible property include, but are not limited to: (4-4-13)

**i.** Stocks and bonds; (4-4-13)

~~**ii.** Easements and rights of way, including agricultural, forest, historic, or open-space easements;~~ (4-4-13)

~~**iii.** Grazing permits;~~ (4-4-13)

~~**iv.** Leasehold interests, regardless of term;~~ (4-4-13)

~~**v.** Options;~~ (4-4-13)

~~**vi.** Water, mineral, hunting and fishing, renewable energy, and land surface rights;~~ (4-4-13)

~~**vii.** Conservation easements;~~ (4-4-13)

- ~~viii. Scenic easements. (4-4-13)~~
- ~~ix. Interests in a partnership, LLC, or S corporation. (4-4-13)~~
- 06. Holding Periods. (3-20-97)**
- a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)
- b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. (4-4-13)
- c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)
- d.** Examples of nonqualifying property. (7-1-98)
- i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)
- ii. Assume the same facts as in the example in Subparagraph 171.05.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (4-7-11)
- 07. Holding Periods of S Corporation and Partnership Property. (7-1-98)**
- a.** Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. (5-8-09)
- b.** Property Distributed by an S Corporation or Partnership. (2-27-12)
- ~~i. *Liquidating Distributions.* For purposes of this rule, the holding period of property received in a distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation. (2-27-12)~~
- ~~ii. *Nonliquidating Distributions.* For purposes of this rule, the holding period of property received in a distribution from a partnership other than in liquidation of a partnership interest or from an S corporation other than in liquidation of stock includes the time the entity held the property. (2-27-12) ( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2014 (RULE 291).**

Sections 63-3022L and 63-3026A, Idaho Code

**01. In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individuals or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-4-13)

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

**a.** Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

**b.** Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

**03. Deductions.** Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

**a.** Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)

**b.** Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)

**c.** Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)



iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

g. Items Reported as a Pass-Through Deduction. Amounts reported from the pass-through entity to the pass-through owner in their distributive share are allowed as a deduction under Section 63-3022L, Idaho Code, unless otherwise disallowed under this rule. These include but are not limited to: ( )

- i. Section 179 deduction: ( )
- ii. Charitable contributions made by the pass-through entity: ( )
- iii. Investment interest expense: ( )
- iv. Section 59(e)(2) expenditures (qualified research expenditures): ( )
- v. Amounts paid for medical insurance: ( )
- vi. Educational assistance benefits: ( )
- vii. Payments to a pension or IRA. ( )

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1502**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 251 through 265](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670 or email [Cynthia.adrian@tax.idaho.gov](mailto:Cynthia.adrian@tax.idaho.gov).

DATED this 2nd Day of December 2015.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 075 is being amended to add the tax brackets for calendar year 2015 and remove the information for calendar year 2010 so only five years of historical data is retained in the rule.

Rule 130 is being amended consistent with 2015 HB36 to add the Foreign Service Retirement and Disability System and its offset program to the list of qualified benefits for the Retirement Benefits Deduction. It also adds the offset program of the Civil Service Retirement System to the list of qualified benefits.

Rule 173 is being amended consistent with 2015 HB133 to change who must meet the gross income limitations for the Idaho capital gains deduction when the gain is passed through from an S corporation, partnership, trust, or estate.

Rule 201 is being amended to clarify the procedure for adjustments to a net operating loss.

Rule 252 is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income is used to allow certain deductions to part-year or nonresidents. The distortive percentage occurs when a part-year or nonresident has a federal NOL carryover that wipes out income for federal purposes.

Rule 263 is being amended to update the amount of guaranteed payments that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code.

Rule 771 is being amended to add tax year 2015 and the applicable grocery credit amounts to the table.

Rule 855 is being amended to delete the reference to the election under Section 63-3022L, Idaho Code. The election language was removed from Section 63-3022L, Idaho Code, in 2012.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, September 23, 2015.

DATED this 30th Day of July, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1502**

**075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).**

Section 63-3024, Idaho Code

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for

inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

**02. Tax Computation.** (5-3-03)

**a.** The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

**c.** For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

**03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets.** (3-20-04)

*For taxable years beginning in 2010:*

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	+	1.6% of taxable income
\$1,316	\$2,632	\$21.06	+	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	+	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	+	5.1% of the amount over \$3,948
\$5,264	\$6,580	\$189.52	+	6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80	+	7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39	+	7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69	+	7.8% of the amount over \$26,320

*Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.*

(4-7-11)

**a.** For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690

\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+	7.8% of the amount over \$26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.				

(2-27-12)

**eb.** For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,380	\$0	+	1.6% of taxable income
\$1,380	\$2,760	\$22.08	+	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+	7.4% of the amount over \$10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.				

(4-4-13)

**ec.** For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.				

(3-20-14)

**ed.** For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,429	\$0	+	1.6% of taxable income
\$1,429	\$2,858	\$22.86	+	3.6% of the amount over \$1,429
\$2,858	\$4,287	\$74.30	+	4.1% of the amount over \$2,858
\$4,287	\$5,716	\$132.89	+	5.1% of the amount over \$4,287
\$5,716	\$7,145	\$205.77	+	6.1% of the amount over \$5,716
\$7,145	\$10,718	\$292.94	+	7.1% of the amount over \$7,145
\$10,718 or more		\$546.59	+	7.4% of the amount over \$10,718

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

(4-11-15)

**e.** For taxable years beginning in 2015:

<u>IF IDAHO TAXABLE INCOME IS</u>		<u>IDAHO TAX</u>		
<u>At least</u>	<u>But less than</u>	<u>Is</u>		<u>Plus</u>
<u>\$1</u>	<u>\$1.452</u>	<u>\$0</u>	<u>±</u>	<u>1.6% of taxable income</u>
<u>\$1.452</u>	<u>\$2.904</u>	<u>\$23.23</u>	<u>±</u>	<u>3.6% of the amount over \$1.452</u>
<u>\$2.904</u>	<u>\$4.356</u>	<u>\$75.50</u>	<u>±</u>	<u>4.1% of the amount over \$2.904</u>
<u>\$4.356</u>	<u>\$5.808</u>	<u>\$135.03</u>	<u>±</u>	<u>5.1% of the amount over \$4.356</u>
<u>\$5.808</u>	<u>\$7.260</u>	<u>\$209.08</u>	<u>±</u>	<u>6.1% of the amount over \$5.808</u>
<u>\$7.260</u>	<u>\$10.890</u>	<u>\$297.65</u>	<u>±</u>	<u>7.1% of the amount over \$7.260</u>
<u>\$10.890 or more</u>		<u>\$555.38</u>	<u>±</u>	<u>7.4% of the amount over \$10.890</u>

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**

Section 63-3022A, Idaho Code.

**01. Qualified Benefits.** Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

**a.** Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System ~~by the United States Government~~, the Foreign Service Retirement and Disability System, or the offset programs of these systems. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal

Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. (4-4-13)( )

**b.** Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid ~~by~~ out of the public employee's retirement system do not qualify for the deduction. (3-20-97)( )

**c.** Retirement benefits paid to a retired Idaho city police officer: (4-4-13)

**i.** By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or (4-4-13)

**ii.** In regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or (4-4-13)

**iii.** By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or (4-4-13)

**iv.** An unremarried widow or widower of a person described in Subparagraph 130.01.c.i., 130.01.c.ii., or 130.01.c.iii. of this rule. (4-4-13)

**d.** Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

**02. Unremarried Widow or Widower.** An unremarried widow or widower of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow or widower. (4-4-13)

**a.** Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)

**b.** Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)

**c.** Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)

**03. Married Individuals Filing Separate Returns.** Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

**04. Publication of Maximum Deduction.** The maximum deduction that may be subtracted when computing Idaho taxable income will be published each year in the instructions for preparing Idaho individual

income tax returns. (4-4-13)

**05. Disabled Individual.** For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code, or an individual who qualifies as a person with a “permanent disability” under Section 49-117 (7) (b) (iv), Idaho Code. This includes: (4-4-13)

**a.** An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or (4-6-05)

**b.** A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).**  
Section 63-3022H, Idaho Code

**01. In General.** (3-20-97)

**a.** Qualified property held by an S corporation, partnership, trust, or estate may be eligible for the Idaho capital gains deduction. The deduction is allowed only on the return of an individual shareholder, individual partner, or individual beneficiary. (3-29-10)

**b.** Partnerships, S corporations, trusts, and estates that pay the tax for an electing individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (3-29-10)

~~**02. Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)~~

~~**032. Multistate Entities.** A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)~~

~~**043. Examples.** (3-20-97)~~

~~**a.** XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars (\$6,000), computed as follows: (\$40,000 Idaho gain X 75% apportionment factor = \$30,000 gain apportioned to Idaho X 1/3 interest = \$10,000 attributable to each partner X 60% = \$6,000 capital gains deduction allowable on each partner’s nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or eight thousand dollars (\$8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars (\$6,000).~~



(3-30-07)

**b.** Assume the same facts as in Paragraph 173.04.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (5-8-09)

**c.** Assume the same facts as in Paragraph 173.04.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.04.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (5-8-09)

**d.** Assume the same facts as in Paragraph 173.04.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). (5-8-09)

**e.** An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.04.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$40,000 Idaho gain X 1/3 interest X 80% = \$10,667). (5-8-09)

**f.** Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).**

Section 63-3022(c), Idaho Code

**01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)**

**a.** The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

**b.** A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

**02. Adjustments to Net Operating Losses. (3-20-97)**

**a.** Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. (3-20-97)

**b.** Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations, but will not result in any tax due or refund for the closed taxable years. ~~(3-20-97)~~(\_\_\_\_)

**03. Adjustments in Carryback and Carryover Years. (3-20-97)**

**a.** Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

**b.** Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

**c.** Adjustments may be made even though the year is closed due to the statute of limitations, but will not result in any tax due or refund for the closed taxable years. ~~(3-20-97)~~ ( )

**04. Net Operating Loss Carrybacks Application. (3-20-14)**

**a.** The net operating loss carryback allowed for the entire carryback period may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-7-11)

**b.** The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. (3-20-14)

**c.** Except as provided in Paragraphs 201.04.d. and 201.04.f, a net operating loss is applied as follows: (3-20-14)

**i.** Net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, are applied to the third preceding taxable year and if not absorbed, the difference is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (3-20-14)

**ii.** Net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, are applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

**iii.** Net operating losses incurred in taxable years beginning on and after January 1, 2013, are applied to the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

**d.** For taxable years beginning prior to January 1, 2013, if the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.c. do not apply and the net operating loss carryover is applied as follows: (3-20-14)

**i.** For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

**ii.** For net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (3-20-14)

**e.** For taxable years beginning prior to January 1, 2013, if the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not result in a refund for the closed taxable year. (3-20-14)

**f.** For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is

applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (3-20-14)

**05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013.** (3-20-14)

**a.** Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (4-7-11)

- i.** The name, address, and taxpayer's social security number or employer identification number; (3-20-97)
- ii.** A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)
- iii.** The amount of the net operating loss. (3-20-97)

**b.** Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss does not constitute an election for Idaho purposes. (4-7-11)

**c.** If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.c. (4-7-11)

**06. Order in Which Losses Are Applied in a Year.** Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

**07. Documentation Required When Claiming a Net Operating Loss Deduction.** A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

**08. Conversion of C Corporation to S Corporation.** An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation subject to Idaho tax on net recognized built-in gains or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain and excess net passive income. (4-7-11)

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).**  
Section 63-3026A(6), Idaho Code.

**01. In General.** Deductions allowed in computing adjusted gross income will be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed will be computed as provided in this rule. Each computation in this rule will include the amounts reported for the taxable year unless otherwise indicated. (3-20-14)

**02. Deductions Directly Related to Specific Items of Income or Property.** If the deduction directly relates to a specific item of income or property, the allowable deduction will be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction will be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: (3-20-14)

**a.** Penalty on early withdrawal of savings. The allowable deduction will be computed by dividing the interest income of the time savings deposit subject to the penalty included in Idaho income by the total interest income of the time savings deposit included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes. (3-20-14)

**b.** Certain business expenses of reservists, performing artists, and fee-basis government officials. (3-29-10)

**c.** Domestic production activities deduction. The allowable deduction will be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. (3-20-14)

**d.** Jury duty pay remitted to an employer. (3-29-10)

**e.** Deductible expenses related to income from the rental of personal property engaged in for profit. (3-29-10)

**f.** Reforestation amortization and expenses. The allowable deduction will be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable deduction will be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. (3-20-14)

**g.** Repayment of supplemental unemployment benefits. The allowable deduction will be computed by dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. (3-20-14)

**h.** Attorney fees and court costs. The allowable deduction will be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. (3-20-14)

**03. Deductions Allowed Based on Qualifying Types of Income.** If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction will be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. (3-20-14)

**a.** Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction will be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. (3-20-14)

**b.** Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction will be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. (3-20-14)

**04. Other Deductions.** Deductions that do not relate to specific items of income or to the earning of qualifying income will be allowed in the proportion that Idaho total income bears to federal total income ~~computed without the federal net operating loss deduction~~. The federal net operating loss deduction is not included in either the federal total income or the Idaho total income for this calculation. Such deductions include the following:

~~(3-20-14)~~ ( )

- a. Alimony payments. (3-29-10)
- b. Moving expenses. (3-29-10)
- c. Student loan interest payments. (3-29-10)
- d. Tuition and fees deduction. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS --  
DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).**

Section 63-3026A(3), Idaho Code

**01. In General.** The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

**02. Nonbusiness Income.** Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

**03. Pass-Through Items.** Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

**04. Guaranteed Payments Treated As Compensation.** (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 263.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. ~~The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars (\$250,000).~~ The amount of guaranteed payments that are sourced as compensation for services is as follows:

<u>TAX YEAR</u>	<u>AMOUNT</u>
<u>2015</u>	<u>\$254,000</u>
<u>2014</u>	<u>\$250,000</u>
<u>2013</u>	<u>\$250,000</u>

(4-11-15)( )

**05. Distributions.** (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
 Section 63-3024A, Idaho Code

**01. Residents.** (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

<b>TAX YEAR</b>	<b>IDAHO TAXABLE INCOME \$1,000 OR LESS</b>	<b>IDAHO TAXABLE INCOME MORE THAN \$1,000</b>
<u>2015</u>	<u>\$100</u>	<u>\$100</u>
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

(4-11-15)( )

**b.** A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

**02. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

**a.** Received assistance under the federal food stamp program; or (5-8-09)

**b.** Was incarcerated. (5-8-09)

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

**05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

**06. Members of the Uniformed Services.** A member of the uniformed services who is: (4-7-11)

**a.** Domiciled in Idaho is entitled to this credit; (5-8-09)

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

**c.** See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

**07. Spouse or Dependents of Members of the Uniformed Services.** Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

**08. Claiming the Credit.** (5-8-09)

**a.** An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

**b.** An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

**c.** No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

**09. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code.

**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

**02. Pass-Through Entities.** The permanent building fund tax does not apply to a pass-through entity if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A pass-through entity that has Idaho taxable income or loss must pay the permanent building fund tax. ~~For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule.~~ (3-20-14)( )

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax must pay the permanent building fund tax. (3-20-14)

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax does not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. (3-20-14)

**06. Entities That Pay the Tax for Individuals Under Section 63-3022L, Idaho Code.** When a pass-through entity pays the Idaho income tax on a composite return for an individual shareholder, partner, member, or beneficiary on his share of income from the entity, the entity must pay the permanent building fund tax for each individual filing as part of the composite return. When a pass-through entity pays backup withholding for individuals, the permanent building fund tax will be paid by each individual when they file their return. If an individual has tax paid by more than one (1) entity for a taxable year, each entity is required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has tax paid by multiple entities for a taxable year. (3-20-14)



**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1501**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the October 7, 2015, Idaho Administrative Bulletin, [Vol. 15-10, pages 554 through 564](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact McLean Russell (208) 334-7531 or email [mclean.russell@tax.idaho.gov](mailto:mclean.russell@tax.idaho.gov).

DATED this 2nd Day of December, 2015.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 027 - Computer Equipment, Software, & Data Services.**

The passage of House Bill 209 during the 2015 Idaho legislative session necessitated changes to this rule. Effective April 1, 2015, the bill amended the definition of tangible personal property in Idaho Code Section 63-3616 clarifying that digital videos, digital music, digital books, and digital games are tangible personal property only when the purchaser has a permanent right to use the digital product. The proposed changes primarily focus on removing conflicts with the new law. The old subsection 08 addressing digital games has been combined into subsection 06 with the other digital products. The new subsection 08 contains changes to bring it in line with legislative changes from previous years (primarily House Bill 598 from the 2014 session).

**Rule 056 - Photographers and Photofinishers.**

The proposed rule has been updated to address taxability of digital photographs particularly in light of House Bill 598 passed during the 2014 legislative session. That change in the law removed digital photographs from the definition of tangible personal property unless the photographs are delivered on disc. As a result, where a photographer primarily sells digital photographs delivered electronically, they no longer qualify for the production exemption on their purchases.

**Rule 107 - Vehicles and Vessels – Gifts, Military Personnel, Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians, and Other Exemption.**

The passage of House Bill 12 during the 2015 legislative session added utility-type vehicles (UTVs) and specialty off-highway vehicles to the exemption available to nonresidents purchasing certain vehicles and boats in Idaho. The proposed rule has been updated to reflect those changes.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 6, 2015, Idaho Administrative Bulletin, [Vol. 15-5, pages 84-85](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1501**

**027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).**  
Section 63-3616, Idaho Code

**01. Definitions.** For purposes of this rule, the following terms will have the following meanings:

(4-11-15)

**a.** Canned Software. Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. (4-11-15)

**b.** Computer. A computer is a programmable machine or device having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (4-11-15)

**c.** Computer Hardware. Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (4-11-15)

**d.** Computer Program. A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. (4-11-15)

**e.** Computer Software. Computer software, or simply software, is defined as any of the following: (4-11-15)

i. A computer program; (4-11-15)

ii. Any part of a computer program; (4-11-15)

iii. Any sequence of instructions that operates automatic data processing equipment; or (4-11-15)

iv. Information stored in an electronic medium. (4-11-15)

**f.** Custom Software. Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. (4-11-15)

**g.** Digital Product. See definition for "Information Stored in an Electronic Medium" in Subsection 027.01.h. (4-11-15)

**h.** Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with "digital product." (4-11-15)

**i.** Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user's storage media at the user's location but does not transfer storage media containing the software to the user. (4-11-15)

**j.** Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. (4-11-15)

**k.** Storage Media. Storage media include, but are not limited to, hard disks, optical media discs, diskettes, magnetic tape data storage, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. (4-11-15)

**02. Computer Hardware.** The sale or lease of computer hardware is a sale at retail. Sales tax is

imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (4-11-15)

**03. Canned Software.** When canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. If canned software is sold using a physical package but the package does not contain the canned software on storage media, it is not tangible personal property and the sale is not taxable. For example, if a printed key code is sold in a box that allows the user to download canned software and activate the canned software using the key code, the sale is not taxable. (4-11-15)

**a.** If canned software is loaded on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in Subsection 027.03 of this rule. (4-11-15)

**b.** Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 ~~through~~ and 027.08~~7~~ of this rule. (~~4-11-15~~)(      )

**c.** When a sale of canned software is taxable, tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (4-11-15)

**04. Remotely Accessed Computer Software.** Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. (4-11-15)

**05. Maintenance Contracts.** Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

**a.** If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (4-11-15)

**b.** If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

**i.** Then only the portion of the contract fee representing upgrades is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; (4-11-15)

**ii.** If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (4-11-15)

**iii.** If the maintenance contract only provides upgrades delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; (4-11-15)

**iv.** If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

**c.** If an optional software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software updates on storage media, no portion of the contract is taxable unless the customer actually receives software updates on storage media. (4-11-15)

**06. Digital Products.** Digital music, digital books, ~~and~~ digital videos, and digital games are tangible personal property regardless of the delivery or access method but only if the purchaser has a permanent right to use the digital music, digital books, digital videos, or digital games. Where the purchaser has a permanent right to use these digital products, the sales, leases, and rentals of these digital products are taxable. ~~Whether the user has the right to stream or download these digital products, the sale, l~~leases, or rentals of these digital products ~~is~~ are not taxable. (4-11-15)(    )

a. Other than digital music, digital books, ~~or~~ digital videos, or digital games, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. (4-11-15)(    )

b. ~~Special rules apply to digital games. See Subsection 027.08 of this rule. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is taxable if the purchaser has a permanent right to use the digital game. If a user pays a periodic subscription charge to play a digital game, the periodic subscription charge is not taxable. If a user pays a periodic subscription charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is not taxable.~~ (4-11-15)(    )

**07. Digital Subscriptions.** Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions ~~granting access to a database of digital music, digital books, or digital videos~~ are not taxable ~~regardless of the method of access or delivery.~~ (4-11-15)(    )

~~a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable.~~ (4-11-15)

~~b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may download content from the database onto the user's storage media.~~ (4-11-15)

~~**08. Digital Games.** Digital games are tangible personal property regardless of access or delivery method and, therefore, the sale of a digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still taxable. If a user pays a periodic charge to play a digital game that requires a constant connection over the internet to a remote server, the periodic charge is taxable. If a user pays a periodic charge for a gaming service that enables certain functionality such as multiplayer capability in one (1) or more digital games, the periodic charge is taxable. If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable.~~ (4-11-15)

**09. Reports Compiled by a Computer.** The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable ~~regardless of the means of transfer~~ if the final product is printed or delivered in an electronic format on storage media. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented or delivers the report to the purchaser electronically. (3-6-00)(    )

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (4-11-15)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts

book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

**d.** When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

**e.** Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

~~40.~~ **Online or Remote Data Storage.** Charges to store data on storage media owned and controlled by another party is a nontaxable service. (4-11-15)

~~140.~~ **Training Services.** Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

**a.** When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

**b.** When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

**c.** When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

~~121.~~ **Custom Software.** The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

**a.** Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

**b.** If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

**c.** Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

~~132.~~ **Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

056. PHOTOGRAPHERS AND PHOTOFINISHERS (RULE 056).

Sections 63-3616 & 63-3622D, Idaho Code

**01. Sales of Photographs.** ( )

**a.** Printed photographs are tangible personal property. Sales of printed photographs are taxable. ( )

**b.** Digital photographs are tangible personal property when sold and delivered to the purchaser on storage media. Sales of digital photographs are taxable when sold and delivered to the purchaser on storage media. ( )

**c.** Digital photographs are not tangible personal property when delivered electronically. Sales of digital photographs are not taxable when sold and delivered to the purchaser electronically. ( )

**012. Sales by Photographers and Photofinishers.** ~~Photographers and photofinishers are engaged in the business of producing and selling tangible personal property.~~ (6-23-94) ( )

**a.** When ~~such persons develop and/or print pictures, and~~ photographers or photofinishers sell films, frames, cameras, ~~completed~~ printed photographs, digital photographs delivered on storage media, photostats, blueprints, etc., they are making a sale of a completed article of tangible personal property ~~in every case~~ and they must collect the tax on the total selling price unless an exemption applies. (6-23-94) ( )

**b.** When ~~such persons~~ photographers or photofinishers render service, such as retouching, ~~and~~ tinting, or coloring of print photographs belonging to others, they are performing taxable processing services and must collect the tax from their customers unless an exemption applies. When similar services are performed on a digital photograph, the service is only taxable if the final product is delivered on storage media. (6-23-94) ( )

**c.** Photographers may charge a sitting fee ~~to cover the cost of taking the picture,~~ which may be separately stated from any charges for ~~developing and printing~~ the photographs. ~~Such~~ When charged along with a sale of printed photographs or digital photographs delivered on storage media, sitting fees are charges for producing or fabricating tangible personal property and are ~~therefore subject to sales~~ taxable. See Idaho Sales Tax Administrative Rule 029. (6-23-94) ( )

**023. Sales to Photographers and Photofinishers.** (6-23-94)

**a.** Photographers ~~who are in the business of selling photographs~~ and photofinishers may qualify for the production exemption if they are primarily in the business of selling print photographs or digital photographs delivered on storage media. Photographers and photofinishers primarily in the business of selling digital photographs that are delivered electronically cannot qualify for the production exemption. ( )

**b.** The production process begins when the film image is ~~exposed~~ captured. Therefore, photographers must pay sales or use tax on purchases of props, backdrops and other items used prior to the start of production of the photograph. Equipment and supplies including cameras, lights, lenses, film, paper, fix, developer, and enlargers used to produce photographs are used during the production process and are exempt if the photographer otherwise qualifies for the production exemption in Section 63-3622D, Idaho Code. (6-23-94) ( )

**b.c.** Photofinishers may purchase equipment and supplies exempt from sales or use tax as long as the equipment and supplies are directly used to produce photographs which they will sell and they otherwise qualify for the production exemption provided by Section 63-3622D, Idaho Code. (6-23-94)

**04. Definitions. For purposes of this rule, the following terms have the following definition:** ( )

**a.** Storage media. Storage media include, but are not limited to, optical media discs such as CDs or DVDs, hard drives, diskettes, magnetic tape data storage, solid state drives, flash drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).**

Sections 63-3621(k) and (l) and 63-3622R, Idaho Code

**01. In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

**02. Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

**a.** No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

**b.** The recipient assumes no indebtedness. (7-1-93)

**c.** The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

**d.** The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

**i.** A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

**ii.** The title may be marked as a gift and signed by the donor. (3-4-10)

**03. Nonresidents.** (3-30-07)

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

**b.** For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)

**c.** A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general



sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (4-11-15)

**a.** If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

**b.** A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

**05. Military Personnel.** (4-11-15)

**a.** Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

**b.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

**a.** If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the six hundred dollars (\$600) tax due Idaho. The assessor will collect three hundred dollars (\$300) tax. (4-11-15)

**c.** Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

**d.** Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

**e.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

**f.** Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

- g.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

**a.** The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

- b.** This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

**c.** Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

**09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

- 10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)

**a.** Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: ~~(5-3-03)~~( )

**i.** The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and ~~(5-3-03)~~( )

**ii.** The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. ~~(5-3-03)~~( )

**b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

**c.** This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, ~~an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator.~~ UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. (3-4-10)( )

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

g. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

**11. Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1502**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the October 7, 2015, Idaho Administrative Bulletin, [Vol. 15-10, pages 565 through 581](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact McLean Russell (208) 334-7531 or email [mclean.russell@tax.idaho.gov](mailto:mclean.russell@tax.idaho.gov).

DATED this 2nd Day of December, 2015.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 041 - Food, Meals, or Drinks.**

**Rule 072 - Application and Payment of Use Tax.**

The passage of House Bill 237 during the 2015 Idaho legislative session exempted prepared food and beverage freely given to employees if the retailer is in the business of selling prepared food and beverage (e.g. a restaurant). A new subsection has been added to the proposed draft of Rule 041 to define prepared food and prepared beverage. The only change to the proposed draft of Rule 072 is an addition of a cross reference to Rule 041.

**Rule 050 - Veterinarians and Veterinary Supplies.**

**Rule 079 - Production Exemption.**

**Rule 083 - Farming & Ranching.**

**Rule 103 - Hand Tool, Component, and Unit Price.**

The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule drafts of each of the above remove the language that is in conflict with the new law.

**Rule 128 - Certificates for Resale and Other Exemption Claims.**

The proposed rule draft includes changes to several descriptions of exemption certificates that have been updated to reflect the current version of the form. In addition, several changes have been made to remove hand tool language due to the passage of House Bill 39 mentioned above.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2015, Idaho Administrative Bulletin, [Vol. 15-6, pages 55-56](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1502**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**

[Section 63-3612\(2\)\(b\), 63-3621\(p\), & 63-3622J, Idaho Code](#)

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations.

(7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs and Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, and Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

**b.** If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

**c.** Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

**a.** Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

**b.** The formula for computing the taxable amount is:  $TS / (100\% + TR)$  where TS is total sales and TR is the tax rate. (4-2-08)

**08. Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. (3-20-14)

**11. Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

**a.** Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

**b.** Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

**c.** Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**12. Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

**a.** Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

**13. Free Giveaways to Employees.** It is common practice for a retailer to give away prepared food and beverage, including full meals, to its employees free of charge. Giveaways of this nature normally trigger a use tax liability for the retailer calculated on the value of the items given away. However, if the retailer is in the business of selling prepared food and beverage, giveaways of prepared food and beverage to its employees are not taxable. Retailers that would qualify include restaurants and grocery stores with a deli or similar section that sells prepared food. ( )

a. For purposes of this subsection, prepared food means food intended for human consumption that: ( )

i. Is heated when given away; or ( )

ii. Consists of two (2) or more ingredients combined by the retailer and given away as a single item; or ( )

iii. Is customarily served with utensils. ( )

b. For purposes of this subsection, prepared beverage means any beverage intended for human consumption. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. VETERINARIANS AND VETERINARY SUPPLIES (RULE 050).**  
Sections 63-3622 & 63-3622D, Idaho Code

**01. In General.** Fees charged by a veterinarian for professional services are not subject to sales or use taxes. Tangible personal property used or consumed by a veterinarian or sold by a veterinarian ~~are~~ is taxable in accordance with the provisions of this rule. (7-1-93)( )

**02. Drugs and Other Supplies.** Drugs and other supplies used by a veterinarian while treating animal patients are tangible personal property consumed by the veterinarian in the course of providing services. If the veterinarian has not paid sales tax on his purchase of the drugs or supplies, a use tax is ~~payable~~ owed by the veterinarian. (7-1-93)( )

**03. Services Provided to Exempt Customers.** The veterinarian's use of drugs is taxable even though he may be providing services to a cattle rancher, dairyman or other producer because the drugs are consumed by the veterinarian and not by the producer. Since the production exemption is available only to persons engaged in a production business, the veterinarian does not benefit from the exemption. (7-1-93)( )

**04. Retail Sales of Drugs and Supplies.** The sale of drugs and veterinary supplies by a veterinarian is a retail sale. Veterinarians making such sales must obtain a seller's permit and must charge and remit the sales tax on such sales. However, the sale of drugs and veterinary supplies, ~~except hand tools with a unit price of less than one hundred dollars (\$100),~~ to a ~~cattle rancher, dairyman or other~~ person operating ~~for gain or profit~~ a stock, dairy, poultry, fish, fur, or other ranch for gain or profit is exempt if documented by an exemption certificate as provided in Rule 128. (3-15-02)( )

**05. Equipment and Supplies.** Tangible personal property purchased or acquired by the veterinarian for the operation of his business including professional instruments and supplies, and office furnishings and



equipment are taxable.

(7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).**

[Sections 63-3615 & 63-3621, Idaho Code](#)

**01. Imposition of Use Tax.** Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code. (7-1-93)

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term “use” does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules. (3-15-02)

**03. Storage.** Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho. (7-1-93)

**04. Specifically Excluded from the Definition of Both Use and Storage Are:** (7-1-93)

- a.** Retention or use of property for subsequent transportation outside the state; or (7-1-93)
- b.** Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use or resale solely outside the state. (7-1-93)

**05. Receipt Showing Sales Tax Paid.** If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer’s receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements. (6-23-94)

**06. Out-of-State Purchases.** If the property is purchased outside the state or from a retailer not subject to the Commission’s jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. (6-23-94)

**07. Taxes Paid to Another State.** The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid. (7-1-93)

**a.** If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax. (6-23-94)

**b.** If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property. (6-23-94)

**c.** If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is

limited to the amount of Idaho tax due on the same transaction or use of the property. (6-23-94)

**08. Use Undeterminable at Time of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (3-15-02)

**09. Removal from This State.** If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply. (7-1-93)

**10. Tangible Personal Property Removed From Inventory.** A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code. (4-4-13)

**a.** Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, if a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor. (4-4-13)

**b.** Special rules apply to retailers giving away prepared food and beverage to their employees. See Rule 041 of these rules for more information. ( )

**b.c.** Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

**b.d.** Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees. (7-1-93)

**b.e.** Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars (\$10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars (\$100). (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**079. PRODUCTION EXEMPTION (RULE 079).**  
Sections 63-3622 & 63-3622D, Idaho Code

**01. In General.** Section 63-3622D, Idaho Code, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (5-8-09)

**a.** A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property that it will sell and is intended to be ultimately sold at retail. (5-8-09)

**b.** The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: (5-8-09)

**i.** The business of custom farming or operating a farm or ranch for profit. (7-1-93)

**ii.** The business of contract mining or operating a mine for profit. (6-23-94)

**iii.** Businesses devoted to processing tangible personal property for use as fuel for the production of energy. (5-8-09)

**02. Qualifying Businesses.** The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

**a.** For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

**b.** The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

**c.** To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. (5-8-09)

**03. Exempt Purchases.** As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

**a.** Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

**b.** Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

**c.** Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

**d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

**e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

**f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

**g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

- h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)
- i.** Equipment used primarily to fabricate production equipment. (7-1-93)
- 04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)
- 05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)

  - a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
  - b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
  - ~~**e.** A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)~~
  - ~~**c.** Office equipment and supplies. (7-1-93)~~
  - ~~**d.** Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)~~
  - ~~**f.** Equipment and supplies used in selling and distribution activities. (7-1-93)~~
  - ~~**g.** Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)~~
  - ~~**h.** Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)~~
  - ~~**i.** Transportation equipment and supplies. (7-1-93)~~
  - ~~**j.** Aircraft of any type and supplies. (7-1-93)~~
  - ~~**k.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)~~
  - ~~**l.** Other incidental items not directly used in production. (7-1-93)~~
  - ~~**m.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)~~
  - ~~**n.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATVs), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one~~

hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

~~01.~~ Parts to repair recreation-related vehicles. (7-1-93)

~~02.~~ Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

**06. Real Property.** The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. The production exemption does not apply to equipment and materials primarily used to improve real property. (3-20-14)

**07. Change in Primary Use of Property.** If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

**08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

**a.** Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

**b.** Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

**c.** Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

**09. Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

**10. Special Rules.** Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**083. FARMING AND RANCHING (RULE 083).**

[Sections 63-3603, 63-3622 & 63-3622D, Idaho Code](#)

This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in Rule 079 of these rules. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (3-15-02)

**01. In General.** Farming includes custom farming and the operation of a farm or ranch, and includes stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges, and orchards operated with the intention of making a gain or profit. Farming does not include operation of ranches or stables where the sole purpose is showing or racing horses, or the breeding of show or race horses. (7-1-93)

**02. Property Primarily and Directly Used.** As applied to the business of farming, the exemption applies to all tangible personal property which is primarily and directly used to conduct the farming business, and which is necessary or essential to the operation, except those categories of property listed in other sections of this rule. (7-1-93)

**03. Directly Used.** The term directly used means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting, and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. (7-1-93)

**04. Transportation Activities.** Equipment used to move farm produce to initial storage is exempt, even though it may be mounted on a vehicle which is required to be licensed and is taxable. Equipment qualifies for this exemption if: (7-1-93)

- a. It is readily removable from the vehicle on which it is mounted; (7-1-93)
- b. It is separately stated on the vendor's invoice; and (7-1-93)
- c. It is sold to a qualified farming operation and is supported by a valid exemption claim form. (7-1-93)

**05. Disinfectants Used in the Dairy Industry.** Effective January 1, 1990, disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats, or other milking equipment are exempt. (7-1-93)

**06. Safety Supplies.** Safety supplies required by a state or federal agency and directly used in a farming operation are exempt from sales or use tax. (7-1-93)

**07. Plants.** Plants, such as orchard trees and grape vines, are exempt. (7-1-93)

**08. The Farming Exemption Does Not Include:** (9-1-93)

a. Property purchased to meet the personal needs of a farmer, his family, or employees. Examples of items that are excluded from the exemption include, but are not limited to, hand soap, toothpaste, shampoo, blankets, sheets, pillowcases, towels, washcloths, irrigation boots, coveralls, gloves, other clothing, and grocery items. (7-1-93)

b. Food and supplies purchased for barnyard and household pets, such as cat and dog food, are subject to the tax. Even though a dog may occasionally be used for herding livestock or a cat may control mice in the barn, the supplies purchased for their care and maintenance do not qualify for the production exemption. Only when a dog's SOLE purpose is the herding or protection of a rancher's livestock may the food and supplies for the dog be purchased tax exempt under the production exemption. (7-1-93)

c. Livestock trailers which may be attached to motor vehicles used to transport horses, cattle, sheep, or other farm animals on public roads are transportation equipment and are subject to sales or use tax. (7-1-93)

d. Motor vehicles required to be licensed are subject to sales or use tax even when used exclusively in a farming operation. Motor vehicles purchased, but not licensed, by a farmer for use exclusively in an off-road production activity, such as a feed truck, are not subject to sales or use tax. (7-1-93)

*e. A hand tool, regardless of how necessary its use may be to production or how directly it may be used, is specifically excluded from the production exemption if the unit price of the tool is one hundred dollars (\$100) or less. A hand tool is an instrument used or worked by hand. Examples of hand tools in the farming and ranching industry include emasculators, branding irons, tattoo kits such as crimpers and rollers, eartag applicators, calf pullers, syringes and needles, buckets, sponges, balling guns, shovels, wheelbarrows, ropes, cattle prods, whips, wrenches, drills, and power tools. Hand tools do not include such things as feed bags, tack, halters and lead ropes, cow magnets, and weaning rings. These items, depending on use, may qualify for the exemption. If a halter and lead rope are purchased by a horse trainer, no exemption applies. If a halter and lead rope are purchased by a rancher to*

~~be used on his stock horse, no tax applies.~~

~~(7-1-93)~~

~~f.e.~~ Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

**09. Exemption Certificate.** Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See Rule 128 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. HAND TOOL, COMPONENT, AND UNIT PRICE (RULE 103).**

[Sections 63-3622S, 63-3622T, 63-3622W, & 63-3622JJ, Idaho Code](#)

**01. Exempt Hand Tools.** The Idaho sales tax law exempts hand tools with a unit price of over one hundred dollars (\$100) if the hand tools are used directly and primarily in any of the following operations: (7-1-93)

~~a. Manufacturing, processing, mining, farming or fabricating, Section 63-3622D, Idaho Code;~~  
~~(7-1-93)~~

~~b.a.~~ Broadcasting, Section 63-3622S, Idaho Code; (7-1-93)

~~b.b.~~ Certain newspaper publishing, Section 63-3622T, Idaho Code; (7-1-93)

~~b.c.~~ Agricultural irrigation, Section 63-3622W, Idaho Code; (7-1-93)

~~b.d.~~ Logging, Section 63-3622JJ, Idaho Code. (7-1-93)

**02. Unit.** A unit, as applied to hand tools, means a single, distinct part or object which can be used by itself to perform a specific function. For example, a screwdriver can be used by itself to tighten or loosen a screw. When units, such as screwdrivers, are sold in sets to a manufacturer who will use the tools primarily and directly in the production process, i.e., to assemble product, a per unit price must be computed to determine if the purchase qualifies for the over one hundred dollars (\$100) per unit exemption. When a manufacturer purchases a set of twenty (20) wrenches for one hundred twenty-five dollars (\$125) to be used in product assembly, the purchase is taxable because the per unit price of the hand tools is less than one hundred dollars (\$100). (7-1-93)

**03. Component.** A unit may be composed of two (2) or more components. A component is a distinct part which must be physically attached to another part to perform a specific function. A component alone has no utility. For example, a drill bit must be physically attached to a drill in order for the bit or the drill to have utility. Together they become a unit which can perform a specific function. Single components or sets of components, sockets, drill bits, etc., are taxable unless they will be physically joined to another component, ratchet, drill, etc., to form a unit which exceeds one hundred dollars (\$100) in cost. For example, drill bits which are physically attached to a five hundred dollar (\$500) drill press to perform a specific function in a production process are exempt from the tax. (7-1-93)

**04. Unit Price.** The total amount extended on a purchase invoice for multiple units is not the unit price. The unit price must be computed to determine whether the hand tool exceeds one hundred dollars (\$100) and qualifies for a given exemption. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).**

[Section 63-3622, Idaho Code](#)

**01. In General.** This rule applies to proper documentation for exempt purchases of tangible personal

property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

**02. Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

**03. Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

**04. Qualified Buyers for Purposes of Resale.** The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

**a.** A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

**b.** A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

**c.** An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

**05. Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

**i.** Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

**ii.** Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

**iii.** Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

**b.** Retailers of food products who have been granted records reduction authority by the State Tax



Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency employer or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)(      )

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)(      )

g. Motor Vehicle Sales Tax Exemption Certificate -- Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (4-4-13)(      )

h. Truck Camper, Transport Trailer, Occasional Sale Exemption Claim -- Office Trailer and Untitled Boat Certificate Transport Trailer, Form ST-108TR, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. (3-15-02)(      )

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by 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 by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax

on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

**a.** Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

**b.** Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-4-10)

**a.** A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- ~~i.~~ ~~Hand tools with a unit price not in excess of one hundred dollars (\$100);~~ (3-6-00)
- ~~ii.~~ Maintenance and janitorial equipment and supplies; (3-6-00)
- ~~iii.~~ Office equipment and supplies; (3-6-00)
- ~~iv.~~ ~~ii.~~ Selling and distribution equipment and supplies; (3-6-00)
- ~~v.~~ Property used in transportation activities; (3-6-00)
- ~~vi.~~ Equipment or other property used to make repairs; (3-6-00)
- ~~vii.~~ Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- ~~viii.~~ Licensed motor vehicles; (3-6-00)

~~viii.~~ Aircraft; and (3-6-00)

~~ix.~~ Recreational vehicles. (3-6-00)

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of ~~a fifteen dollar (\$15) hammer~~ **toothpaste** and a case of motor oil. The retailer must collect the sales tax on the sale of the ~~hammer~~ **toothpaste**, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the ~~hammer~~ **toothpaste** because, as a matter of law, the sale of ~~hand tools with a unit price of one hundred dollars (\$100) or less~~ **personal hygiene products** is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). ~~(4-11-06)( )~~

~~**e.** Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)~~

~~**c.** A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)~~

~~**d.** Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)~~

~~**e.** In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)~~

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

~~**f.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the~~

products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

**08. Purchaser's Responsibility.** A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

**b.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)

**09. Timely Acceptance of Certificates.** A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production

exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1504**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the October 7, 2015, Idaho Administrative Bulletin, [Vol. 15-10, pages 582 through 587](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact McLean Russell (208) 334-7531 or email [mclean.russell@tax.idaho.gov](mailto:mclean.russell@tax.idaho.gov).

DATED this 2nd Day of December, 2015.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 081 - Underground Mining.**

The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule draft removes the language that is in conflict with the new law.

**Rule 099 - Occasional Sales.**

**Rule 110 - Returns Filed By County Assessors and Financial Institutions.**

These proposed rule drafts change references to an exemption certificate to reflect the current version of the form.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule changes.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell at (208) 334-7531. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 4th Day of September, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1504**

**081. UNDERGROUND MINING (RULE 081).**

[Section 63-3622D, Idaho Code](#)

This rule is meant to show how the production exemption applies to the underground mining industry. This rule is based on the usual methods of doing business. Differences in the way a specific taxpayer conducts his business can result in determinations different from those in this rule. In cases not covered by this rule, the general principles in Rule 079 of these rules apply. Determinations of taxability are based on the primary use of equipment. (3-15-02)

**01. Nontaxable Purchases.** The following are generally considered nontaxable: (7-1-93)

**a.** Development of known ore deposits, including diamond drilling and other activities to develop levels, laterals, crosscuts, drifts, stopes, raises and shafts. (7-1-93)

**b.** Support materials, including, timber, concrete, rock bolts, shotcrete, matting, and equipment used to install them. (7-1-93)

**c.** Drilling of blast holes to facilitate the extraction of ore including pneumatic rock drills and compressors used to supply compressed air to operate pneumatic rock drills. (7-1-93)

- d.** Blasting to facilitate the extraction of ore using explosives, caps, fuses, etc. (7-1-93)
- e.** Slushing/mucking to convey broken ore and waste to passes and chutes using scrapers, slushers, muckers, hoists and loaders, and backhoes used to recover both ore and waste. (7-1-93)
- f.** Hauling, horizontal transportation, to transport ore, waste, men or materials from chutes into cars and the movement of the cars to shaft stations using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
- g.** Haulage, vertical transportation, to hoist ore, waste, men or materials in skips, using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
- h.** Transportation to the surface to load the ore, waste, men or materials into main haulage cars for transportation using locomotives, haulage cars, track and track spikes, fuel batteries used to power locomotives, and conveyors and conveyor belts. (7-1-93)
- i.** Backfilling to pump tailings back underground as hydraulic sandfill to backfill mined-out areas using, pumps, sumps, pipe, and concrete. (7-1-93)
- j.** Personal equipment including hard hats, miners' lights, belts, and batteries, ~~except any hand tool costing one hundred dollars (\$100) or less.~~ (7-1-93) ( )
- k.** Sampling/assaying for quality control purposes. (7-1-93)
- l.** Safety equipment and supplies required by a state or federal agency when used directly in a mining area. (7-1-93)
- m.** Equipment used primarily to install production equipment. (7-1-93)
- n.** Equipment used primarily to fabricate production equipment. (7-1-93)
- 02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)
- a.** Diamond drilling activities used for exploration. (7-1-93)
- b.** Air ventilation and conditioning if an improvement to real property including fans, motors, vent ducts; coolers; and air doors. (7-1-93)
- c.** Water lines and pumps used to remove water from the mine if improvements to real property. (7-1-93)
- d.** Safety equipment and supplies used somewhere other than a mining area, such as an office, or not required by a state or federal agency even if used in a mining area. (7-1-93)
- e.** Maintenance and cleanup using backhoes, except when the primary use is to recover ore or waste; equipment used to repair or maintain mining equipment; battery maintenance equipment including battery chargers, and shop supplies and other materials or supplies which do not become a component part of production exempt equipment. (7-1-93)
- f.** Sampling/assaying for purposes other than quality control. (7-1-93)
- g.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)
- 03. Exemption Certificate.** To claim this exemption underground miners must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)



**(BREAK IN CONTINUITY OF SECTIONS)**

**099. OCCASIONAL SALES (RULE 099).**

[Section 63-3622K, Idaho Code](#)

**01. Occasional Seller.** Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

**a.** If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

**b.** Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108 [TR](#) to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-15-02) ( )

**c.** Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Rule 020 of these rules. (3-15-02)

**02. Change in the Form of Doing Business.** A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

**03. Bulk Sale -- Sale of an On-Going Business.** The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-98)

**a.** The purchaser continues the same type of business operation; and (7-1-93)

**b.** Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

**c.** Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

**04. Sale of a Motor Vehicle Between Family Members.** Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

**a.** Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

**b.** Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

**05. Transfers Between Related Parties.** The transfer of capital assets between related parties qualifies

for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities. (4-11-06)

**a.** Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

**b.** Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

**c.** Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

**06. Sales and Rentals to Related Parties.** The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (4-11-06)

**a.** Sales to family members, but only if all parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

**b.** Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

**07. Motor Vehicles.** Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, the purchaser must complete an appropriate exemption claim form prior to applying for an Idaho motor vehicle title. See Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales and the appropriate exemption claim form. (4-11-06)

**08. Sales of Business Assets.** Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

**09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles.** The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

**a.** Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

**b.** Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

**c.** All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

**d.** Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

**e.** Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

**f.** Motor homes. (7-1-93)

**g.** Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four (4) of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

**h.** Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Rule 037 of these rules regarding other exemption provided for aircraft. (3-15-02)

**i.** Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

**10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles.** Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

**11. Exclusion from the Occasional Sale Exemption.** Section 63-3622K, Idaho Code, excludes from the occasional sale exemption the use of tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property. This exclusion applies only to building materials and fixtures that will be incorporated into real property. Sales of construction equipment such as loaders, backhoes, and excavators may still be included within the definition of "occasional sale" if the seller meets all the other requirements of the exemption. (4-11-06)

a. Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner's purchase does not qualify for the occasional sale exemption.

(4-11-06)

b. Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt occasional sale.

(4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).**  
Section 63-3623 & 63-3638(9), Idaho Code

**01. Filing Returns.** Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected.

(4-6-05)

**02. Reimbursement.** The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property; ~~and each Form ST-108, *Truck-Camper*, Transport Trailer, Office Trailer, and Untitled Boat Certificate;~~ and each Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser.

~~(4-6-05)~~ ( )

**03. Financial Institutions.** Financial institutions collecting tax on sales of tangible personal property that they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code.

(4-6-05)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1503**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-07, pages 79 through 90](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rules, contact Alan Dornfest (208) 334-7742 or email [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

DATED this 2nd Day of December 2015.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
(208) 334-7742

**THE FOLLOWING NOTICE WAS PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2015.

**AUTHORITY:** In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-5224 and 67-5291, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 15, 2015.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**RULE 803. Budget Certification -- Dollar Certification Form (L-2 Form)** - In Subsection 803.10 personal property replacement revenue is added back to the tort budget when computing the school district hypothetical new construction levy. Also, in subparagraphs 803.01.e.iv. and 04.e.vii. personal property recovered after 2013 for which no state replacement money is paid is noted to be deducted from the budget. Paragraph 803.06.g. is added to note that for recoveries related to personal property exempt in 2013 the recovery is to be paid to the state and future replacement amounts are to be reduced by the amount of such recovery.

**RULE 804. Tax Levy - Certification - Urban Renewal Districts** - Newly enacted HB 76 adds the school emergency levy found in Section 33-805, Idaho Code, to the list of funds in Section 50-2908(1)(f), Idaho Code, which provides that the current equalized assessed value of a taxing district containing a revenue allocation area shall be used to calculate the property tax rate for the school emergency levy. This rule adds the school emergency fund levy to the list of funds that use the current equalized assessed value (includes any increment value) to compute the levy rate.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs, and confers a benefit to taxpayers.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rule making.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest (208) 334-7742.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 22, 2015.

DATED this 20th Day of May, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1503**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).**  
Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), 63-3638(11), and (13), Idaho Code. (4-11-15)

**01. Definitions.** (4-5-00)

**a.** “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

**b.** “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code. (4-2-08)

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

<b>CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*</b>				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district’s decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

**d.** “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

**e.** “Recovered/Recaptured Property Substitute Funds Tax List.” Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)

- i. Section 63-602G(5), Idaho Code; and (5-8-09)
- ii. Section 63-3029B(4), Idaho Code; and (5-8-09)
- iii. Section 31-808(11), Idaho Code; and (4-11-15)
- iv. Section 63-602KK(7), Idaho Code- for personal property exempted after 2013 for which no replacement money was paid. (4-11-15)( )

**f.** “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

**g.** “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

**02. Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed and signed L-2 Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed using the amount shown in the notice of budget hearing. (3-20-14)

**03. Budget Certification Requested Documents.** Using the completed L-2 Form, each board of county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission. (4-2-08)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money retained, but intended to be spent to fund the approved budget being certified on the L-2 form. (4-11-15)

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(11), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-11-15)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (4-11-15)

iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code; (5-8-09)

v. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement; ~~and~~ (4-11-15) ( )



vi. The amount of money received annually under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code: and ~~(4-11-15)~~ ( )

vii. The amount of money received annually under Section 63-602KK(7), Idaho Code, for personal property exempted after 2013, for which no replacement money was paid, and listed on the "Recovered/recaptured property tax substitute funds list". ( )

**f.** "Balance to be Levied." Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

**g.** Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

**h.** Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)

i. For all taxing districts, L-2 worksheet. (3-20-04)

ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

**a.** The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement.** Property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. Except as provided in Paragraph 803.06.f. of this rule, for all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (4-11-15)

a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Sections 63-3638(11) and (13), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Sections 63-3638(11) and (13), Idaho Code. (4-11-15)

b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received, and shall further identify the type of replacement money as described in Paragraph 803.04.e. of this rule. For charter school districts subject to the provisions of Paragraph 803.06.f. of this rule, the amount to be subtracted shall be reported. (4-11-15)

c. Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

d. For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. (5-8-09)

e. Levy limits shall be tested against the amount actually levied. (3-15-02)

f. For charter school districts with a levy in 2013 for maintenance and operations, as provided in Section 33-802(6), Idaho Code, a portion of the property tax replacement money received for property subject to the exemption in Section 63-602KK, Idaho Code, is not required to be subtracted in determining the "balance to be levied." Said portion shall be the amount calculated by applying the 2013 levy rate for the maintenance and operations levy amount, as authorized in the district's charter, to the 2013 exempt value of personal property used to compute replacement money provided to the school district. (4-11-15)

g. For recovered personal property exemptions, as provided in Section 63-602KK(7), Idaho Code, for personal property exempted in 2013 for which replacement money was paid, recovered amounts shall be distributed to the State Tax Commission. Once received, the amount of future payments to the affected taxing districts shall be reduced by the amount received. ( )

**07. Special Provisions for Library Districts Consolidating with Any City's Existing Library Operations or Services.** For any library district consolidating with any city's existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district's property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax

funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city's total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**10. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the "Calculated Levy Rate" column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the "Column Total" entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

**10. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this hypothetical levy, sum the amount of the school district's tort fund levied for the prior year ~~and~~ the agricultural equipment replacement revenue, and the personal property replacement revenue subtracted from that tort fund, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)( )

**11. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**12. Special Provisions for Levies for Payment of Judgments by Order of Court.** The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. (4-4-13)

**13. Cross Reference for School Districts with Tuition Funds.** School district tuition fund levies are exempt from the limitations of Section 63-802, Idaho Code. See Section 33-1408, Idaho Code. (4-11-15)

**804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).** Section 50-2908, 63-803, and 63-811, Idaho Code. (5-8-09)

**01. Definitions.** (4-5-00)

**a.** "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

**b.** "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

**c.** “Current base value.” The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

**d.** “Initial base value.” The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. In the case of annexation to an RAA, initial base value of each annexed parcel shall be the value of that parcel as of January 1 of the year in which the annexation takes place. (4-11-15)

**e.** “Increment value.” The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel’s current base value, provided such difference is a positive value. (4-5-00)

**02. Establishing and Adjusting Base and Increment Values. (4-5-00)**

**a.** Establishing initial base value. If a parcel’s legal description has changed prior to computing initial base year value, the value that best reflects the prior year’s taxable value of the parcel’s current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

**b.** Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel’s initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

**i.** Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

**ii.** Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

**iii.** Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

**c.** Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel’s legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

**i.** When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. Proportions used to determine the amount of base value assigned to each of the new parcels shall be based on the value of the new parcels had they existed in the year preceding the year for which the value of the new parcels is first established. (4-11-15)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels losing the speculative value exemption. When a partially exempt parcel with a speculative value exemption that applies to farmland within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the taxable value of the parcel for the year in which the exemption is lost and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that this parcel had a speculative value exemption of two thousand dollars (\$2,000) at that time. Two (2) years later the parcel is reclassified as industrial land, loses the speculative value exemption, and has a current taxable value of fifty thousand dollars (\$50,000). The base value within the RAA would be adjusted upwards by forty-nine thousand five hundred dollars (\$49,500), the difference between fifty thousand dollars (\$50,000) and five hundred (\$500). The preceding example applies only in cases of loss of the speculative value exemption that applies to land actively devoted to agriculture and does not apply to timberland. Site improvements, such as roads and utilities, that become taxable after the loss of the speculative value exemption are not to be added to the base value. For example, if, in addition to the fifty thousand dollars (\$50,000) current taxable value of the undeveloped land, site improvements valued at twenty-five thousand dollars (\$25,000) are added, the amount reflected in the base value remains fifty thousand dollars (\$50,000), and the additional twenty-five thousand dollars (\$25,000) is added to the increment value. In addition, this example applies only to land that loses the speculative value exemption as a result of changes occurring in 2010 or later and first affecting taxable values in 2011 or later. Parcels that lost speculative value exemptions prior to 2010 had base value adjustments as described in Subsection 804.02.d.iii. of this rule. (3-29-12)

iii. Partially exempt parcels other than those losing the speculative value exemption. When a partially exempt parcel, other than one subject to the speculative value exemption that applies to farmland, within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a residential parcel within an RAA had a market value of one hundred thousand dollars (\$100,000), a homeowner's exemption of fifty thousand dollars (\$50,000), and a taxable value of fifty thousand dollars (\$50,000) in the year the RAA base value was established. After five (5) years, this parcel is no longer used for owner-occupied residential purposes and loses its partial exemption. At that time the parcel has a taxable value of one hundred eighty thousand dollars (\$180,000). The base value within the RAA would be adjusted upwards by fifty thousand dollars (\$50,000) to one hundred thousand (\$100,000) to reflect the loss of the homeowner's exemption, but not any other value increases. (3-29-12)

iv. Partially exempt properties for which the amount of the partial exemption changes. For partially exempt properties that do not lose an exemption, but for which the amount of the exemption changes, there shall be no adjustment to the base value, unless the current taxable value is less than the most recent base value for the property. For example, assume a home has a market value of two hundred thousand dollars (\$200,000) and a homeowner's exemption of one hundred thousand dollars (\$100,000), leaving a taxable value of one hundred thousand dollars (\$100,000), all of which is base value. The following year the homeowner's exemption limit changes to ninety thousand dollars (\$90,000), so the property's taxable value increases to one hundred ten thousand dollars (\$110,000). The base value remains at one hundred thousand dollars (\$100,000). Alternatively, assume the property in the preceding example increases in market value to two hundred twenty thousand dollars (\$220,000) and the homeowner's exemption drops to ninety thousand dollars (\$90,000) because of the change in the maximum amount of this exemption. The base value remains at one hundred thousand dollars (\$100,000). Finally, assume the property

decreases in value to one hundred eighty-eight thousand dollars (\$188,000) at the same time the homeowner's exemption limit changes to ninety thousand dollars (\$90,000). The property now has a taxable value of ninety-eight thousand dollars (\$98,000), requiring an adjustment in the base value to match this amount, since it is lower than the original base value of one hundred thousand dollars (\$100,000). (3-29-12)

v. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the most current value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). One (1) year later the parcel has a value of nineteen thousand dollars (\$19,000), so the base value is reduced to nineteen thousand dollars (\$19,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by nineteen thousand dollars (\$19,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by nineteen thousand dollars (\$19,000). (4-11-15)

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA or any of the personal property associated with a parcel becomes exempt. In the case of exemption applying to personal property, the downward adjustment will first be applied to the increment value and then, if the remaining taxable value of the parcel is less than the most current base value, to the base value. Assume, for example that a parcel consists entirely of personal property with a base value of twenty thousand dollars (\$20,000) and an increment value of ninety thousand dollars (\$90,000). The next year the property receives a one hundred thousand (\$100,000) personal property exemption. The increment value is reduced to zero and the base value is reduced to ten thousand dollars (\$10,000). (4-11-15)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to base value for annexation. When property is annexed into an RAA, the base value in the RAA shall be adjusted upwards to reflect the value of the annexed property as of January 1 of the year in which the annexation takes effect. As an example, assume that parcels with current taxable value of one million dollars (\$1,000,000) are annexed into an RAA with an existing base value of two million dollars (\$2,000,000). The base value of the RAA is adjusted upwards to three million dollars (\$3,000,000). (4-11-15)

g. Adjustments to increment values. In addition to the adjustment illustrated in subsection (02)(e)(ii) of this rule, decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-11-15)

h. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal**

**Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

**a.** For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

**b.** For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (5-8-09)

**04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

**a.** Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

**b.** Modification by annexation. (5-8-09)

**i.** If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

**ii.** For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$40 Million
	RAA annex (B) increment	\$10 Million

<p style="text-align: center;">School District Area \$500 M base</p> <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> <p style="text-align: center;">2008 RAA Annexation (B) \$10 M Increment</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> <p style="text-align: center;">Pre 2008 RAA (A) Boundaries \$40 M Increment</p> </div>	2009 School Levies	
	Fund	Value for Setting Levies \$ Millions
	Tort	500
	2001 Plant	510
	2008 Bond (Passed and first levied in 2008)	550
2009 Supplemental	550	

(4-11-15)

**05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

**a.** Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

**b.** Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

**c.** Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

**d.** Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

**e.** Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

**f.** Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)

**g.** Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. (4-11-15)

**h.** Levies authorized by Section 33-805, Idaho Code, known as school emergency fund levies. ( )

**06. Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)



**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1504**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-9, pages 266 through 272](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rules, contact Alan Dornfest (208) 334-7742 or email [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

DATED this 2nd Day of December 2015.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
(208) 334-7742

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 315: Use of Ratio Study to Equalize Boise School District** - At termination of a revenue allocation area (raa), the Boise School District needs instructions on how to handle the increment value. The increment value of a terminating raa will be included in the taxable value and if a ratio study indicates that an adjustment should be made, the adjustment will be applied to the actual value including the increment value.

**Rule 626: Property Exempt from Taxation - Certain Personal Property** - This rule provides guidance to taxpayers and both ISTC appraisers and county assessors on the implementation of HB29. This rule directs the reporting and apportionment procedures of the I.C. 63-602KK (2) personal property exemption for operating properties as provided for in new law (HB29). A cross reference is provided to explain that “taxpayer” is the claimant of the exemption and that I.C. 63-201 defines a “person”. This rule is changed so that the operator’s statement reports only the personal property items located in Idaho; the tax code area need not be reported. Operating properties that operate in multiple counties are entitled to an exemption equal to the lesser of the amount 1) computed by multiplying the number of counties that the operating property operates in times \$100,000, or 2) the value of personal property reported by the company. The private rail car company size, which is measured by the company’s taxable value, determines the apportionment of value and allocation of the tax collected from rail car companies, is determined after deducting the exemption from the Idaho value prior to apportionment. This rule provides that operating property apportionment occurs after subtracting the exemption from the Idaho value. The rule provides notice to operating property companies when their locally assessed property is granted the exemption.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

No fees or charges have been imposed or increased in this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no negative fiscal impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Volume 15-7, pages 91-92](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, (208) 334-7742, [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2015.

DATED this 28th Day of July, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1504**

**315. USE OF RATIO STUDY TO EQUALIZE BOISE SCHOOL DISTRICT (RULE 315).**  
Sections 63-315, [33-802\(6\)](#) Idaho Code

**01. Procedures for Boise School District Ratio Studies.** The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the “Standard on Ratio Studies” referenced in Rule 006 of these rules. The following specific procedures will be used. (4-2-08)

**a.** Information on property sales, which meet the requirements of arm’s length and market value sales, will be obtained and assembled into samples representing various primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, within designations defined in Subsection 315.02 of this rule in the Boise School District. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within the Boise School District between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. (4-2-08)

**b.** A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

**c.** A statistical analysis is to be conducted for the sales and any appraisals in each property designation described in Subsection 315.02 of this rule in the Boise School District and appropriate measures of central tendency, uniformity, reliability, and normality computed. (4-2-08)

**d.** With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. (7-1-98)

**e.** If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the Boise School District by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted. (4-2-08)

**f.** Within the Boise School District, adjusted market value or taxable value for each primary and each applicable secondary category of real, personal and operating property will be summed to produce the total adjusted market value for the Boise School District. The Boise School District taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in the Boise School District. Statewide totals are to be calculated by compiling county totals. (4-2-08)

**g.** Urban renewal increment values will not be included in the taxable value or the adjusted market value for the Boise School District. Upon receipt of an urban renewal agency's resolution recommending the adoption of an ordinance for termination of a revenue allocation area by December 31 of a given year, the increment value in the immediate prior year will be included in the taxable value and the adjusted market value for the Boise School District. If the resolution is received prior to the first Monday in April, the actual value for the immediate prior year shall be adjusted by adding the increment value. If any ratio study based adjustments are warranted, as provided in this rule, they shall be applied to the actual value including the increment value. If the resolution is received on or after the first Monday in April, but by September 1, a corrected certification of actual and adjusted values shall be provided as soon as practical. (4-2-08)( )

**h.** “Reasonable statistical certainty,” that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not “reasonable statistical certainty” that the property designation is not at

market value for assessment purposes. (3-30-01)

i. Primary and secondary categories subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

Secondary Categories	Primary Categories	Ratio Study Designations
12, 15, 18, or 20	Vacant Residential Land	Residential
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property	Residential
47, 49, or 65	Manufactured Home on Leased Land	Residential
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land	Commercial
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property	Commercial

(3-30-07)

j. For all secondary categories, described in Rule 510, 511, or 512 of these rules but not contained in the list in Paragraph 315.01.i. of this rule, adjusted market value will equal taxable value. (3-30-07)

k. “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal. (7-1-98)

**02. Use of Property Designations.** In computing the ratio for the Boise School District, the State Tax Commission will designate property as residential or commercial and shall assign appropriate primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, to these designations as shown in Paragraph 315.01.i. of this rule. For the Boise School District, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each primary and secondary category assigned to a designation. Except as provided in Subsection 315.06 of this rule, for the taxable value in any secondary category to be included in said sum, at least one (1) observation (sale or appraisal) from that secondary category must be present in the ratio study. If the ratio for any given designation in the Boise School District indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the Boise School District abstract(s) required pursuant to Subsection 315.04 of this rule for each of the secondary categories included in that designation shall be the adjusted market value for said designation for said school district. (4-2-08)

**03. Assessor to Identify Boise School Districts.** Each county assessor will identify for the State Tax Commission which sales submitted for the ratio study are located within the Boise School District. (4-2-08)

**04. Abstracts of Value for the Boise School District.** Each applicable county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of the Boise School District in that county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (4-2-08)

**05. Urban Renewal Increment and Exemption to be Subtracted.** The taxable value of each primary or secondary category within the Boise School District shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any property exempt from property tax. (4-11-15)

**06. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from

farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one (1) observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

**07. Certification of Values.** The values required to be certified to the county clerk by the first Monday in April each year under Section 63-315, Idaho Code, shall be published on the State Tax Commission's web site or provided in an alternate format on request by the first Monday in April each year to satisfy this required certification. (3-30-07)

**08. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these Rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. The requirement to add increment value following dissolution of an urban renewal revenue allocation area is found in Section 33-802(6), Idaho Code. (3-30-07)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).**  
Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code

**01. Locally Assessed Property - Application Required.** (3-20-14)

**a.** The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. For purposes of reporting personal property, the value is to be based on market value, not book value. (3-20-14)

**b.** Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, that are exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. (3-20-14)

**02. Locally Assessed Property - Taxpayers' Election of Property Location.** (3-20-14)

**a.** Multiple Locations Within A County. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. (3-20-14)

**b.** Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market

value per county. (3-20-14)

**03. Centrally Assessed Property - Application Required.** (3-20-14)

a. Except for private railcar fleets, the taxpayer may file a list of personal property located in Idaho with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsections 626.03.b. and 03.c. of this rule, for such personal property to be considered for the exemption, the operator's statement must include: (4-11-15)( )

i. A description of the personal property located in Idaho, ~~including any tax code area in which the personal property subject to assessment as situs property is located;~~ (3-20-14)( )

ii. Cost and depreciated cost of the personal property located in Idaho; (3-20-14)( )

~~iii. The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county.~~ (3-20-14)

b. For private railcar fleets subject to assessment by the Commission, the ~~filing of the annual operator's statement shall constitute application for this exemption~~ Idaho taxable value shall be reduced by subtracting the lesser of the Idaho taxable value before the exemption or the product of one hundred thousand dollars (\$100,000) times the number of counties in Idaho in which the fleet operates. The Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county within which the railcar fleet operates. Provided that the remaining taxable value is five hundred thousand dollars (\$500,000) or ~~greater~~ more, this value is to be ~~further~~ apportioned to each taxing district and urban renewal revenue allocation area in accordance with procedures described in Rule 415 of these rules. (4-11-15)( )

c. After subtraction of the personal property exemption calculated as provided in Subsection 626.03.b. of this rule, for private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), neither the final amount of the exemption nor the taxable value of the fleet shall be subject to apportionment, and the remaining taxable value shall be taxed as provided in Rule 415 of these rules. (4-11-15)( )

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. If such exemption is entered on the property roll, such notification must be made by the ~~first~~ third Monday in ~~August~~ July. ~~After notice by the Commission of the amount of exemption granted to the centrally assessed property, the assessor may make adjustments to assessed values to be entered on any subsequent or missed property rolls to ensure that the exemption does not exceed \$100,000 (one hundred thousand dollars) for any taxpayer~~ The Commission will then reduce the amount of the exemption otherwise to be granted to the centrally assessed operating property of the company by the exemption value reported by the assessor. The Commission will notify the company of the reduction in exemption by the fourth Monday in July. This reduction will be made before determining the company's Idaho taxable value. No additional exemption pursuant to Section 63-602KK(2), Idaho Code, will be granted for any locally assessed property of operating property companies. (4-11-15)( )

~~04. Centrally Assessed Property - Taxpayers' Election of Property Location. Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection 626.03.b. of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment.~~ (3-20-14)

**054. Valuation Assessment Notice.** The valuation assessment notice required by Section 63-308, Idaho Code, must show the taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, the exempt market value pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. After the year of initial eligibility, if the net taxable market value is

zero, no valuation assessment notice is required. (4-11-15)

**065. Correction of Personal Property Tax Replacement Amounts.** If subsequent to finalization of the amount of replacement money to be paid to any county, an amount paid on behalf of any taxpayer is disapproved by the county, the county shall so notify the Commission, which shall adjust the payment to the county. The county may begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. (4-11-15)

**076. Limitation on Eligibility for the Exemption.** (3-20-14)

**a.** Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. (3-20-14)

**b.** Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. (3-20-14)

**c.** Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. (3-20-14)

**d.** Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. (3-20-14)

**087. Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code.** (3-20-14)

**a.** Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. (3-20-14)

**b.** The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. (3-20-14)

**c.** No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. (3-20-14)

**d.** The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application. (3-20-14)

**098. Limitation on Replacement Money.** (3-20-14)

**a.** In addition to replacement money reductions due to corrections as provided in Subsection 626.06 of this rule, there may be changes and reductions as follow: (4-11-15)

**i.** If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. (3-20-14)

**ii.** If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. (3-20-14)

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. (3-20-14)

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 626.~~409~~ of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. ~~(4-11-15)~~( )

b. There shall be no adjustment to replacement money if personal property not receiving the exemption found in Section 63-602KK(2), Idaho Code, receives this exemption in the future. (4-11-15)

~~409~~. **Special Provision For Replacement Money For State Authorized Plant Facilities Levy.** The amount of replacement money calculated based on any 2013 state authorized plant facilities levy shall be remitted directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. (4-11-15)

~~410~~. **Special Provision For Exempt Personal Property Within Urban Renewal Revenue Allocation Areas (RAAs).** When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. (3-20-14)

~~121~~. **No Reporting of Exempt Value.** Beginning in 2014, taxing district values submitted to the Commission as required in Section 63-510, Idaho Code, shall not include or indicate the otherwise taxable value exempt pursuant to Section 63-602KK(2), Idaho Code. (4-11-15)

~~132~~. **Cross Reference.** For information on transient personal property, see Rule 313 of these rules. For information on the definition of personal property see Rule 205 of these rules. For information on the definition of a taxpayer, see Rule 627 of these rules. For the purpose of this rule, "taxpayer" means the claimant of the exemption pursuant to section 63-602KK(2), Idaho Code, and must be a person, as that term is defined in Section 63-201, Idaho Code. ~~(4-11-15)~~( )



**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1505**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the September 2, 2015 Idaho Administrative Bulletin, [Vol. 15-09, pages 273 through 287](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rules, contact Alan Dornfest (208) 334-7742 or email [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

DATED this 2nd Day of December 2015.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
(208) 334-7742

**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Property Tax Rule 006 is being amended to update the dates of guides and standards referenced in various property tax rules. This rule adopts current editions of manuals used to determine the value of recreational and certain other vehicles and railcars. The amendment also confirms the link to all referenced standards on the IAAO website.

Property Tax Rule 627 is being amended to conform with House Bill 29 (2015) which changed the word “taxpayer” to the word “person.”

Property Tax Rule 632 is being amended to conform with Idaho Code section 63-60200 (Oil or Gas Related Wells Exemption) by deleting the requirement to apply for the exemption.

Property Tax Rule 645 is being amended to change the application due date from March 15 to April 15 thereby making the rule conform to Idaho Code Subparagraph 63-602(3)(b).

Property Tax Rule 802 is being amended to add a new provision requiring qualifying new construction which is valued by the Idaho state tax commission to be reported to the county assessor by October 1 and be listed on the immediate next new construction roll.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the provisions of these rules are of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2015.

DATED this 29th Day of July, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1505**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 2013, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2012<sup>5</sup>, “Standard on Mass Appraisal of Real Property” published in 2012, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> [http://www.iaao.org/wcm/Resources/Publications\\_access/Technical\\_Standards/wmc/Resources\\_Content/Pubs/Technical\\_Standards.aspx?hkey=93ba7851-659f-4d02-80a2-9a52ef21f995](http://www.iaao.org/wcm/Resources/Publications_access/Technical_Standards/wmc/Resources_Content/Pubs/Technical_Standards.aspx?hkey=93ba7851-659f-4d02-80a2-9a52ef21f995) which was last accessed and verified on June 14<sup>22</sup>, 2012<sup>5</sup>. (3-20-14)( )

b. “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2013<sup>5</sup> for the September through December period by the National Appraisal Guides Incorporated. (3-20-14)( )

c. “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2013<sup>5</sup> for the September through December period by the National Appraisal Guides Incorporated. (3-20-14)( )

d. “Official Railway Equipment Register” published for the last three (3) quarters in 2012<sup>5</sup> and the first quarter in 2014<sup>6</sup> by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (3-20-14)( )

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

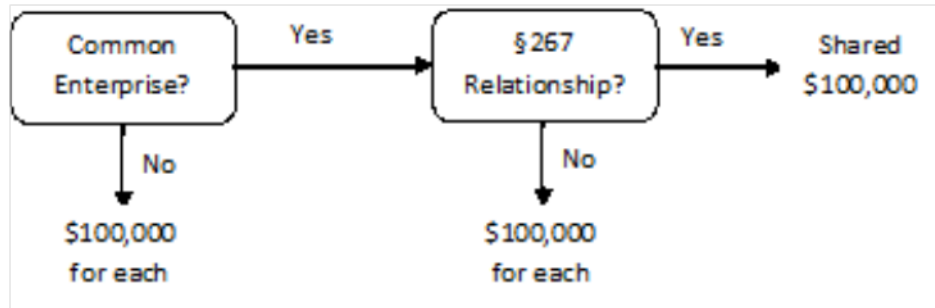
**03. Effective Date.** The effective date of this rule is January 1, 2016. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**627. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY – ~~TAXPAYER~~ OWNERSHIP CLARIFICATION (RULE 627).**  
Section 63-602KK(2), Idaho Code

**01. Idaho Code Section 63-602KK(2) Provides ~~Taxpayers~~ Persons With One Exemption in Each Idaho County in Which They Meet the Ownership Rules.** Although ~~taxpayers~~ persons are limited to receiving one (1) exemption per county, a ~~taxpayer~~ person owning more than one (1) business within one (1) county may be entitled to more than one (1) exemption within the county. (4-11-15)( )

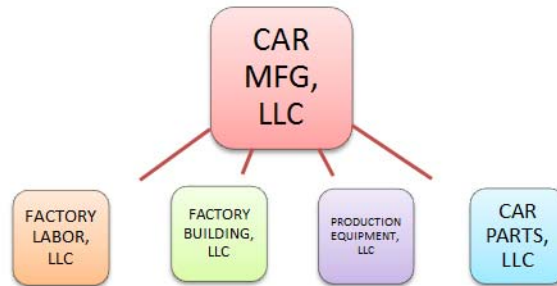
**02. Illustration of Common Enterprise and IRC Section 267 Restriction.** For purposes of the Idaho Code Section 63-602KK(2) exemption, a ~~taxpayer~~ person includes two (2) or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart:



(4-11-15)( )

a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in a common enterprise. (4-11-15)

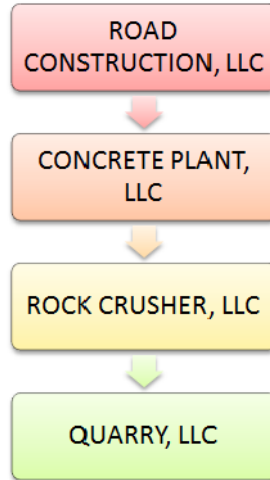
i. Horizontal Commonality is demonstrated by the following chart:



Here, the usual functions involved in a working car manufacturing company are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Car Manufacturing, LLC

(4-11-15)

ii. Vertical Commonality is demonstrated by the following chart:



Here, a business operation is split so that each step in a process is designated to a different LLC. All the steps rely on the one below in order to produce the final product, or process.

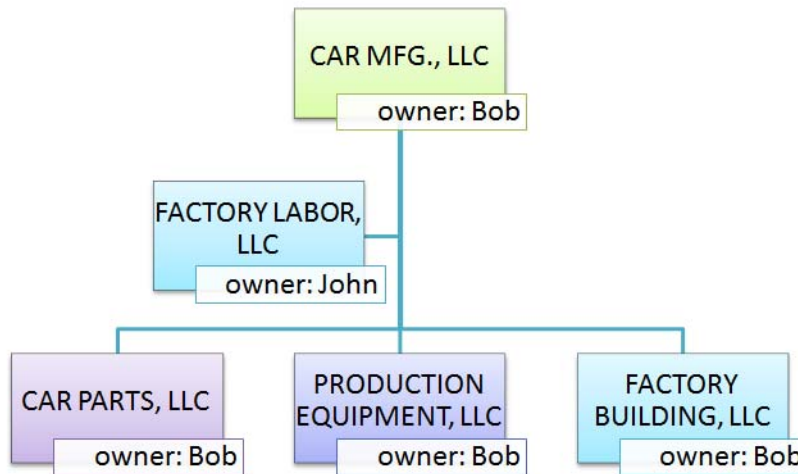
(4-11-15)

**b.** Second, an analysis would be made to determine whether the ownership between the entities is within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, and the businesses are in a common enterprise, then the entities or individuals would be considered one (1) ~~taxpayer~~ **person** for purposes of this exemption. (4-11-15)( )

**c.** Ownership alone does not determine whether entities are considered one (1) ~~taxpayer~~ **person** for purposes of this exemption. Two (2) businesses can have identical ownership, and each receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. (4-11-15)( )

**d.** The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: (4-11-15)

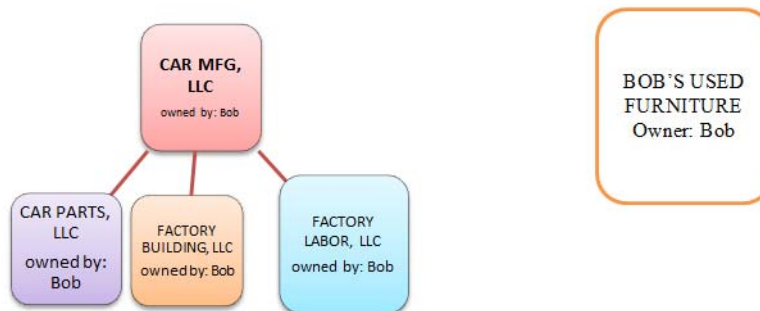
**i.** Example 1. This is an example of a common enterprise, that is entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code.



So long as Bob and John are not related in a manner identified in IRC 267, two (2) exemptions exist. One (1) for Factory Labor, LLC. The other for all of Bob's businesses, because they are in a common enterprise and are all owned by him.

(4-11-15)

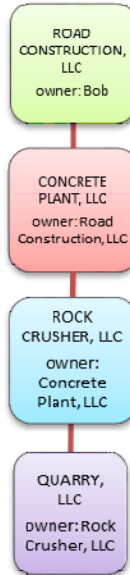
ii. Example 2. This is an example of the same owner with multiple businesses not all united in a common enterprise. Bob's car businesses are common enterprises, and therefore entitled to only one (1) exemption for all the car businesses. Bob's used furniture business is not involved with Bob's car businesses, so Bob is entitled to an additional exemption related to his used car business.



(4-11-15)

iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because a common enterprise exists and all the businesses are constructively owned in a manner identified in IRC 267.

(4-11-15)

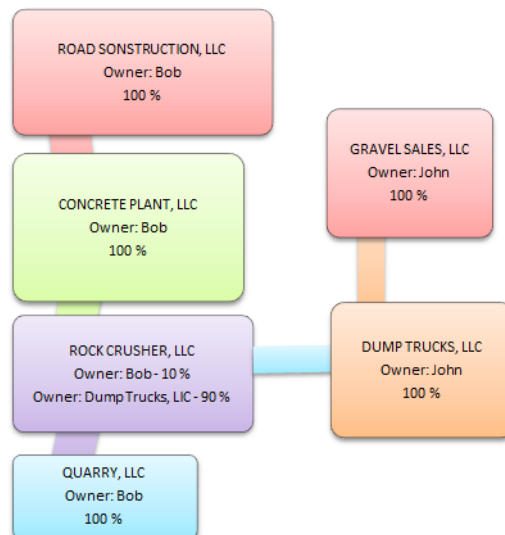


Here, one (1) exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

(4-11-15)

- iv. Example 4. This is an example showing how owners of common enterprises may intersect.

(4-11-15)



This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.

(4-11-15)

**e.** In cases of partial ownership as noted in example four wherein Bob owns ten percent (10%) and Dump Trucks, LLC owns ninety percent (90%) only the majority owner is eligible to receive this exemption.

(4-11-15)

**03. Cross Reference.** For information on applying for the exemption provided in Section 63-602KK(2), Idaho Code, see Rule 626 of these rules.

(4-11-15)

**(BREAK IN CONTINUITY OF SECTIONS)**

**632. PROPERTY EXEMPT FROM TAXATION - OIL OR GAS RELATED WELLS (RULE 632).**

Section 63-602OO, Idaho Code

**01. Definitions of Oil or Gas Well.** (3-20-14)

**a.** Wells drilled for the production of oil, gas or hydrocarbon condensate may include the well, casing, and other structures permanently affixed inside the well, and the land inside the perimeter of the well. (3-20-14)

**b.** The well shall include the part where the gas producing stratum has been successfully cased off from any oil. (3-20-14)

**02. Ineligible Land and Equipment.** (3-20-14)

**a.** Wellheads and gathering lines or any line extending above ground level shall not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate shall not qualify. (3-20-14)

**b.** Land, other than that used for the well as defined in Subsection 632.01 of these rules, shall not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land shall reflect the increase, unless the land qualifies independently for any other property tax exemption. (3-20-14)

~~**03. Application.** As provided in Section 63-602(3), Idaho Code, annual application is required for the exemption provided in this section and must be made to the county commissioners by April 15. (3-20-14)~~

**633. -- 644. (RESERVED)**

**645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).**

Section 63-604, Idaho Code

**01. Definitions.** The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

**a.** Homesite. The "homesite" is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

**b.** Associated Site Improvements. The "associated site improvements" include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)



c. Nursery Stock. Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

d. Land Used to Produce Nursery Stock. "Land used to produce nursery stock" means land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

e. Speculative Value Exemption. The "speculative value exemption" is the exemption allowed on land actively devoted to agriculture. (7-1-99)

**02. Homesite Assessment.** Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

a. Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

b. Appropriate Market and Comparable Selection. The appropriate market is the market most similar to the homesite and improvements located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

c. Assigning secondary category. List and report the secondary category for the homesite using the chart in Subsection 645.02.c.

Description of Land	Secondary Category
Rural and Nonsubdivided	10
Rural and Subdivided	15
Urban	20

(4-2-08)

d. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

**03. Valuing Land, Excluding the Homesite.** The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

a. Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit enterprise, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. (4-11-06)

b. Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (4-11-06)

c. Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be

presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less gross income is measured by production of crops, nursery stock, grazing, or gross income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by ~~March~~ April 15, each year. (4-11-15)( )

**d. Land, More Than Five (5) Contiguous Acres.** Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

**04. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**  
Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code

**01. Definitions.** (4-5-00)

**a.** "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a secondary category change and in a change in taxable land value to be reflected on the current property roll. (4-7-11)

**b.** "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year. (4-7-11)

**c.** "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

**02. New Construction Roll Listing.** "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (3-29-12)

**a.** Qualifying new construction which is valued by the State Tax Commission shall be reported to the county assessor for each applicable taxing district by October 1 and shall be listed by the assessor on the immediate next new construction roll. ( )

**b.** Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from a new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year's new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (3-29-12)

**b.c.** Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (3-29-12)

**b.d.** Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. (3-29-12)

**03. Special Provisions for Value Increases and Decreases.** Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (4-4-13)

**a.** Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

**i.** Except as provided in Subparagraph 802.03.a.iii., increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll. (4-4-13)

**ii.** Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (4-4-13)

**iii.** Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. (4-4-13)

**b.** Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-4-13)

**i.** Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction

roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (4-4-13)

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Provided the criteria in Subparagraph 802.03.b.i. are met, value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-4-13)

v. Except as provided in Subparagraph 802.03.b.vi., only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-4-13)

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum allowable property tax budget. (4-4-13)

vii. Table A - Effect on New Construction Roll:

Table A - Effect on New Construction Roll		
Year	Occurrence	Effect on New Construction Roll (for that year)
2011	Site improvements added and taxable	+ \$500,000
2012	Site improvements exempt	NA (no prior year's exemption)
2013	Site improvements exempt	- \$500,000
2014	Site improvements exempt	- \$500,000

Table A - Effect on New Construction Roll		
2015	Loses site improvement exemption before June 30	+ \$400,000

(4-4-13)

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three (1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. (4-4-13)

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget				
Year	Occurrence	Effect on New Construction Roll (for that year)	Maximum Allowable Property Tax Budget	Calculations
2011	Site improvements added and taxable	+ \$500,000	\$258,750	$(\$250,000 \times 1.03) + (\$500,000 \times 0.0025)$ (tax levy rate = $\$258,750 / \$100,500,000 = 0.002574627$ )
2012	Site improvements exempt	NA (no prior year's exemption; no new construction value)	\$266,512	$\$258,750 \times 1.03$ (tax levy rate = $\$266,512 / \$100,000,000 = 0.002665120$ )
2013	Site improvements exempt	- \$500,000	\$273,174	$(\$266,512 \times 1.03) - (\$500,000 \times 0.002665120)$ (tax levy rate = $\$273,174 / \$100,000,000 = 0.002731744$ )
2014	Site improvements exempt	- \$500,000	\$280,003	$(\$273,174 \times 1.03) - (\$500,000 \times 0.002731744)$ (tax levy rate = $\$280,003 / \$100,000,000 = 0.002800033$ )
2015	Loses site improvement exemption before June 30	+ \$400,000	\$289,523	$(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$ (tax levy rate = $\$289,523 / \$100,400,000 = 0.002883696$ )

(4-4-13)

**04. Manufactured Housing.** "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

**05. Partial New Construction Values.** Except as provided in Subsection 802.06 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.06 of this rule, any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's

or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.06 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

2010 Value	\$90,000
2009 Value Already Reported on New Construction Roll	<\$10,000>
2010 New Construction Roll Value (this improvement)	\$80,000

(4-7-11)

**06. Change in Status.**

(4-2-08)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W(3) or (4), Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-4-13)

i. If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. (4-4-13)

ii. If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be added to the new construction roll following loss of the exemption. (4-4-13)

**b.** Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the "incremental value as of December 31, 2006," shall be added to the appropriate year's new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year's new construction roll. (4-7-11)

**c.** When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006." (4-7-11)

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)

ii. Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area. (4-7-11)

iii. Step 3. Add any positive difference calculated in Step 2 to the current year's new construction roll value. (4-7-11)

iv. Step 4. Adjust the "incremental value as of December 31, 2006" for the RAA by subtracting the

increment value determined in Step 1.

(4-7-11)

v. The following table shows the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006" applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

<b>Steps (as designated in Paragraph 802.06.c.)</b>	<b>Area</b>	<b>Value</b>
	December 31, 2006, increment value of the original RAA	\$10,000,000
Step 1	December 31, 2006, increment value of the de-annexed area	\$1,000,000
	December 31, 2009, increment value of the de-annexed area	\$3,000,000
Steps 2 and 3	Amount related to the de-annexed area to be added to the 2010 new construction roll	\$2,000,000
Step 4	Adjustment amount to be deducted from the original RAA's "incremental value as of December 31, 2006"	<\$1,000,000>
	Adjusted "incremental value as of December 31, 2006" for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)	\$9,000,000

(4-7-11)

**07. Limitation on Annexation and New Construction Roll Value.** For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

**08. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1501

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2016 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and they are being adopted as originally proposed. The complete text of the proposed rules was published in the October 7, 2015 Idaho Administrative Bulletin, [Vol. 15-10, pages 588 through 592](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rules, contact Cynthia Adrian (208) 334-7670 or email [cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov).

DATED this 2nd Day of December 2015.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 310 is being amended to add the interest rate for calendar year 2016 and the Revenue Ruling where the federal rate for the calculation can be found.



Rule 400 is being amended to clarify the penalty computation for substantial understatement.

Rule 704 is being amended consistent with 2015 HB236 to allow the Tax Commission to exchange information with the Department of Correction and the Department of Health and Welfare regarding incarcerated persons and food stamp recipients claiming the food tax credit.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 28, 2014.

DATED this 19th Day of August, 2015.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-1501**

**310. INTEREST RATES (RULE 310).**  
Sections 63-3045 and 63-3073, Idaho Code

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22
<u>Calendar Year 2016</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2015-19</u>

(4-11-15)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. PENALTIES: GENERAL RULES (RULE 400).**

Sections 63-3033 and 63-3046, Idaho Code

**01. Penalty Presumed Appropriate.** If a taxpayer becomes liable to pay the Internal Revenue Service a penalty similar to one provided in Section 63-3046, Idaho Code, it shall be presumed the penalty is appropriate as part of the related state tax deficiency. (3-20-97)

**02. Computation of Tax Due Amounts for Extension of Time Criteria.** For purposes of computing whether the taxpayer has met the extension of time criteria provided in Section 63-3033, Idaho Code, the terms, total tax due on the income tax return when it is filed, total tax due on the income tax return for the prior year, and total tax due under the provisions of this chapter shall mean amounts computed as follows: (3-20-04)

- a. Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax

credits, and any income tax credits. (3-20-04)

**b.** Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. Payments for the amounts included in Subsection 400.02.a. are also excluded for purposes of this calculation. (3-20-04)

**03. Computation of Tax Due Amounts for Failure to File, Failure to Pay, Delinquent Filing, Substantial Understatement, and Extension Penalties.** For purposes of computing the failure to file, failure to pay, substantial understatement, or delinquent filing penalties, provided by Section 63-3046, Idaho Code, and the penalty for failing to meet the extension criteria, provided by Section 63-3033, Idaho Code, the terms tax shown thereon to be due, tax required to be shown on the return, ~~and~~ tax due on such return, and the amount on which the extension penalty is applied shall mean amounts computed as follows: ~~(3-20-04)~~( )

**a.** Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax credits, income tax credits, and any payments for these taxes for that year. (3-20-04)

**b.** Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. (3-20-04)

**04. Net Operating Loss and Capital Loss Carrybacks.** If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the penalty shall be computed on the tax due prior to the application of the carryback. (5-3-03)

**05. Minimum Penalty.** A ten dollar (\$10) minimum penalty applies to each penalty imposed by Subsection (a), (b), (c)(1), (d) or (e) of Section 63-3046 and by Section 63-3033, Idaho Code. For example, if a taxpayer fails to file only one (1) withholding tax statement, which generally results in a penalty of two dollars (\$2) pursuant to Section 63-3046(e)(1), Idaho Code, a penalty of ten dollars (\$10) will be applied. (3-15-02)

**06. Dishonored Checks.** The charge provided by Section 63-3046(h), Idaho Code, for each dishonored check or instrument is: (2-23-01)

**a.** Ten dollars (\$10) if dishonored prior to July 1, 2001. (2-23-01)

**b.** Twenty dollars (\$20) if dishonored on or after July 1, 2001. (2-23-01)

**c.** This charge may be added even if sufficient funds are in the taxpayer's account after the date of dishonor. (2-23-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).** Sections 23-907, 39-8405, 49-326, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3634A, and 67-4917C, Idaho Code

**01. Legislature.** The Tax Commission will disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission will disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (4-4-13)

**02. Government Agencies or Officials.** The Tax Commission will disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (4-4-13)

**03. Exchange of Information.** Information may be exchanged between the Tax Commission and:

- (4-5-00)
- a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
  - b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
  - c. County assessors, limited to: (3-20-04)
    - i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
    - ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
  - d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
  - e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
  - f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
  - g. Idaho Transportation Department, relating to: (3-20-04)
    - i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
    - ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
    - iii. Tax declaration for blindness as required by Section 49-326, Idaho Code. (4-4-13)
  - h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
  - i. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
  - j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, as allowed by Section 63-3077C, Idaho Code; (3-29-12)
  - k. Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
  - l. Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
  - m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
  - n. County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
  - o. The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
  - p. The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. (3-29-10)
  - q. The State Treasurer, as provided in Section 63-3077E, Idaho Code, limited to: (3-29-12)
    - i. The names and addresses of businesses in Idaho; (4-4-13)

- ii. The names and addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the State Treasurer; and (4-4-13)
- iii. The taxpayer identifying numbers. (4-4-13)
- r.** The Idaho Department of Correction, as limited by Section 63-3077G, Idaho Code. ( )
- s.** The Idaho Department of Health and Welfare, as limited by Section 63-3077H, Idaho Code. ( )