

PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
House Revenue & Taxation Committee
66th Idaho Legislature
Second Regular Session – 2022



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2022



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 10, 2022

MEMORANDUM

TO: **Members of the 2022 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*
Bradley A. Hunt, Rules Coordinator *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2021**

Background. Governor Little maintains and continues to stress the importance of an efficiently functioning government along with ensuring continuity of the services citizens expect and implemented through executive administrative rules. Nearly all rules published in the Legislative Rules Review books are simply re-published because the 2021 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code, as well as not extending any effective rule on July 1 by statute as outlined in Section 67-5292, Idaho Code. The necessary rules were re-published in the following special bulletins:

- [July 21](#) – Temporary Rules
- [October 20](#) – Proposed Rules
- [December 22](#) – Pending Rules

Changes in Existing Rules. Since the vast majority of rules either expired or were not approved, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2022. In some cases, rules were modified based on public comment, or to implement Executive Order [2020-01](#), Zero-Based Regulation (ZBR), among other reasons. Given the unprecedented volume, edits are incorporated within a single omnibus docket, or in the case of ZBR rulemaking a standalone docket, and presented as a clean rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes between previous rules and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages for omnibus rulemaking were noted in the [December 22](#) bulletin where applicable.

Process for Approving Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Pending Rules become final and effective *sine die* unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2022 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

HOUSE REVENUE & TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2022 Legislative Session

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IDAPA 35 – IDAHO STATE TAX COMMISSION

DOCKET NO. 35-0000-2100

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 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, or date specified in, the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105, 23-1051, and 23-1319, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This pending rule adopts and publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 35, rules of the Idaho State Tax Commission:

IDAPA 35

- 35.01.01, *Income Tax Administrative Rules*;
- 35.01.02, *Idaho Sales and Use Tax Administrative Rules*;
- 35.01.03, *Property Tax Administrative Rules*;
- 35.01.05, *Idaho Motor Fuels Tax Administrative Rules*;
- 35.01.06, *Hotel/Motel Room and Campground Sales Tax Administrative Rules*;
- 35.01.08, *Mine License Tax Administrative Rules*;
- 35.01.09, *Idaho Beer and Wine Taxes Administrative Rules*; and
- 35.01.10, *Idaho Cigarette and Tobacco Products Taxes Administrative Rules*.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 20, 2021, Special Edition of the Idaho Administrative Bulletin, [Vol. 21-10SE, pages 4093-4522](#).

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kimberlee Stratton using the contact information below.

Dated this 22nd day of December, 2021.

Kimberlee Stratton, Rules Coordinator
Idaho State Tax Commission
Taxpayer Resources Unit, Tax Research
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THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS 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 63-105(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 35, rules of the Idaho State Tax Commission:

IDAPA 35

- 35.01.01, *Income Tax Administrative Rules*;
- 35.01.02, *Idaho Sales and Use Tax Administrative Rules*;
- 35.01.03, *Property Tax Administrative Rules*;
- 35.01.05, *Idaho Motor Fuels Tax Administrative Rules*;
- 35.01.06, *Hotel/Motel Room and Campground Sales Tax Administrative Rules*;
- 35.01.08, *Mine License Tax Administrative Rules*;
- 35.01.09, *Idaho Beer and Wine Taxes Administrative Rules*; and
- 35.01.10, *Idaho Cigarette and Tobacco Products Taxes Administrative Rules*.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Tom Shaner using the contact information below.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING DOCKET NO. 35-0000-2100

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.01 – INCOME TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Income Tax Act. The rules relating to the administration and enforcement of income taxes as well as other taxes, such as sales taxes, are promulgated as IDAPA 35.02.01. ()

001. TITLE AND SCOPE (RULE 001).

Section 63-3039, Idaho Code.

01. Title. These rules are titled IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.01, “Income Tax Administrative Rules.” ()

02. Scope. These rules will be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence. ()

03. Effective Date. To the extent allowed by statute, rules in this chapter will be applied on their effective date to all taxable years open for determining tax liability. ()

04. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. ()

05. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ()

003. INCORPORATION BY REFERENCE (RULE 003).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: ()

01. MTC Special Industry Regulations. These documents are found on the Multistate Tax Commission (MTC) Website at <http://www.mtc.gov/Uniformity/Adopted-Uniformity-Recommendations>, or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. ()

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions as adopted November 17, 1994. This document is found on the MTC Website at http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_-_Z/FormulaforApportionmentofNetIncomeFinInst.pdf or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. ()

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Section 63-3003, Idaho Code

01. Administration and Enforcement Rules. The term Administration and Enforcement Rules refers to IDAPA 35.02.01, relating to the administration and enforcement of Idaho taxes. ()

02. Due Date. As used in these rules, due date means the date prescribed for filing without regard to extensions. ()

03. Employee. An employee is an individual who performs services for another individual or organization that controls what services are performed and how they are performed. ()

04. Employer. An employer is any person or organization for whom an individual performs services as an employee. ()

05. Mathematical Error. A mathematical error includes arithmetical errors, incorrect computations, omissions, defects in a return, and entries on the wrong line. ()

06. Sale. A sale is defined as a transaction in which title passes from the seller to the buyer, or when possession and the burdens and benefits of ownership are transferred to the buyer. A sale may have occurred even if the buyer does not have the right to possession until he partially or fully satisfies the terms of the contract. ()

07. Tax Home. For income tax purposes, the term tax home refers to the taxpayer's principal place of business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he is not entitled to a deduction for travel expenses incurred in the other state since that is his tax home. ()

08. Terms. Terms not otherwise defined in the Idaho Income Tax Act or these rules will have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms. ()

09. These Rules. The term these rules refers to IDAPA 35.01.01, relating to Idaho income tax. ()

10. Wages. The term wages relates to all compensation for services performed for an employer regardless of the form of payment. ()

011. -- 014. (RESERVED)

015. INTERNAL REVENUE CODE (RULE 015).
Section 63-3004, Idaho Code

01. Interpretations. Interpretations of the Internal Revenue Code may be found in various sources. These sources include decisions of the Tax Court, Congressional Committee Reports, General Counsel Memoranda, Decisions of the Federal and State Courts on federal income tax issues and Treasury Regulations. These interpretations are adopted by this reference to the extent that they are not in conflict with or inconsistent with the Idaho Code or administrative rules. ()

02. Retroactive Amendments. For the purpose of determining federal taxable income, any retroactive amendments to the Internal Revenue Code that are enacted on or before the date found in Section 63-3004(a), Idaho Code, are applied retroactively to the extent allowed under federal law. ()

03. Tax Commission Granted Discretion in Determining Correctness of Tax Return. Discretion granted to the Secretary of the Treasury to determine or reallocate items of income or adjustments to income, deductions, expenses, credits or other subjects of taxation by the Internal Revenue Code may also be exercised by the Tax Commission and its authorized agents, employees and deputies to enforce and administer the Idaho Income Tax Act and these rules. ()

016. IDAHO GROSS INCOME (RULE 016).
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. ()

017. TREATMENT OF THE SECTION 965 OF THE INTERNAL REVENUE CODE INCREASE IN SUBPART F INCOME AND RELATED EXCLUSIONS (RULE 017).

Section 63-3002, Idaho Code

Subpart F income as defined in Section 952, Internal Revenue Code, is gross income under Section 951(a), Internal Revenue Code, and included in a taxpayer's taxable income under the Internal Revenue Code. Idaho taxpayers must include the Section 965, Internal Revenue Code, increase in their subpart F income (Section 965(a) reduced by Section 965(c), Internal Revenue Code), when computing their Idaho taxable income regardless of how such income is reported to the Internal Revenue Service on the federal income tax form. ()

018. -- 024. (RESERVED)

025. TAXABLE YEAR AND ACCOUNTING PERIOD (RULE 025).

Section 63-3010, Idaho Code

01. In General. A taxpayer will file his Idaho return for the same taxable year as filed for federal income tax purposes. If a federal return is not filed, the taxable year will be the taxable year required by the Internal Revenue Code, any other period that may be required by law, or the calendar year. Taxable year generally corresponds to the taxpayer's annual accounting period unless a short-period return is required. ()

02. Change of Accounting Period. ()

a. If a taxpayer changes his accounting period for federal income tax purposes, he will make the same change for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue Service is required, a copy of that approval will accompany the Idaho short-period return. ()

b. If a change does not require prior approval of the Commissioner of the Internal Revenue Service, the change will be noted on the Idaho short-period return, along with a statement that no prior approval was required and the authority cited. ()

026. -- 029. (RESERVED)

030. RESIDENT (RULE 030).

Section 63-3013, Idaho Code

01. Resident. The term resident applies to individuals, estates, and trusts. ()

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of servicemembers and their spouses, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules. ()

b. For the rules relating to the residency status of estates, see Rule 034 of these rules. ()

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules. ()

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. ()

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. ()

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code. ()

c. An individual meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. ()

d. The safe harbor exception to being a resident of Idaho does not apply to a servicemember or a servicemember's spouse domiciled in Idaho if the Servicemembers Civil Relief Act applies to the individual. ()

03. Place of Abode. See Rule 040 of these rules for information as to what constitutes a place of abode. ()

031. ALIENS (RULE 031).
Sections 63-3013, 63-3013A, and 63-3014, Idaho Code

01. Idaho Residency Status. For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident, except a nonresident alien as defined in Section 7701, Internal Revenue Code, will be a nonresident. See Paragraph 031.01.b., of this rule. ()

a. An alien will determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. ()

b. A nonresident alien as defined in Section 7701, Internal Revenue Code, is a nonresident for Idaho. If a nonresident alien has elected to be treated as a resident of the United States for federal income tax purposes, he will determine his Idaho residency status as provided in Paragraph 031.01.a., of this rule. ()

02. Computation of Idaho Taxable Income. ()

a. To compute the Idaho taxable income of an alien, the first step is to determine his taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes. ()

b. Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. ()

c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). However, a nonresident alien who qualifies as a student or business apprentice eligible for the benefits of Article 21(2) of the United States - India Income Tax Treaty is entitled to the standard deduction amount as if he were a resident for federal income tax purposes provided he does not claim itemized deductions. ()

03. Filing Status. An alien will use the same filing status for the Idaho return as used on the federal return. If for federal income tax purposes a married alien files as a nonresident alien and does not elect to be treated as a resident, the married alien will use the filing status married filing separate on the Idaho return. ()

04. Copy of Federal Forms Required. In addition to the requirements set forth in Rule 800 of these rules, a nonresident alien will attach a copy of the following forms to his Idaho individual income tax return: ()

a. Form 8843 if filed with the IRS; ()

b. All Forms 1042-S received for the taxable year. ()

032. MEMBERS OF THE UNIFORMED SERVICES (RULE 032).
Section 63-3013, Idaho Code

01. Servicemembers Civil Relief Act. Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that a servicemember will neither lose nor acquire a residence or domicile with regard to his income tax as a result of being absent or present in a state due to military orders. ()

02. Servicemember. A servicemember is defined to include any member of the uniformed services as that term is defined in 10 U.S.C. Section 101(a)(5). A member of the uniformed services includes: ()

a. A member of the armed forces, which includes a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty. It also includes a member of the National Guard who has been called to active service by the President of the United States or the Secretary of Defense of the United States for a period of more than thirty (30) consecutive days under 32 U.S.C. Section 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds. ()

b. The commissioned corps of the National Oceanic and Atmospheric Administration in active service; and ()

c. The commissioned corps of the Public Health Service in active service. ()

03. Idaho Residency Status. ()

a. A servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely in compliance with military orders. ()

b. A servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely in compliance with military orders. The safe harbor exception to being a resident as provided in Section 63-3013(2), Idaho Code, does not apply to a servicemember covered by the federal law. ()

c. If a servicemember is present in or absent from Idaho for reasons other than compliance with military orders, the standard analysis of residency under Sections 63-3013, 63-3013A, and 63-3014, Idaho Code, applies. ()

d. See Subsection 032.07 of this rule for information relating to a spouse of a servicemember. ()

04. Military Service Compensation. ()

a. Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the military service compensation of a servicemember who is not domiciled in Idaho is not considered income from Idaho sources. ()

b. The military service compensation of a servicemember who is domiciled in Idaho is subject to

Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid to a member of the United States Armed Forces for active duty military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. A member of the armed forces does not include the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service, unless they have been militarized by Presidential Executive Order under Title 42, United States Code. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. ()

05. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered military service compensation. Therefore, Subsection 032.04 of this rule does not apply. ()

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. ()

b. For purposes of this rule, a former active duty servicemember whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. ()

06. Nonmilitary Income. All Idaho source income earned by a servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. ()

07. Spouses of Servicemembers. Beginning on January 1, 2009, Section 511 of the Servicemembers Civil Relief Act also applies to the spouse of a servicemember. ()

a. If a spouse of a servicemember has the same domicile or state of residency for tax purposes as the servicemember, the spouse of the servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely to be with the servicemember who is stationed in Idaho. ()

b. If a spouse of a servicemember and the servicemember are both Idaho residents for income tax purposes, the spouse of the servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely to be with the servicemember who is stationed outside of Idaho. ()

c. If the spouse is not a resident of Idaho for income tax purposes because of the reason stated in Paragraph 032.07.a. of this rule, income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. ()

033. AMERICAN INDIANS (RULE 033).
Section 63-3022S, Idaho Code

01. Definitions. For purposes of this rule: ()

a. Enrolled member means an enrolled member of a federally recognized Indian tribe. ()

b. Indian reservation means a federally recognized Indian reservation. ()

02. Idaho Residency Status. An American Indian must determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. Membership in an Indian tribe does not affect that individual's Idaho residency status. ()

03. Gambling Winnings. ()

a. Amounts received from gambling on an Indian reservation by an enrolled member who lives on the Indian reservation are not subject to Idaho tax. ()

b. Amounts received from gambling on an Indian reservation by an enrolled member who lives off the Indian reservation in Idaho are subject to Idaho tax. ()

04. Per Capita Distributions. ()

a. Per capita distributions paid by an Indian tribe to an enrolled member who lives on the Indian reservation are tax-exempt by Idaho. ()

b. Per capita distributions paid by an Indian tribe to an enrolled member who resides off the reservation in Idaho are subject to Idaho tax. ()

034. ESTATE -- RESIDENCY STATUS (RULE 034).
Section 63-3015, Idaho Code

01. Resident Estates. An estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of his or her death. If the estate is other than an estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho. ()

02. Nonresident Estates. If the estate does not qualify as a resident estate, it is treated as a nonresident estate. The tax liability of a nonresident estate is computed in the same manner as a nonresident individual. ()

035. TRUSTS -- RESIDENCY STATUS (RULE 035).
Section 63-3015, Idaho Code

01. Resident Trusts. A trust other than a qualified funeral trust is treated as a resident trust if three (3) or more of the following conditions exist: ()

a. The domicile or residency of the grantor is in Idaho; ()

b. The trust is governed by Idaho law; ()

c. The trust has real or tangible personal property located in Idaho; ()

d. The domicile or residency of a trustee is in Idaho; ()

e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record keeping and preparation and filing of tax returns. ()

02. Qualified Funeral Trusts. A qualified funeral trust is treated as a resident trust under Section 63-3015, Idaho Code, if: ()

a. At the time of the initial funding of the trust, the trust was required to be established under the laws of Idaho; or ()

b. The requirement in Subsection 035.02.a. did not exist, but a funeral home or cemetery located in Idaho was identified to provide services or merchandise under the terms of a preneed contract requiring the establishment of the trust. ()

03. Nonresident Trusts. If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. ()

04. Residency Status of a Trust. For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. ()

036. -- 039. (RESERVED)

040. PART-YEAR RESIDENT (RULE 040).
Section 63-3013A, Idaho Code

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. ()

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. ()

b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. ()

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. ()

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. ()

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. ()

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. ()

03. Place of Abode. An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. This definition does not apply for purposes of the federal foreign income exclusion and only applies for purposes of Sections 63-3013 and 63-3013A, Idaho Code. ()

a. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. ()

b. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. ()

041. -- 044. (RESERVED)

045. NONRESIDENT (RULE 045).
Sections 63-3014, 63-3026A, Idaho Code

01. Traveling Salesmen. ()

a. A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. ()

b. If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as

hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. ()

02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code.

Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: ()

- a. An operator, including an independent contractor, of a commercial motor vehicle; ()
- b. A mechanic; ()
- c. A freight handler; and ()

d. An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. ()

03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code.

Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: ()

- a. Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or ()
- b. Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. ()

04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code.

Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: ()

- a. The employee's state of residence, and ()
- b. The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. ()

05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code.

Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. ()

06. Pension Income Covered by Title 4, Section 114, United States Code. Pension income, including certain guaranteed payments made to a retired partner of a partnership, per Title 4, Section 114(b)(1)(I), United States Code, is subject to income tax only in the individual's state of residence or domicile. ()

046. -- 049. (RESERVED)

050. LIMITED LIABILITY COMPANIES (RULE 050).

Section 63-3006A, Idaho Code

01. Classification. A limited liability company will be classified for Idaho income tax purposes the same as classified for federal income tax purposes as provided by the Internal Revenue Code. ()

02. Application of Idaho Code and Rules. Idaho income tax laws and administrative rules will apply

according to the applicable classification of the limited liability company. For example, if a limited liability company has elected to be classified for income tax purposes as a partnership, Idaho's income tax administrative rules that apply to partnerships will also apply to such limited liability company. ()

051. -- 074. (RESERVED)

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 are listed at <https://tax.idaho.gov/indrate>. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. ()

076. -- 077. (RESERVED)

078. TAX ON TRUSTS -- ELECTING SMALL BUSINESS TRUSTS (RULE 078).

Section 63-3024, Idaho Code

01. In General. The special rules for taxation of electing small business trusts as provided in Section 641, Internal Revenue Code, will apply for purposes of computing the Idaho income tax. These rules include the following: ()

a. The portion of an electing small business trust that consists of stock in one (1) or more S corporations will be treated as a separate trust. ()

b. The tax on the separate trust will be determined with the following modifications from the usual rules for taxing trusts: ()

i. The only items of income, loss, deduction, or credit to be taken into account are the items required to be taken into account as an S corporation shareholder under Section 1366, Internal Revenue Code, and any gain or loss from the disposition of stock in an S corporation. ()

ii. As provided in federal Treasury Regulations, administrative expenses will be taken into account to the extent allocable to the items described in Subparagraph 078.01.b.i. ()

iii. A deduction or credit will be allowed only for an amount described in this paragraph. No item described in this paragraph will be apportioned to any beneficiary. ()

c. A capital loss deduction provided by Section 1211(b), Internal Revenue Code, will be allowed only to the extent of capital gains. ()

02. Tax Rate Applied. The tax rates applied to the Idaho taxable income of a trust are identified in Rule 075 of these rules. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 will apply in computing the tax attributable to the S corporation stock held by an electing small business trust. ()

079. -- 099. (RESERVED)

100. ADJUSTMENTS TO TAXABLE INCOME -- IN GENERAL (RULE 100).

Section 63-3022, Idaho Code. Rules 101 through 249 of these rules discuss the additions to and subtractions from taxable income required when computing the Idaho taxable income of corporations, partnerships, and resident individuals, estates and trusts. For the rules relating to the adjustments to taxable income required of nonresident and part-year resident individuals and nonresident trusts and estates, see Rules 250 through 259 of these rules. ()

101. -- 104. (RESERVED)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. ()

01. State and Local Income Taxes. As provided in Section 63-3022(a), Idaho Code, state and local income taxes that are measured by net income and were deducted in computing taxable income must be added. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. ()

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, the amount of the net operating loss deduction included in taxable income must be added. ()

03. Capital Loss or Passive Loss Carryover Deduction. As provided in Section 63-3022(i), Idaho Code: ()

a. A corporation must add a capital loss or passive loss that was deducted in computing taxable income if the loss occurred during a taxable year when the corporation did not transact business in Idaho. However, a capital loss is not required to be added back where the corporation was part of a unitary group and at least one (1) member of the group was taxable by Idaho for the taxable year in which the loss was incurred. ()

b. An individual must add a capital loss or passive loss that was deducted in computing taxable income if the loss was incurred in an activity not taxable by Idaho at the time it was incurred. ()

04. Interest and Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, Idaho Code, certain interest and dividend income that is exempt from federal income tax must be added. For example, interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. ()

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. ()

b. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, must be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income must be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets must be attached to the return. ()

i. Expenses prorated to Idaho state and municipal interest income are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. ()

ii. Expenses prorated to non-Idaho state and municipal interest income are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. ()

05. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer must add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. ()

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes must be added. The adjustments required by this subsection do not apply to property

acquired after 2007 and before 2010. ()

106. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS (RULE 106).

Section 63-3022, Idaho Code. As provided in Section 63-3022(d), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. ()

107. ADJUSTMENTS TO TAXABLE INCOME -- ADJUSTMENTS REQUIRED ONLY OF TAXPAYERS REPORTING NONBUSINESS INCOME (RULE 107).

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income will be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 through 336 of these rules for the definitions of business income and nonbusiness income. ()

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).

Section 63-3022, Idaho Code

01. Lump Sum Distributions. As provided in Section 63-3022(k), Idaho Code, an individual must add the taxable amount of a lump sum distribution excluded from taxable income. ()

02. Withdrawals from an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, an account holder must add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. ()

03. Withdrawals from an Idaho College Savings Program. ()

a. As provided in Section 63-3022(o), Idaho Code, an account owner must add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. The addition is limited to contributions previously exempt from Idaho state income tax and earnings generated from the program as long as the earnings are not already included in federal adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. ()

b. As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. ()

04. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, an eligible educator as defined in Section 62, Internal Revenue Code, must add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. ()

05. State and Local Sales Tax. As provided in Section 63-3022(j), Idaho Code, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. ()

109. ADJUSTMENTS TO DISTRIBUTABLE NET INCOME OF ESTATES AND TRUSTS (RULE 109).

Section 63-3022, Idaho Code. As provided in Section 63-3022(g), Idaho Code, an estate or trust will make the adjustments that are required of individuals as provided in Section 63-3022, Idaho Code, in determining the Idaho taxable income of the beneficiary of an estate or trust. ()

110. -- 114. (RESERVED)

115. INTEREST EXPENSE OFFSET RELATED TO TAX-EXEMPT INTEREST INCOME (RULE 115).

Section 63-3022M, Idaho Code

01. In General. The interest expense offset provided by Section 63-3022M, Idaho Code, is a separate

and distinct adjustment from provisions in the Internal Revenue Code that disallow interest expense related to federal tax-exempt interest. ()

02. Tax-Exempt Interest Income. For purposes of computing the interest expense offset attributable to tax-exempt interest income, tax-exempt interest income means interest on qualifying obligations of the United States and interest on qualifying obligations of the state of Idaho, its cities, and political subdivisions. ()

a. If a taxpayer owns an interest in a pass-through entity, that entity's tax-exempt income is to also be included to the extent of the taxpayer's interest. ()

b. Interest income that is only partially exempt for federal purposes is not included. Also, expenses related to tax-exempt interest income such as adjustments provided by Sections 265 and 291, Internal Revenue Code, are not included. ()

03. Total Income. For purposes of computing the interest expense offset, total income is to be computed as follows: ()

a. Corporations. ()

i. Total income equals the amount reported as total income on Form 1120, U.S. Corporation Income Tax Return, for domestic corporations, plus the amount reported as total income on Form 1120F, U.S. Income Tax Return of a Foreign Corporation, for foreign corporations engaged in a U.S. trade or business, plus the amount of tax-exempt interest income not included in total income on Form 1120 and Form 1120F, plus the amount reported as nonexempt foreign trade income on Schedule B of Form 1120-FSC, Income Tax Return of a Foreign Sales Corporation, less the amount of foreign dividend gross-up included in federal income pursuant to Section 78, Internal Revenue Code. ()

ii. If a taxpayer files a return using the worldwide combined reporting method, total income also includes the amount reported as total income on Schedule C of Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, for each foreign corporation included in the combined report. ()

iii. If the corporation is a partner in a partnership, total income also includes the corporation's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1120. ()

iv. Intercompany amounts are to be eliminated to the extent included in these amounts. ()

b. S Corporations. ()

i. Total income is to equal the amount reported as total income on Form 1120S, U.S. Income Tax Return for an S Corporation, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1120S. ()

ii. If the S corporation is a partner in a partnership, total income also includes the appropriate partnership amounts as provided in Subsection 115.03.a.iii. ()

c. Partnerships. ()

i. Total income is to equal the amount reported as total income on Form 1065, U.S. Partnership Return of Income, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1065. ()

ii. If the partnership is a shareholder in an S corporation, total income also includes the partnership's

distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1065. ()

d. Individuals. ()

i. Total income is to equal the amount reported as total income on Form 1040, U.S. Individual Income Tax Return. ()

ii. If the individual is a partner in a partnership, total income also includes the individual's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1040. ()

iii. If the individual is a shareholder in an S corporation, total income also includes the individual's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1040. ()

iv. Total income also includes the amount of tax-exempt interest income not included on Form 1040, plus his share of the amount not included on Forms 1065 and 1120S. ()

04. Unitary Taxpayers. The interest expense offset is to be computed at the combined group level, not within each corporate entity. Total income, interest expense, and tax-exempt interest amounts from each member of the combined group are used in computing the interest expense offset. ()

116. EXPENSES OTHER THAN INTEREST ATTRIBUTABLE TO TAX-EXEMPT INCOME (RULE 116).
Section 63-3022M, Idaho Code

01. Directly Allocable Expenses. Expenses, other than interest, that are directly allocable to exempt interest or dividend income, is to be allocated to such income and no deduction is to be allowed for such allocated expenses. ()

02. Indirectly Allocable Expenses. If an expense is indirectly allocable to both a class of nonexempt income and exempt interest or dividend income, a reasonable proportion of such expense determined in the light of all the facts and circumstances in each case is to be allocated to each class. No deduction is allowed for expenses indirectly allocated to exempt interest or dividend income. ()

117. -- 119. (RESERVED)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).
Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. ()

01. State and Local Income Tax Refunds. State and local income tax refunds included in taxable income may be subtracted, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. ()

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, an Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules may be subtracted. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. ()

03. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: ()

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. ()

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. ()

c. Certain income from loss recoveries. See Rule 195 of these rules. ()

04. Technological Equipment Donation. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the lower of cost or fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. ()

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. ()

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 and before 2010. ()

a. Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. ()

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. ()

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. ()

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). ()

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). ()

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars

(\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. ()

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer is allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction is allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. ()

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: ()

a. Certain income earned by American Indians. See Rule 033 of these rules. ()

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. ()

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. ()

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. ()

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they will be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back will be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this proration will be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. ()

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. ()

c. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return will be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. ()

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. ()

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. ()

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: ()

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; ()

ii. Railroad unemployment; and ()

iii. Sickness benefits. ()

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. ()

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. ()

07. Energy Efficiency Upgrades. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the installation of energy efficiency upgrades in the residence of the taxpayer built or subject to an outstanding building permit on or before 2002. ()

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence of the taxpayer. ()

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. ()

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. ()

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. ()

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified Idaho property. ()

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. ()

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. ()

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. ()

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. ()

17. Unused Net Operating Losses of Estates and Trusts. An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. For taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. For taxable years beginning on and after January 1, 2013, the first one hundred thousand (\$100,000) of loss sustained in any taxable year of an estate or trust may be carried back by the estate or trust if an amended return carrying the loss back is filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. ()

122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).

Sections 63-3022 and 41-3821, Idaho Code

01. Foreign Dividend Gross-Up. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. ()

02. Stock Insurance Subsidiary Dividends or Distributions. ()

a. As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company is to subtract the amount received as a dividend or distribution from a stock insurance subsidiary. The deduction is allowed for taxable years beginning on or after January 1, 2004. ()

b. The deduction allowed by Section 41-3821, Idaho Code, is not allowed if the stock insurance subsidiary's Idaho premium tax liability for the preceding taxable year is less than the stock insurance subsidiary would have paid in Idaho income tax had it been subject to Idaho income taxation for that year. The Idaho premium tax liability is the amount of total premium taxes less total premium tax credits allowed. The Idaho income tax it would have paid is to be computed as provided by Section 63-3027, Idaho Code, net of any applicable income tax credits. ()

c. The taxpayer claiming the deduction is to include in its Idaho income tax return for the year the deduction is claimed information that it is entitled to the deduction. Such information is to include the amount of the stock insurance subsidiary's Idaho premium tax for the preceding taxable year and the amount of Idaho income tax it would have paid for such year. ()

123. -- 124. (RESERVED)

125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007, OR AFTER DECEMBER 31, 2009 (RULE 125).

Section 63-3022O, Idaho Code

01. In General. Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 and before 2010. ()

02. Depreciation. ()

a. If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer is entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes. ()

b. If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer is not entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. ()

c. The Idaho adjustments are required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer may claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. ()

d. Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. ()

126. -- 127. (RESERVED)

128. IDAHO ADJUSTMENTS -- PASS-THROUGH ENTITIES (RULE 128).

01. In General. An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. ()

a. Partnerships. An adjustment passes through to a partner based on that partner's distributive share of partnership profits. ()

b. S Corporations. An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. ()

c. Estates and Trusts. An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. ()

02. Limitations. Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. ()

03. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment is to be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. ()

04. Information Provided by a Pass-Through Entity. The pass-through entity will prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules is to be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. ()

05. Pass-Through Entities That Pay Tax. Generally, a pass-through entity is to report the same Idaho adjustments as those allowed to the individual partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, certain deductions that may be allowed to the individual if reporting and paying the tax is not allowed to the pass-through entity. ()

a. See Rule 291 of these rules for information on computing the taxable income on which a pass-through entity is to be subject to tax. ()

b. See Subsection 173.01 of these rules for the disallowance of an Idaho capital gains deduction to a pass-through entity paying the tax for an electing owner or beneficiary. ()

129. (RESERVED)

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: ()

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, 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. ()

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 out of the public

employee's retirement system do not qualify for the deduction. ()

c. Retirement benefits paid to a retired Idaho city police officer: ()

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 ()

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 ()

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 ()

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. ()

d. Retirement benefits paid by the United States Government to a retired member of the military services. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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: ()

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 ()

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. ()

131. -- 139. (RESERVED)

140. DEDUCTION FOR ENERGY EFFICIENCY UPGRADES (RULE 140).
Section 63-3022B, Idaho Code

01. Qualifying Date. The energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, 2002. A residence, or addition to a residence, constructed after January 1, 2002, does not qualify. ()

02. Qualifying Residence. The residence must be the primary residence of the taxpayer and must be located in Idaho. ()

03. Energy Efficiency Upgrade Measure Definition. "Energy efficiency upgrade measure" means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued. The IECC in effect in Idaho refers to the version most recently adopted by the Idaho Building Code Board, including amendments made by the Board. See the Board's administrative rules at IDAPA 07.03.01, "Rules of Building Safety," Section 004. ()

04. Siding. Siding is not considered an energy efficiency upgrade. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. ()

141. -- 149. (RESERVED)

150. DEDUCTION FOR ALTERNATIVE ENERGY DEVICES (RULE 150).
Section 63-3022C, Idaho Code

01. Qualifying Residence. The deduction applies only to a residence of an individual and does not apply to rental housing, unless the renter, rather than the owner, installs and pays for the device. ()

02. Converted Rental Unit. If a residence served by an alternative energy device is converted by the owner from a rental unit to his residence, the owner is entitled to any remaining allowable deduction for the year of the conversion based on the portion of the year that the residence served as his residence. For each subsequent year, the owner is entitled to the full amount of the allowable deduction for that year assuming the residence continues to be the owner's residence. ()

03. Purchase of a Residence. If a residence served by an alternative energy device is sold, both the seller and the buyer are entitled to a portion of the allowable deduction for the year of the sale based on the fraction of the year each individual had ownership of the residence. The new owner is entitled to any allowable deduction remaining for each subsequent year. The deduction is allowed even if the new owner previously rented the residence as his personal residence. No more than a five thousand dollar (\$5,000) deduction may be prorated in any year. ()

04. Common Distribution System. ()

a. If the alternative energy device is dependent on and a part of a common distribution system such as a common solar collector facility or a common pipeline that distributes geothermally heated water, the common system is an alternative energy device if owned by the users of the facility. ()

b. For purposes of determining the amount of the deduction, each common owner may claim the cost of the portion of the alternative energy system owned solely by that owner that serves only his residence, plus his pro rata share of the costs of installation of the common system. The pro rata share of the cost is to be the actual cost charged to the residential owner for the common system if the costs are allocated by a method that is reasonably related to the actual cost of providing the alternative energy to the various residential owners. ()

c. The developer of a common system should provide a statement to each common owner identifying his allocable cost of the common system. If a statement is not provided, the common owners may agree to a reasonable allocation. If the common owners are unable to determine a reasonable allocation, they may petition the Tax Commission to make the determination. ()

05. Destruction of Wood Burning Stove. The wood burning stove that does not meet the environmental protection agency requirements for certification is to be surrendered to the Department of Environmental Quality no later than thirty (30) days from the date of purchase of the qualifying alternative energy device. Failure to surrender the wood burning stove within the thirty (30) day period is to result in the new device failing to qualify as an alternative energy device. The thirty (30) day period may be extended only if the taxpayer can show good cause for the delay. ()

151. -- 159. (RESERVED)

160. DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE SERVICES (RULE 160).

Section 63-3022D, Idaho Code. Section 21, Internal Revenue Code, provides for a credit against federal income tax of a percentage of the authorized employment-related expenses incurred for the care of qualifying individuals. The allowable household and dependent care service expense is a deduction in computing Idaho taxable income. The provisions of the Internal Revenue Code determine which dependents qualify, the maximum allowable expenses, and the qualified payees. ()

161. -- 164. (RESERVED)

165. ADDITIONAL HOUSEHOLD DEDUCTION OR CREDIT FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (RULE 165).

Sections 63-3022E and 63-3025D, Idaho Code

01. Developmentally Disabled Defined. For purposes of the deduction allowed by Section 63-3022E, Idaho Code, or the credit allowed by Section 63-3025D, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: ()

a. Is attributable to an impairment, such as intellectual disability, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from the impairment. The other condition must result in limitations of general intellectual functioning or adaptive behavior similar to those required for individuals with an intellectual disability. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501 for the developmental disability determination standards. ()

b. Has continued or can be expected to continue indefinitely. ()

c. Has substantial functional limitations in three (3) or more areas of major life activity. Individuals with mild intellectual disabilities, controlled epilepsy, and mild cerebral palsy may not be viewed as developmentally disabled since the criteria of substantial limitation may not be met. Individuals who succeed in developing skills to function adequately in five (5) or more major life skill areas will no longer meet the definition of developmental disability. The following are areas of major life activity: ()

i. Self-care; ()

ii. Receptive and expressive language; ()

- iii. Learning; ()
- iv. Mobility; ()
- v. Self-direction; ()
- vi. Capacity for independent living; and ()
- vii. Economic self-sufficiency. ()

d. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated. Individuals who have limited or no need for services specific to disabilities do not qualify. ()

02. Qualifying Individual. ()

a. Immediate Family Member. An immediate family member is an individual who meets the relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member does not have to be claimed as a dependent on the taxpayer's income tax return to qualify. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. ()

b. Additional Household Deduction or Credit for Elderly. For purposes of the additional household deduction or credit for the elderly, a qualifying individual must be an immediate family member. ()

c. Additional Household Deduction or Credit for Developmentally Disabled Dependents. For purposes of the additional household deduction or credit for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. ()

03. Fractions of Years. ()

a. The deduction is prorated at eighty-three dollars (\$83) per month if the qualified individual lives in the household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days is treated as a full month. ()

b. The credit is not available to part-year or nonresident individuals. If the qualified individual lives in the household for less than a full year, the credit is prorated at eight dollars and thirty-three cents (\$8.33) per month. ()

166. -- 169. (RESERVED)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).
Section 63-3022H, Idaho Code

01. Qualifying for the Idaho Capital Gains Deduction. To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. ()

02. Capital Gain Net Income Limitation. ()

a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. ()

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income

included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. ()

03. Ordinary Income Limitation. Gains treated as ordinary income pursuant to the Internal Revenue Code do not qualify for the Idaho capital gains deduction, including the following: ()

a. Gain from dispositions of certain depreciable property treated as ordinary income pursuant to Sections 1245 or 1250, Internal Revenue Code. ()

b. Gain treated as ordinary income pursuant to Section 1231(c), Internal Revenue Code, and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code. Gain treated as ordinary income under Section 1231(c) and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code, must be prorated within each category between the gains on property that qualifies for the Idaho capital gains deduction and gains on property that do not qualify for the Idaho capital gains deduction. ()

c. Example. One hundred thousand dollars (\$100,000) of capital gain income is treated as ordinary income. The first seventy thousand dollars (\$70,000) of ordinary income is allocated to the net section 1231 gain in the twenty-eight percent (28%) category. None of the gain in this category qualifies for the Idaho capital gains deduction since it is all treated as ordinary income. The remaining thirty thousand dollars (\$30,000) of ordinary income is allocated to gain from property in the twenty-five percent (25%) group. The gain in this category is derived from the sale on three (3) items of equipment. Two (2) of the items were qualified property located in Idaho. The third item was located in Oregon. Each item generated a gain of twenty-five thousand dollars (\$25,000). The gain treated as ordinary income is prorated between the three (3) items, ten thousand dollars (\$10,000) to each. As a result, fifteen thousand dollars (\$15,000) of the gain on each item remains as capital gain. The fifteen thousand dollars (\$15,000) of capital gain on each of the two items of Idaho equipment qualify for the Idaho capital gains deduction. Ten thousand dollars (\$10,000) of the gain on each of the items do not qualify since it is treated as ordinary income. The gain on the Oregon equipment does not qualify for the capital gains deduction since the equipment is not located in Idaho.

\$100,000 of Gain Treated as Ordinary Income	28% Group	25% Group		
		Idaho Equipment	Idaho Equipment	Oregon Equipment
Total Gain in Category	\$70,000	\$25,000	\$25,000	\$25,000
Gain Treated as Ordinary Income	\$70,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000
Amount Remaining as Capital Gain	\$0	\$25,000 - \$10,000 = \$15,000	\$25,000 - \$10,000 = \$15,000	\$25,000 - \$10,000 = \$15,000
Gain Qualifying for Idaho Capital Gains Deduction	\$0	\$15,000	\$15,000	\$0

04. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. ()

05. Losses From Qualified Property. ()

a. Losses from property qualifying for the Idaho capital gains deduction are netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. ()

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction will be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover is the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. ()

06. Examples. ()

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500). The capital gains deduction is sixty percent (60%) or one thousand five hundred dollars (\$1,500). ()

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. The capital gains deduction is sixty percent (60%) or twelve thousand dollars (\$12,000). ()

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. ()

02. Real Property. Idaho real property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. See Subsection 171.05 of this rule for examples of nonqualifying property. ()

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. ()

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

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

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. ()

05. Nonqualifying Property. Nonqualifying property includes: ()

a. Real or tangible personal property not having an Idaho situs. ()

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

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

- i. Stocks and bonds; ()
- ii. Interests in a partnership (except for interests identified in Section 63-3022H(3)(f)), Idaho Code, LLC, or S corporation. ()

06. Holding Periods. ()

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. ()

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. ()

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. ()

d. Examples of nonqualifying property. ()

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. ()

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. ()

07. Holding Periods of S Corporation and Partnership Property. ()

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. ()

b. Property Distributed by an S Corporation or Partnership. ()

i. Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership or from an S corporation other than in liquidation of stock includes the time the entity held the property. ()

08. Sale of a Partnership Interest. For taxable years beginning on or after January 1, 2018, when 26 CFR 1.170A-13(c)(3) is used to determine the fair market value of the partnership's qualified real property, the language of that federal regulation is to be treated as if it sets forth an appraisal method for determining the value of the qualified real property due to the sale of the partnership interest rather than a donation of property. ()

172. IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (RULE 172).
Section 63-3022H, Idaho Code

01. In General. Only the activities listed in Section 63-3022H(5), Idaho Code, qualify as a revenue-producing enterprise. ()

02. Nonqualifying Activities. Examples of activities that do not qualify as a revenue-producing enterprise include the following: ()

a. Retail sales; ()

b. Professional or managerial services; ()

c. Repair services or other service related activities; ()

d. Transportation activities, unless they are an integral part of the taxpayer's qualifying activity; ()

e. Telephone, cable, and internet services; ()

f. Agricultural services, such as horse training, veterinarian services, and crop dusting. ()

03. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. ()

04. Examples. ()

a. A taxpayer's Idaho business includes buying wool and processing it into yarn, using the yarn to manufacture clothes, and selling the clothes to the customers. Only part of the taxpayer's business activity qualifies as a revenue-producing enterprise. The activity related to retail sales does not qualify as a revenue-producing enterprise and any tangible personal property used in that activity does not qualify for the Idaho capital gains deduction. ()

b. A taxpayer's Idaho business includes cutting timber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The entire business qualifies as a revenue-producing enterprise, including the selling activity, because the selling activity is at wholesale. ()

c. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. Tangible personal property used in the taxpayer's long-haul trucking business does not qualify for the Idaho capital gains deduction. ()

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

01. In General. ()

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. ()

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. ()

02. 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, is to compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. ()

03. Examples. ()

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). ()

b. Assume the same facts as in Paragraph 173.03.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. ()

c. Assume the same facts as in Paragraph 173.03.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 173.03.a. of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. ()

d. Assume the same facts as in Paragraph 173.03.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). ()

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 173.03.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 (\$10,667). ()

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

174. -- 179. (RESERVED)

180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).

Section 63-3022J, Idaho Code

01. Limitations. The deduction for donations of technological equipment is limited to the lower of cost, fair market value, or Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. ()

02. Fair Market Value. Fair market value is determined pursuant to Section 170, Internal Revenue Code. ()

03. Pass-Through of Deduction. ()

a. See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. ()

b. The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. ()

181. -- 184. (RESERVED)

185. ADOPTION EXPENSES (RULE 185).

Section 63-3022I, Idaho Code

01. In General. Subject to the limitations of Subsection 185.02, adoptive parents may deduct from taxable income legal and medical expenses related to the adoption of a child. Travel expenses related to the adoption may not be deducted. ()

02. Maximum Deduction. The deduction allowed for a successful adoption is limited to a maximum deduction for each adopted child. For taxable years beginning before 2018, the maximum deduction is three thousand dollars (\$3,000). For taxable years beginning after 2017, the maximum deduction is ten thousand dollars (\$10,000) regardless of whether the deduction is claimed in one (1) or more years. ()

a. Examples: ()

i. A taxpayer spent five thousand dollars (\$5,000) in 2017 and four thousand dollars (\$4,000) in 2018 to adopt a child. He can deduct three thousand dollars (\$3,000) in 2017 and four thousand dollars (\$4,000) in 2018. ()

ii. A taxpayer spent five thousand dollars (\$5,000) in 2017 and fifteen thousand dollars (\$15,000) in 2018 to adopt a child. He can deduct three thousand dollars (\$3,000) in 2017 and seven thousand dollars (\$7,000) in 2018. ()

03. Ineligible Expenses. ()

a. The costs associated with an unsuccessful attempt to adopt a child do not qualify for the deduction. ()

b. A deduction is not allowed for expenses incurred in violation of state or federal law or for a surrogate parenting arrangement. ()

04. Year Deduction Allowed. The deduction is allowed in the taxable year the expense is paid. A taxpayer is to file an amended return if he claimed any adoption expenses related to an unsuccessful attempt to adopt in a previous taxable year. ()

05. Financial Assistance. Eligible expenses are to be reduced by amounts received as financial aid for the adoption, or from a grant pursuant to a federal, state, or local program. ()

186. -- 189. (RESERVED)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (RULE 190).
Section 63-3022K, Idaho Code

01. Designation as a Medical Savings Account. An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following: ()

- a. The name of the account; ()
- b. The title of the account; ()
- c. The description of the account; or ()
- d. The designation of the account. ()

02. Withdrawal to Reimburse the Account Holder. ()

a. A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. ()

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). ()

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. ()

04. Contributions That Exceed the Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. For taxable years beginning on or after January 1, 1995, but before January 1, 2014, the maximum amount deductible is two thousand dollars (\$2,000), four thousand dollars (\$4,000) for a joint account. For taxable years beginning on or after January 1, 2014, the maximum amount deductible is ten thousand dollars (\$10,000), twenty thousand dollars (\$20,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, will be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. ()

05. Death of a Spouse. If an Idaho medical savings account is established for married individuals as a joint account, no contributions will be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death will be attributed to each account holder. If the amounts are less than the maximum contribution amount, the surviving account holder may make contributions so that his total contributions for the year total the maximum contribution amount. For example, a married couple contributes three thousand dollars (\$3,000) to their medical savings account in January of 2013. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars (\$1,500). Because the wife has not met the maximum deduction of two thousand dollars (\$2,000) for taxable year 2013, she can contribute another five hundred dollars (\$500) in that year. ()

191. -- 192. (RESERVED)

193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).

Sections 63-3022P and 63-3022Q, Idaho Code

01. In General. The amounts paid by an individual taxpayer for health insurance and long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year. ()

02. Costs Deducted or Accounted For. Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. See Rule 194 of these rules for examples of the limitations when costs are otherwise deducted or accounted for. Health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for include amounts: ()

- a.** Paid out of an Idaho medical savings account; ()
- b.** Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or ()
- c.** Deducted as business expenses. ()

03. Social Security Medicare Part A. ()

a. The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. ()

b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. ()

04. Social Security Medicare Part B. Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. ()

05. Social Security Medicare Part D. Amounts paid for Medicare D, which is a voluntary prescription drug insurance program for individuals with Medicare A or B, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. ()

06. Medical Payments Coverage and Personal Injury Protection of Automobile Insurance. The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. ()

194. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE -- EXAMPLES OF LIMITATIONS (RULE 194).

Sections 63-3022P and 63-3022Q, Idaho Code

01. Examples of Limitations When Costs are Otherwise Deducted or Accounted For. If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the federal adjusted gross income limitation, the amount that is deducted as an itemized deduction will first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if

the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the federal adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations must not be less than zero (0). ()

02. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Zero (0).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. Applicable percentage of federal adjusted gross income	\$0
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0

()

03. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Three Thousand Dollars (\$3,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. Applicable percentage of federal adjusted gross income	\$3,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000

()

04. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. Applicable percentage of federal adjusted gross income	\$6,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

()

05. Example with Applicable Percentage of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. Applicable percentage of federal adjusted gross income	\$14,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000

()

06. Applicable Percentage. For taxable years beginning January 1, 2013, the percentage is seven and one-half percent (7.5%) if the taxpayer or spouse is age sixty-five (65) or older. The percentage for taxpayers under the age of sixty-five (65) is ten percent (10%). ()

195. LOSS RECOVERIES (RULE 195).
Section 63-3022R, Idaho Code

01. In General. A deduction is allowed in taxable years beginning after December 31, 2012 for recoveries of losses deducted from federal taxable income in a prior year that were not allowed or allowable as a deduction in calculating Idaho taxable income to the extent the recovery is included in federal taxable income of the current year. ()

02. No Double Deduction. No deduction is allowed for recovery of an amount not included in federal taxable income of the current year. No deduction is allowed to the extent the loss recovered previously reduced Idaho

taxable income. ()

03. Example. A taxpayer claims an itemized deduction of one hundred thousand (\$100,000) on his 2010 federal tax return for a theft loss from a Ponzi-type investment scheme. The deduction results in a federal net operating loss of fifty thousand (\$50,000) for 2010 but no Idaho net operating loss because the itemized deduction is not allowable in calculating an Idaho net operating loss under Section 63-3021, Idaho Code. On his 2013 federal tax return, the taxpayer includes in federal taxable income a recovery of sixty thousand (\$60,000) of the amount previously deducted. Since ten thousand (\$10,000) of the recovered amount reduced 2010 Idaho taxable income and fifty thousand (\$50,000) did not reduce 2010 Idaho taxable income, a fifty thousand (\$50,000) deduction is allowed in calculating 2013 Idaho taxable income. The 2013 Idaho deduction allowed is fifty thousand (\$50,000) since that is the amount that was previously disallowed for Idaho purposes. ()

196. -- 199. (RESERVED)

200. NET OPERATING LOSS -- CORPORATIONS (RULE 200).

Section 63-3021, Idaho Code

01. Unitary Taxpayers. Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. ()

02. Example.

	XYZ USA, Inc.	Idaho XYZ	Oregon XYZ	Combined
Computation of Idaho Net Operating Loss (NOL):				
Federal Taxable Income	(50,000,000)	5,000,000	(7,000,000)	(52,000,000)
State Adjustments	(5,000,000)	(150,000)	450,000	(4,700,000)
Unitary Business Income (Loss) Subject to Apportionment				(56,700,000)
Idaho Apportionment Factor	.000329	.006217	.000000	
Loss Apportioned to Idaho	(18,654)	(352,504)	0	
Income (Loss) Allocated to Idaho		35,000	0	
Idaho NOL	(18,654)	(317,504)	0	
Application of Idaho NOL:				
Idaho Taxable Income Before Carry-back:				
2nd Preceding Tax Year	15,987	212,852		
1st Preceding Tax Year	29,854	447,962		
Maximum Loss Available for Carryback – Limited to the lesser of the current year NOL or \$100,000	(18,654)	(100,000)		

	XYZ USA, Inc.	Idaho XYZ	Oregon XYZ	Combined
NOL Applied to:				
2nd Preceding Tax Year	(15,987)	(100,000)		
1st Preceding Tax Year	(2,667)	0		
NOL Available for Carryover	0	(217,504)		
Taxable Income Remaining in Carry-back Years:				
2nd Preceding Tax Year	0	112,852		
1st Preceding Tax Year	27,187	447,962		

()

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. ()

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. ()

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. ()

02. Adjustments to Net Operating Losses. ()

a. Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. ()

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. ()

03. Adjustments in Carryback and Carryover Years. ()

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. ()

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. ()

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. ()

04. Net Operating Loss Carrybacks Application. ()

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). ()

b. The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. ()

c. Except as provided in Paragraphs 201.04.d. and 201.04.f, a net operating loss is applied as follows:

()

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. ()

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. ()

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. ()

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: ()

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. ()

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. ()

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. ()

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. ()

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

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: ()

i. The name, address, and taxpayer's social security number or employer identification number; ()

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and ()

iii. The amount of the net operating loss. ()

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. ()

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. ()

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. ()

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. ()

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. ()

202. -- 209. (RESERVED)

210. REDUCTION OF IDAHO TAX ATTRIBUTES AND BASIS WHEN INCOME FROM INDEBTEDNESS DISCHARGE IN BANKRUPTCY IS EXCLUDED FROM GROSS INCOME (RULE 210).
Section 63-3022(c), Idaho Code

01. In General. Any taxpayer excluding from taxable income an amount resulting from the discharge of indebtedness in bankruptcy under Section 108(b) of the Internal Revenue Code, is to reduce Idaho net operating loss and basis in accordance with Section 346 of the Bankruptcy Code of the United States. If the discharge occurs outside of bankruptcy, the provisions of these rules do not apply. ()

02. Order of Reduction. The reduction referred to in Subsection 210.01 is to be made to the following tax attributes in the following order: ()

a. Any net operating loss deduction, as defined in Rule 201 of these rules, is to be reduced by the amount of the indebtedness forgiven or discharged in bankruptcy except as follows: ()

i. A deduction with respect to the liability which is disallowed for any taxable period during or after the liability is forgiven or discharged. A deduction with respect to the liability includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset. ()

ii. To the extent that the indebtedness forgiven or discharged consisted of items of a deductible nature that were not deducted by the taxpayer, or resulted in an expired net operating loss deduction or carryover that did not offset income for any taxable period and did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after the indebtedness was discharged. ()

b. The basis in the taxpayer's property or of property transferred to an entity required to use the taxpayer's basis in whole or in part is to be reduced by the lesser of: ()

i. The amount of the forgiven or discharged indebtedness, minus the total amount of adjustments made under Subsection 210.02.a.; and ()

ii. The amount of the debtor's total basis of assets before the discharge that exceeds the total preexisting liabilities still remaining after discharge of indebtedness. Basis may not be reduced below a level equal to the remaining undischarged liabilities. ()

03. Exception to Basis Reduction. The basis reduction under Subsection 210.02.b. is not required if the taxpayer elects to treat the amount that would otherwise be applied in reduction of basis as taxable income of the taxable period in which the debt is forgiven or discharged. ()

04. Discharge Not Treated as Discharged Indebtedness. The following provisions exclude from this rule indebtedness that is discharged and treat the debtor as if it had originally issued stock instead of debt. No reduction to the Idaho net operating loss or basis is required if one (1) or more of these provisions are satisfied. ()

a. The indebtedness did not consist of items of a deductible nature and is exchanged for an equity security, other than a limited partnership interest, issued by the debtor or is forgiven as a contribution to capital; or ()

b. The indebtedness consisted of items of a deductible nature, and the exchange of stock for debt has the same effect as a cash payment equal to the fair market value of the equity security that is issued by the debtor or, if the value of the security is less than the value of the debt, only part of the debt will be excluded. ()

211. -- 249. (RESERVED)

250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).
Sections 63-3026A(1) and (2), Idaho Code

01. Tax on Income From Idaho Sources. All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho must be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 275 of these rules. ()

02. Tax on Income Received by Individuals Residing in or Domiciled in Idaho. All income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income. ()

03. Receipt of Income -- Part-Year Residents. For purposes of determining if income is reportable to Idaho by a part-year resident, a cash basis taxpayer is considered to have earned or received income when it is actually or constructively received, except as provided in Subsections 250.04 and 250.05. ()

04. Receipt of Intangible Income -- Part-Year Residents. ()

a. Interest and dividend income received from a source other than from a pass-through entity is considered to be earned or received by a part-year resident ratably during the taxable year. ()

b. If a transaction or activity gives rise to income that is reported in a subsequent year when the taxpayer is a part-year resident, the income must be treated as received ratably during that subsequent year. Subsection 250.04 also applies to income that is not received during the year by the taxpayer, but which must be reported in taxable income. See Subsection 250.05 for the receipt of income from a pass-through entity. ()

c. A part-year resident must report such income to Idaho in the proportion that the number of days during the taxable year that the individual qualified as an Idaho part-year resident bears to total days in the taxable year. ()

d. Example. An individual converts an amount from a traditional IRA to a Roth IRA in year one (1). He elects to have the income taxed over four (4) years. The individual moves to Idaho on August 1 of year two (2). Since the individual was an Idaho resident for one hundred fifty-three (153) days of year two (2), he must report as Idaho income forty-two percent (42%) of his income from the conversion to a Roth IRA for that year. ()

05. Receipt of Pass-Through Items of Income and Losses -- Part-Year Residents. ()

a. For a part-year resident who is a shareholder in an S corporation, or a partner in a partnership, the income, gains, losses and other pass-through items from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a shareholder or partner for the entire taxable year, the pass-through items are treated as received ratably during the portion of the taxable year the taxpayer was a shareholder of the S corporation or partner of the partnership. ()

b. For a part-year resident who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the portion of the taxable year the taxpayer was a beneficiary of the estate or trust. ()

c. A part-year resident must report such income to Idaho in the proportion that the number of days during the taxable year that the individual qualified as an Idaho part-year resident bears to total days in the taxable year. ()

251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 251).

Section 63-3026A, Idaho Code

01. Idaho Total Income. To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho total income. ()

a. Idaho total income is that portion of total income subject to Idaho taxation. It is the amount reported as total income on Form 43. ()

b. For purposes of this rule, federal total income means gross income less certain deductions allowed under the Internal Revenue Code. It is the amount reported on the federal individual income tax return that is identified as total income. ()

02. Idaho Adjusted Gross Income. From Idaho total income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. ()

03. Idaho Adjusted Income. From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. ()

04. Idaho Taxable Income. From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. ()

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. ()

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: ()

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. ()

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

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. ()

d. Jury duty pay remitted to an employer. ()

e. Deductible expenses related to income from the rental of personal property engaged in for profit. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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. 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: ()

a. Alimony payments. ()

- b.** Moving expenses. ()
- c.** Student loan interest payments. ()
- d.** Tuition and fees deduction. ()

253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.

Section 63-3026A(6), Idaho Code. The following items must be added to Idaho adjusted gross income in computing the Idaho adjusted income of nonresident and part-year resident individuals. ()

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. ()

a. Part-Year Residents. Interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho must be added. However, interest received from obligations of the state of Idaho or any political subdivision of Idaho is exempt from Idaho income tax and is not added. ()

b. Nonresidents. Interest and dividend income reportable from a pass-through entity that was transacting business in Idaho must be added to the extent the income was apportioned or allocated as Idaho income. See Rule 263 of these rules for multistate apportionment rules. ()

02. Net Operating Loss Deduction. The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. ()

03. Capital Loss. Capital losses included in Idaho adjusted gross income must be added if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. ()

04. Lump Sum Distributions. Part-year residents must add the taxable amount of a lump sum distribution deducted in calculating taxable income received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. ()

05. Idaho Medical Savings Account. An account holder must add the amount of any nonqualified withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. ()

06. Idaho College Savings Program. ()

a. An account owner must add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted gross income. The addition is limited to contributions previously exempt from Idaho state income tax and earnings generated from the program as long as the earnings are not already included in federal adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. ()

b. As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007, to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. ()

07. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. An individual must add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on

property acquired after 2007 and before 2010. ()

08. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, the amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. ()

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. ()

01. Idaho Net Operating Loss. An Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules, may be subtracted to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. ()

02. State and Local Income Tax Refunds. State and local income tax refunds included in Idaho total income may be subtracted unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. ()

03. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in Idaho total income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: ()

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. ()

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. ()

c. Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on his tribe's federally recognized Indian reservation is not taxable on income derived within that reservation. See Rule 033 of these rules. ()

d. Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. ()

e. Certain income from loss recoveries. See Rule 195 of these rules. ()

04. Military Pay. Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. ()

05. Social Security and Railroad Retirement Benefits. Social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code may be subtracted to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. ()

06. Household and Dependent Care Expenses. The allowable portion of household and dependent

care expenses that meets the requirements of Section 63-3022D, Idaho Code, may be subtracted if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, a percentage is calculated by dividing Idaho earned income by total earned income. The qualified expenses are multiplied by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. ()

07. Insulation and Alternative Energy Device Expenses. Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted. ()

08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities. One thousand dollars (\$1,000) may be subtracted for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. ()

09. Adoption Expenses. The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage. ()

10. Capital Gains Deduction. The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted. ()

11. Idaho Medical Savings Account. ()

a. The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted. ()

b. Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income. ()

12. Technological Equipment Donation. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the lower of cost or fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. ()

13. Worker's Compensation Insurance. As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. ()

14. Idaho College Savings Program. The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted. ()

15. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, a percentage is calculated by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, is multiplied by the percentage. ()

16. Health Insurance Costs. The allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes may be subtracted. To determine the allowable portion of the amounts paid for medical care insurance, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022P, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. ()

17. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022Q, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. ()

18. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 and before 2010. ()

a. Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. ()

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. ()

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. ()

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). ()

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). ()

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. ()

255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).
Section 63-3026A(4), Idaho Code

01. In General. The exemptions and deductions allowable for federal purposes, except for the deduction of state and local income taxes and the deduction for state and local general sales taxes, are allowed in part in computing Idaho taxable income. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, are multiplied by the calculated proration. ()

02. Proration. For taxable years beginning in or after 2007, the proration is calculated by dividing Idaho adjusted income by total adjusted income. Calculate four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000 / \$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000 / \$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%), nor be less than zero (0). ()

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. ()

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage is between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage is one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage is one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage is zero (0). ()

03. Standard Deduction for Married Filing Joint Returns. The proration percentage is applied after making the following calculations for taxable years beginning on or after January 1, 2000. The standard deduction allowed on a married filing joint return is equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. ()

256. -- 259. (RESERVED)

260. INCOME FROM IDAHO SOURCES (RULE 260).

Section 63-3026A(3), Idaho Code. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 275 of these rules. ()

261. INCOME FROM ESTATES AND TRUSTS (RULE 261).

Section 63-3026A(3), Idaho Code. Income, gain, loss, or deduction of an estate or trust distributed to a nonresident beneficiary is income derived from or related to sources within Idaho if the income, gain, loss or deduction would be Idaho source income pursuant to Section 63-3026A, Idaho Code, if received directly by a nonresident individual. ()

262. (RESERVED)

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. ()

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. ()

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: ()

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

04. Guaranteed Payments Treated As Compensation. ()

a. Guaranteed payments to an individual partner up to the amount shown at <https://tax.idaho.gov/guarpay> 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. ()

b. The amounts of guaranteed payments that are sourced as compensation for services are listed at <https://tax.idaho.gov/guarpay>. ()

05. Distributions. ()

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. ()

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. ()

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. ()

264. INCOME FROM REAL AND TANGIBLE PERSONAL PROPERTY (RULE 264).
Section 63-3026A(3), Idaho Code

01. In General. Rents, royalties, profits, gains, losses and other items of income from the ownership or disposition of real or tangible personal property located in Idaho is Idaho source income. ()

02. Property Located Within and Without Idaho. ()

a. If the property is located or used within and without Idaho, specific allocation of the income, gain, or loss is appropriate if the gross receipts and related deductions and expenses are readily identifiable from the

location or use of the property in Idaho. ()

b. To the extent income derived from real property located both within and without Idaho cannot be specifically allocated, the rents, profits, gains, losses or other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the average value of the property located in Idaho and the denominator is the average value of the property located both within and without Idaho. The value of real property is determined by the original cost of the land and improvements. The average value is determined by averaging the values at the beginning and end of the taxable year. However, the Tax Commission may require the averaging of monthly values during the taxable year if required to properly reflect the average value of the taxpayer's property. ()

c. To the extent income derived from tangible personal property used both within and without Idaho cannot be readily allocated, the rents, royalties, gains, losses, and other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the total number of days the property was used in Idaho during the taxable year, and the denominator is the total number of days the property was used both within and without Idaho during the taxable year. ()

03. Alternative Method. If either fraction in Subsection 264.02 does not fairly represent the income derived from the property's use in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, acres may be a more appropriate measure than average value in some cases. ()

a. The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. ()

b. The method proposed by the taxpayer may be used in lieu of the method in Subsection 264.02 unless the Tax Commission expressly denies its use. ()

265. SOLE PROPRIETORSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 265).
Section 63-3026A(3), Idaho Code

01. In General. A sole proprietorship that operates within and without Idaho will apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of proprietorship income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. ()

02. Application of Rule. This rule also applies to farming activities operated as a sole proprietorship. ()

03. Alternative Method. If the method described in Subsection 265.01 does not fairly represent the extent of the business activity in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. ()

a. The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. ()

b. The method proposed by the taxpayer may be used in lieu of the method in Subsection 265.01 unless the Tax Commission expressly denies its use. ()

266. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME FROM INTANGIBLE PROPERTY (RULE 266).
Section 63-3026A(3), Idaho Code

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. ()

a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income

from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. ()

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. ()

c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. ()

d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. However, a gain or loss from the sale of an interest in a publicly traded partnership transacting business in Idaho is Idaho source income to the extent of the gain or loss determined under Section 751, Internal Revenue Code, multiplied by the Idaho apportionment factor of the partnership for the year in which the sale occurred. ()

02. Interest Income Earned on a Bank Account. ()

a. Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. ()

b. Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. ()

03. Payment of Penalties. Payment of penalties is sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalty paid is Idaho source income. ()

04. Covenant Not to Compete. Income from a covenant not to compete is sourced to Idaho based on the Idaho apportionment factor of the entity sold for the taxable year immediately preceding the year of the sale. ()

05. Goodwill. Gain or loss from the sale of goodwill from a business transacting business in Idaho is sourced to Idaho based on the Idaho apportionment factor of the business sold for the taxable year immediately preceding the year of the sale. ()

06. Timing of Sourcing Determination for Intangible Personal Property. The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments is Idaho source income. ()

267. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PASSIVE ACTIVITY LOSSES (RULE 267).
Section 63-3026A(6), Idaho Code

01. In General. Losses from a passive activity incurred while an individual is a nonresident are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

02. Idaho Activity. An activity is an Idaho activity only to the extent the income from that activity would be included in the Idaho taxable income of a nonresident pursuant to Section 63-3026A, Idaho Code. If a

passive activity is engaged in both within and without Idaho, the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules must be applied to determine the extent of Idaho activity. ()

03. Prior Year Losses. Suspended passive activity losses from prior years included in federal taxable income for the current year are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

04. Current Year Losses. Non-Idaho passive activity losses incurred in the current taxable year are included in Idaho taxable income only to the extent the losses were incurred while the individual was an Idaho resident. The portion of the losses incurred while an Idaho resident is determined by prorating the losses based on the proportion of the year the individual resided in Idaho. ()

268. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUSPENDED LOSSES FROM PASS-THROUGH ENTITIES (RULE 268).
Section 63-3026A, Idaho Code

01. In General. A nonresident individual's suspended losses from a pass-through entity are included in Idaho taxable income in the year included in federal taxable income only to the extent the losses were from an Idaho source in the year incurred. ()

a. Suspended Loss. For purposes of this rule, a suspended loss is a loss required to be carried over to a succeeding taxable year due to Section 465(a), Section 704(d), or Section 1366(d) of the Internal Revenue Code. ()

b. Idaho Source. A suspended loss is from an Idaho source in the year incurred to the extent provided by Section 63-3026A, Idaho Code, and related rules. For purposes of this rule, the Idaho source portion of a suspended business loss subject to apportionment is determined by multiplying the loss by the Idaho apportionment factor of the pass-through entity in the year the loss was incurred. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ()

c. Nonbusiness Losses. A suspended nonbusiness loss is from an Idaho source in the year incurred to the extent the loss is allocable to Idaho pursuant to Section 63-3027, Idaho Code and Rule 263.02 of these rules. ()

d. Year Loss Incurred. For purposes of this rule, "year incurred" means the tax year the loss was first suspended. ()

e. Example. A nonresident individual's federal taxable income includes one hundred thousand dollars (\$100,000) of loss from a partnership. Sixty thousand dollars (\$60,000) of that loss was incurred in the prior tax year and suspended due to the basis limitation of Section 704(d) of the Internal Revenue Code. Forty thousand dollars (\$40,000) of that loss was incurred in the current tax year. The Idaho apportionment factor of the partnership is one hundred percent (100%) in the current year and fifty percent (50%) in the prior year. The individual's Idaho taxable income includes seventy thousand dollars (\$70,000) of the partnership's loss, computed as follows: (\$60,000 prior year suspended loss x fifty percent (50%) prior year Idaho apportionment factor plus (Forty thousand dollars (\$40,000) current year loss x one hundred percent (100%) current year Idaho apportionment factor). ()

02. Losses from Multiple Years. For purposes of this rule, losses from a pass-through entity are considered used in the order incurred. ()

a. Example. A nonresident individual has suspended losses from a partnership of one hundred thousand dollars (\$100,000). The suspended losses consist of forty thousand dollars (\$40,000) of loss incurred in Year 1 and sixty thousand dollars (\$60,000) of loss incurred in Year 2. The individual also has a loss from the partnership in the current year of fifty thousand dollars (\$50,000). The partnership's Idaho apportionment factor is one hundred percent (100%) in the current year and fifty percent (50%) in each of the preceding years. Due to the loss limitation of Section 704(d) of the Internal Revenue Code, the individual's current year deduction is limited to one hundred thousand dollars (\$100,000). The one hundred thousand dollar (\$100,000) loss allowed in computing federal

taxable income is considered to be forty thousand dollars (\$40,000) of suspended loss from Year 1 and sixty thousand dollars (\$60,000) of suspended loss from Year 2. The amount included in Idaho taxable income is fifty thousand dollars (\$50,000), computed as follows: (\$40,000 Year 1 loss x 50% Idaho apportionment factor) plus (\$60,000 Year 2 loss x 50% Idaho apportionment factor). ()

269. (RESERVED)

270. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- IDAHO COMPENSATION -- IN GENERAL (RULE 270).

Section 63-3026A(3), Idaho Code

01. In General. If a nonresident individual performs personal services, either as an employee, agent, independent contractor, partner, or otherwise, both within and without Idaho, the portion of his total compensation that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. ()

02. Definitions. ()

a. The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days. ()

b. The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation. ()

c. Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off. ()

d. Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the Internal Revenue Code. ()

03. Work Days. Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. ()

04. Multiple Employers. If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he must determine an Idaho compensation percentage separately for each employer or principal. ()

05. Alternative Method. If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. ()

a. The taxpayer must fully explain the alternative method in a statement attached to his Idaho individual income tax return. ()

b. The alternative method may be used in lieu of the method in Subsection 270.01 unless the Tax Commission expressly denies its use. ()

271. IDAHO COMPENSATION: STOCK OPTIONS (RULE 271).
Section 63-3026A(3), Idaho Code

01. In General. The granting of stock options is considered to be compensation for services. Although considered as compensation, in some circumstances the taxpayer may report the compensation on his federal income tax return as capital gain income. The character of the income from the granting of stock options and the timing of reporting it for federal income tax purposes apply in computing Idaho taxable income. ()

02. Definitions. For purposes of this rule: ()

a. Work days, Idaho work days, and total work days are defined in Rule 270 of these rules. ()

b. Compensable period means the period that begins at the date the stock option is granted and ends at the earlier of the date the stock option becomes vested or the date the employee's services terminate. ()

c. Statutory stock options are options governed by specific Internal Revenue Code sections that impose restrictions on both the employer and the employee. Statutory stock options include incentive stock options as provided in Section 422, Internal Revenue Code, and options issued pursuant to employee stock purchase plans as provided in Section 423, Internal Revenue Code. ()

d. Nonstatutory stock options are options that do not meet the Internal Revenue Code requirements to qualify as statutory stock options or are granted pursuant to a plan or offering that does not qualify. ()

03. Compensation for Future Services. The granting of stock options will be presumed to be intended as compensation for future services. The party alleging otherwise bears the burden of proving that the stock options were intended for services rendered before the date of grant. ()

04. Statutory Stock Options. ()

a. Compensation. Compensation is realized at the date the option is exercised, but not taxable until the income or gain is recognized for federal income tax purposes. If a taxpayer reports a capital gain for federal income tax purposes from statutory stock options, the amount of Idaho source compensation will also be reported as capital gain income for Idaho income tax purposes. Idaho source compensation is determined as follows: ()

i. Compensation is equal to the portion of the gain that equals the difference between the option price and the fair market value of the stock at the date the option was exercised. Compensation is limited to the gain actually recognized if the stock is sold for less than its fair market value at the time the option was exercised. No compensation will be reported if the stock is sold at a loss. ()

ii. Compensation for services performed in Idaho equals the compensation determined in Subsection 271.04.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. ()

b. Investment Income. Appreciation in the value of the stock after the date the option was exercised is to be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold. ()

05. Nonstatutory Stock Options. ()

a. Compensation. Compensation is recognized at the date the stock option is exercised. The amount of Idaho source compensation related to the stock option is determined as follows: ()

i. Compensation for federal income tax purposes is equal to the difference between the option price and the fair market value of the stock at the date the option was exercised. ()

ii. Compensation for services performed in Idaho equals the compensation determined in Subsection 271.05.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. ()

b. Investment Income. Appreciation or depreciation in the value of the stock after the date the option was exercised is to be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold. ()

272. IDAHO COMPENSATION: SEVERANCE PAY (RULE 272).
Section 63-3026A(3), Idaho Code

01. In General. In accordance with federal Treasury Regulation Section 1.61-2, termination or severance pay is treated as compensation for services. The amount of termination or severance pay received by a nonresident that is subject to Idaho income tax is determined pursuant to this rule. ()

02. Definitions. For purposes of this rule work days, Idaho work days and total work days are defined in Rule 270 of these rules. ()

03. Calculation of Idaho Source Severance Pay. The amount of severance pay that is Idaho source income is to be equal to the severance pay received during the taxable year multiplied by the ratio of Idaho work days to total work days during either of the following: ()

a. The employee's entire period of employment with such employer; or ()

b. The employee's last twelve (12) months of employment with such employer. ()

04. Alternative Method. If the Idaho compensation percentage computed in Subsection 272.03 does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. ()

a. The taxpayer will fully explain the alternative method in a statement attached to his Idaho individual income tax return. ()

b. The alternative method may be used in lieu of the method in Subsection 272.03 unless the Tax Commission expressly denies its use. ()

273. IDAHO COMPENSATION: UNEMPLOYMENT COMPENSATION (RULE 273).
Section 63-3026A(3), Idaho Code. Unemployment compensation benefits are Idaho source income if the benefits are received by the taxpayer from the state of Idaho, even though the benefits may relate to wages earned in Idaho and another state. Unemployment compensation benefits received from another state does not constitute Idaho source income even though the calculation of the benefits may be based in part on wages earned in Idaho. ()

274. (RESERVED)

275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code

01. In General. ()

a. For taxable years beginning on or after January 1, 2007, the Idaho taxable income of a nonresident individual does not include the distributive share of investment income of a qualified investment partnership. The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. ()

b. The exemption from tax on investment income from a qualified investment partnership does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is governed by Section 63-3026A(3)(a)(vii), Idaho Code, and Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership is determined

as provided in Rule 263 of these rules. ()

02. Qualified Investment Partnership. An entity is a qualified investment partnership only if it meets both of the following criteria: ()

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. ()

b. The gross income from investments of the entity is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. ()

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly. ()

04. Examples. ()

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars (\$90,000) of dividend income and ten thousand dollars (\$10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. ()

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars (\$10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. ()

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of eighty thousand dollars (\$80,000) of dividend income and twenty thousand dollars (\$20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules. ()

d. A is a nonresident individual partner in ABC, a partnership with a fifty percent (50%) Idaho apportionment factor. The gross income of ABC consists of ninety thousand dollars (\$90,000) of dividend income, five thousand dollars (\$5,000) of capital gain from the sale of non-Idaho real property used in the trade or business, and five thousand dollars (\$5,000) of gross business income. Since at least ninety percent (90%) of ABC's gross income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but fifty percent (50%) of A's distributive share of ABC's gain from the sale of non-Idaho real property (which is business income under the facts of this example) and fifty percent (50%) of A's distributive share of ABC's other business income is included in Idaho taxable income, based on the Idaho apportionment factor of the partnership as provided in Section 63-3026A(3)(a)(i) and Rule 263 of these rules. ()

276. -- 279. (RESERVED)

280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).
Sections 63-3026A(3), 63-3027 and 63-3030(a)(9), Idaho Code

01. In General. A partnership that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. ()

02. Exceptions to Apportionment Formula. If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following: ()

- a.** Separate accounting as provided in Rule 585 of these rules; ()
- b.** The exclusion of a factor pursuant to Rule 590 of these rules; ()
- c.** An additional factor or substitute factor pursuant to Rule 595 of these rules; or ()
- d.** The employment of any other method that would fairly represent the extent of business activity in Idaho. ()

03. Information Provided to Partners. The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: ()

- a.** The partner's share of each pass-through item of income and deduction; ()
- b.** The partner's share of each Idaho addition and subtraction; ()
- c.** The partner's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; ()
- d.** The partner's share of income allocated to Idaho; ()
- e.** The partnership's apportionment factor, and if the partner is not an individual, the partnership's property, payroll and sales factor numerator and denominator amounts, including the amount of capitalized rent expense; and ()
- f.** The partner's distributive share of partnership gross income if the partner is an individual, trust, or estate. ()

281. -- 284. (RESERVED)

285. S CORPORATIONS (RULE 285).
Sections 63-3025 and 63-3025A, Idaho Code

01. Tax on S Corporations. An S corporation that is transacting business in Idaho or authorized to transact business in Idaho is subject to the tax imposed by Section 63-3025, Idaho Code, if not paying the tax imposed by Section 63-3025A, Idaho Code. The tax imposed by Section 63-3025 or 63-3025A, Idaho Code, is computed on the total of the net recognized built-in gains and the excess net passive income of the S corporation attributable to Idaho for the taxable year. ()

- a.** Net recognized built-in gains is to be determined pursuant to Section 1374, Internal Revenue Code, including any applicable limitations. ()
- b.** Excess net passive income is determined pursuant to Section 1375, Internal Revenue Code, including any applicable limitations. ()
- c.** If the tax computed in Subsection 285.01 of this rule is less than the minimum tax, the S corporation pays the minimum tax. ()

02. Minimum Tax. The minimum tax is required of every S corporation that is required to file a return. A name-holder or inactive S corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars (\$20) even though the S corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 285.03 of this rule. ()

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. An S corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. ()

04. Application of Credits. If an S corporation was previously a C corporation with an Idaho income tax credit carryover at the time of the S corporation election, the S corporation may use any available credit carryover against the tax on the excess net passive income or net recognized built-in gains if the carryover period related to the Idaho income tax credit has not expired before the taxable year in which the tax must be reported. ()

05. Tax Resulting From the Requirements of Section 63-3022L, Idaho Code. An S corporation is subject to tax at the corporate rate on the income required to be reported for qualifying shareholders under Section 63-3022L, Idaho Code. This tax is in addition to any tax the S corporation owes under Section 63-3025 or 63-3025A, Idaho Code. See Rule 291 of these rules for additional information. ()

06. Qualified Subchapter S Subsidiary. A corporation that is a qualified subchapter S subsidiary (QSSS) will be treated for Idaho income tax purposes the same as treated for federal income tax purposes. The QSSS will not be treated as a separate corporation, but all the assets, liabilities, and items of income, deduction, and credit of a QSSS will be treated as assets, liabilities and such items of the S corporation. Since the QSSS is not treated as a separate taxpayer, it is not subject to the minimum tax. ()

286. S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO (RULE 286).
Sections 63-3027 and 63-3030(a)(4), Idaho Code

01. In General. An S corporation that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of S corporation income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. ()

02. Exceptions to Apportionment Formula. If the method described in Subsection 286.01 of this rule does not fairly represent the extent of the business activity in Idaho, the S corporation may file a request to use or the Tax Commission may require an alternative method, including the following: ()

- a. Separate accounting as provided in Rule 585 of these rules; ()
- b. The exclusion of a factor pursuant to Rule 590 of these rules; ()
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or ()
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. ()

03. Information Provided to Shareholders. An S corporation must provide to each shareholder information necessary for the shareholder to compute his Idaho income tax. Such information must include: ()

- a. The shareholder's share of each pass-through item of income and deduction; ()
- b. The shareholder's share of each Idaho addition and subtraction; ()

- c. The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; ()
- d. The shareholder's share of income allocated to Idaho; ()
- e. The S corporation's apportionment factor; and ()
- f. The shareholder's distributive share of S corporation gross income. ()

04. Protection Under Public Law 86-272. An S corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. ()

05. Qualified Subchapter S Subsidiary. A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. If the S corporation and its qualified subchapter S subsidiaries are carrying on more than one unitary business, each unitary business must allocate and apportion its income pursuant to Rule 340.03. ()

287. -- 290. (RESERVED)

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. ()

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

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

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

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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: ()

i. The standard deduction; ()

ii. Personal exemptions; ()

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. ()

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, Internal Revenue Code, deduction; ()

ii. Charitable contributions made by the pass-through entity; ()

iii. Investment interest expense; ()

iv. Section 59(e)(2), Internal Revenue Code, 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. ()

292. -- 299. (RESERVED)

300. TAX ON CORPORATIONS (RULE 300).

Sections 63-3025 and 63-3025A, Idaho Code

01. Excise Tax. A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. ()

02. Minimum Tax. A name-holder or inactive corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax.

()

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income.

()

04. Protection Under Public Law 86-272. A corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax.

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05. Corporate Income Tax Rates. Corporate tax rates are listed at <https://tax.idaho.gov/busit>.

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301. -- 309. (RESERVED)

310. ELECTIONS FOR MULTISTATE CORPORATIONS (RULE 310).

Section 63-3027, Idaho Code

01. Available Options. A multistate corporation transacting business in Idaho may elect to be taxed pursuant to the provisions of the Idaho Income Tax Act or pursuant to the Multistate Tax Compact, Section 63-3701, Idaho Code. This provides three (3) options:

()

a. Apportionment and allocation pursuant to Section 63-3027, Idaho Code.

()

b. Apportionment and allocation pursuant to Article III, Section 1 of the Multistate Tax Compact. However, if this option is elected, business income is to be apportioned using the apportionment formula pursuant to Section 63-3027(i), Idaho Code.

()

c. Tax based on one percent (1%) of sales pursuant to Article III, Section 2 of the Multistate Tax Compact and Section 63-3702, Idaho Code. This option is available to corporations whose only activity in Idaho consists of sales that are not in excess of one hundred thousand dollars (\$100,000) during the taxable year.

()

02. Electing an Option. A multistate corporation is to file pursuant to Section 63-3027, Idaho Code, unless it elects to report and pay income tax pursuant to one of the options specified in Subsections 310.01.b. and 310.01.c. The election is made by attaching a written statement of the election to the return. The statement must affirmatively state each element required by statute to qualify for the option elected. The return must include any additional schedules needed to show how the tax due was computed. The election may not be changed for a taxable year after the return for that year has been filed.

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311. -- 319. (RESERVED)

320. APPLICATION OF MULTISTATE RULES (RULE 320).

Section 63-3027, Idaho Code

01. Prologue. Rules 320 through 699 of these rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code. The only exceptions to these allocation and apportionment rules are those set forth in these rules pursuant to the authority of Sections 63-3027(s) and 63-3027(u), Idaho Code.

()

02. Taxpayers Conducting Business Within and Without Idaho. Section 63-3027, Idaho Code, and related rules apply to corporations conducting business within and without Idaho, and to other taxpayers if required by other provisions of the Idaho Code or of these rules. However, only C corporations may use the combined report to determine Idaho taxable income. See Rule 360 of these rules.

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321. -- 324. (RESERVED)

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (RULE 325).

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: ()

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly controlled group of which the taxpayer is also a member. The commonly controlled group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common control, see Rule 344 of these rules. ()

02. Allocation. Allocation refers to the assignment of nonbusiness income to a particular state. ()

03. Apportionment. Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. ()

04. Business Activity. Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations. ()

05. Combined Group. Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. ()

06. Combined Report. Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. ()

07. Gross Receipts. ()

a. Gross receipts are the gross amounts realized, (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if business income, do not include such items as, for example: ()

i. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument; ()

ii. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan; ()

iii. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock; ()

iv. Damages and other amounts received as the result of litigation; ()

v. Property acquired by an agent on behalf of another; ()

vi. Tax refunds and other tax benefit recoveries; ()

vii. Pension reversions; ()

viii. Contributions to capital; ()

- ix. Income from forgiveness of indebtedness; or ()
- x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. ()

b. Exclusion of an item from the definition of gross receipts is not determinative of its character as business or nonbusiness income. Nothing in this definition is to be construed to modify, impair or supersede any provision of Rules 560 through 595 of these rules. ()

08. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. ()

09. MTC. The Multistate Tax Commission. ()

10. Multistate Corporation. A multistate corporation is a corporation that operates in more than one (1) state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. ()

11. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. ()

326. -- 329. (RESERVED)

330. BUSINESS AND NONBUSINESS INCOME DEFINED: APPORTIONMENT AND ALLOCATION (RULE 330).

Section 63-3027(a), Idaho Code. Sections 63-3027(a)(1) and 63-3027(a)(4), Idaho Code, require that every item of income be classified either as business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income. ()

331. BUSINESS AND NONBUSINESS INCOME DEFINED: BUSINESS INCOME (RULE 331).

Section 63-3027(a)(1), Idaho Code

01. In General. Business income means income of any type or class and from any activity that meets the “transactional test” described in Rule 332 of these rules, or the “functional test” described in Rule 333 of these rules. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. ()

02. Terms Used in Definition of Business Income and in Application of Definition. As used in the definition of business income and in the application of the definition. ()

a. “Trade or business” means the unitary business of the taxpayer, part of which is conducted within Idaho. ()

b. “To contribute materially” includes, without limitation, “to be used operationally in the taxpayer’s trade or business.” Whether property materially contributes is not determined by reference to the property’s value or percentage of use. If an item of property materially contributes to the taxpayer’s trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer’s trade or business. ()

332. BUSINESS AND NONBUSINESS INCOME DEFINED: TRANSACTIONAL TEST (RULE 332).

Section 63-3027(a)(1), Idaho Code

01. In General. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business. ()

02. Business Income for Idaho. If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Idaho, the resulting income of the transaction or activity is business income for Idaho. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Idaho. ()

03. Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services that are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold or replaced with some regularity, even if replaced less frequently than once a year. ()

333. BUSINESS AND NONBUSINESS INCOME DEFINED: FUNCTIONAL TEST (RULE 333).
Section 63-3027(a)(1), Idaho Code

01. In General. Business income also includes income from tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. ()

02. Terms. ()

a. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. ()

b. "Acquisition" refers to the act of obtaining an interest in property. ()

c. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. ()

d. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. ()

e. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner that materially contributed to the production of business income. ()

03. Integral, Functional, or Operative Component of Trade or Business. Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within Idaho. Depending on the facts and circumstances of each case, property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral

part of the trade or business is not considered converted to investment purposes merely because it is placed for sale.
()

04. Examples of Business Income Under the Functional Test. Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.
()

05. Operational Function Versus Investment Function. Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.
()

06. Property Held in Furtherance of Trade or Business. If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Idaho.
()

07. Presumptions. If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to Idaho or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions.
()

08. Application of the Functional Test. Application of the functional test is generally unaffected by the form of the property (for example, tangible or intangible property, real or personal property). Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment.
()

334. BUSINESS AND NONBUSINESS INCOME DEFINED: RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).

Section 63-3027(a)(1), Idaho Code. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extraterritorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Idaho. The unitary business that is conducted in Idaho includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) to be tied to the same trade or business that is being conducted within Idaho. Determination of the scope of the unitary business being conducted in Idaho is without regard to the extent to which Idaho requires or permits combined reporting.
()

335. NONBUSINESS INCOME (RULE 335).

Section 63-3027(a)(4), Idaho Code

01. Nonbusiness Income. Nonbusiness income is all income other than business income. All deductions relating to the production of nonbusiness income is to be allocated with the income produced. Any allowable deduction that applies to both business and nonbusiness income of the taxpayer is to be prorated to those classes of income to determine income subject to tax. When used in these rules, the term nonbusiness income includes nonbusiness losses unless the context clearly indicates otherwise. ()

02. Offset of Interest Expense Against Nonbusiness Income. Interest on indebtedness incurred or continued to purchase or to carry investment that generates nonbusiness income is offset against the income produced. If the facts do not support such a matching of the interest expense to the nonbusiness income, the portion of the taxpayer's interest expense that is offset against income from nonbusiness investments is to be an amount that bears the same ratio to the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year as the taxpayer's nonbusiness income mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year. Aggregate amount allowable means the taxpayer's total interest expense deducted in determining taxable income as defined in Section 63-3011B, Idaho Code, plus interest expense disallowed under Sections 265 and 291 of the Internal Revenue Code, plus interest expense from a pass-through entity, plus the interest expense of a corporation that, pursuant to Sections 63-3027 and 63-3027B through 63-3027E, Idaho Code, is included in a combined report with the taxpayer for the taxable year. See Rule 115 of these rules for the calculation of total income. ()

03. Allocated to Idaho. Nonbusiness income, net of interest and other related expense offsets, that is attributable to Idaho is allocated to Idaho. ()

04. Allocated to Other States. Nonbusiness income, together with interest and other related expense offsets, is allocated to other states if it is not attributable to Idaho. ()

336. BUSINESS AND NONBUSINESS INCOME: APPLICATION OF DEFINITIONS (RULE 336).
Section 63-3027(a)(1), 63-3027(A)(4), Idaho Code

01. In General. The following applies the foregoing principles for purposes of determining whether particular income is business or nonbusiness income. ()

02. Rent From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property for which the rental income was received is or was used in the taxpayer's trade or business and, therefore, is includable in the property factor under Rule 465 of these rules. ()

03. Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property is business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. ()

04. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

05. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

06. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is an integral, functional, operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of

the trade or business operations. ()

337. -- 339. (RESERVED)

340. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: UNITARY BUSINESS PRINCIPLE (RULE 340).

Section 63-3027, Idaho Code

01. The Concept of a Unitary Business. ()

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process “definite link and minimum connection” necessary for Idaho to apportion business income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. ()

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. ()

02. Constitutional Requirement for a Unitary Business. ()

a. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. ()

b. In Idaho, the unitary business principle will be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle will not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution. ()

03. Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. ()

04. Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship is to be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates is to be considered even though a water’s edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. ()

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: DETERMINATION OF A UNITARY BUSINESS (RULE 341).

Section 63-3027, Idaho Code

01. In General. Unity can be established under any one (1) of the judicially acceptable tests (Butler Brothers, Edison California Stores, Container, etc.), and cannot be denied merely because another of those tests does not simultaneously apply. ()

02. Significant Flows of Value. A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. ()

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).

Section 63-3027, Idaho Code

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. ()

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. ()

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) ()

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. ()

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. ()

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. ()

f. Common or Intercompany Financing. Significant common or intercompany financing, including

the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) ()

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. ()

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. ()

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. ()

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. ()

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. ()

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. ()

343. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: INDICATORS OF A UNITARY BUSINESS (RULE 343).

Section 63-3027, Idaho Code

01. Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, for example, a multistate grocery chain. ()

02. Steps in a Vertical Process. Business activities that are part of different steps in a vertically

structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices. ()

03. Strong Centralized Management. Business activities that might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong centralized management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1) unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing. ()

344. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES (RULE 344).

Section 63-3027, Idaho Code

01. In General. Separate corporations can be a part of a unitary business only if they are members of a commonly controlled group. ()

02. Commonly Controlled Group. A “commonly controlled group” means any of the following: ()

a. A parent corporation and any one (1) or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if: ()

i. The parent owns stock possessing more than fifty percent (50%) of the voting power of a least one (1) corporation, and, if applicable, ()

ii. Stock cumulatively possessing more than fifty percent (50%) of the voting power of each of the corporations, except the parent, is owned by the parent, one (1) or more corporations described in Subparagraph 344.02.a.i., of this rule, or one (1) or more other corporations that satisfy the conditions of this subparagraph. ()

b. Any two (2) or more corporations, if stock, possessing more than fifty percent (50%) of the voting power of the corporations is owned, or constructively owned, by the same person. ()

c. Any two (2) or more corporations that constitute stapled entities. ()

i. For purposes of this paragraph, “stapled entities” means any group of two (2) or more corporations if more than fifty percent (50%) of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. ()

ii. Two (2) or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one (1) of the interests the other interest or interests are also transferred or required to be transferred. ()

d. Any two (2) or more corporations, if stock possessing more than fifty percent (50%) of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of Paragraph 344.05.a., of this rule) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers, sisters, grandparents, children and grandchildren, and their respective spouses. ()

03. Elections and Terminations. ()

a. If, in the application of Subsection 344.02 of this rule, a corporation is a member of more than one (1) commonly controlled group of corporations, the corporation elects to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one (1) of those groups, it elects to be treated as a member of only one (1) of the commonly controlled groups with respect to which it has a unitary business relationship. This election remains in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the State Tax Commission. ()

b. Membership in a commonly controlled group is to be treated as terminated in any year, or fraction thereof, in which the conditions of Subsection 344.02 of this rule are not met, except as follows: ()

i. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group will not be terminated, if the requirements of Subsection 344.02 of this rule are again met immediately after the sale, exchange, or disposition. ()

ii. The State Tax Commission may treat the commonly controlled group as remaining in place if the conditions of Subsection 344.02 of this rule are again met within a period not to exceed two (2) years. ()

04. Controlled. A taxpayer may exclude some or all corporations included in a “commonly controlled group” by reason of Paragraph 344.02.d., of this rule by showing that those members of the group are not controlled directly or indirectly by the same interest, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term “controlled” includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. ()

05. Stock Ownership. Except as otherwise provided, stock is “owned” when title to the stock is directly held or if the stock is constructively owned. ()

a. An individual constructively owns stock that is owned by any of the following: ()

i. The individual’s spouse. ()

ii. Children, including adopted children, of that individual or the individual’s spouse, who have not attained the age of twenty-one (21) years. ()

iii. An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual’s spouse or children. ()

b. Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. ()

c. In the application of Paragraph 344.02.d., of this rule, (dealing with stock possessing voting power held by members of the same family), if more than fifty percent (50%) of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation is to be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation. ()

d. Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner’s capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner. ()

e. In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held

by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. ()

f. In the application of Paragraph 344.02.d., of this rule (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership. ()

06. Terms. For purposes of the definition of a commonly controlled group, each of the following applies: ()

a. "Corporation" means a corporation as defined in Section 63-3006, Idaho Code. ()

b. "Person" means a person as defined in Section 63-3005, Idaho Code. ()

c. "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation. ()

d. "More than fifty percent (50%) of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation. ()

e. "Stock possessing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners: ()

i. For one (1) year or less. ()

ii. By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor. ()

f. In the case of an entity treated as a corporation under Paragraph 344.06.a., of this rule, "stock possessing voting power" refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity. ()

345. -- 349. (RESERVED)

350. PRORATION OF DEDUCTIONS (RULE 350).
Section 63-3027, Idaho Code

01. In General. In most cases a taxpayer's allowable deduction applies only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction applies to the business income of more than one trade or business, to several items of nonbusiness income, or to both. In these cases the deduction is to be prorated among the trades or businesses and the items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it applies. ()

02. Year to Year Consistency. If a taxpayer departs from or modifies the method used for prorating any deduction in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ()

03. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in applying or prorating any deduction, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. ()

351. -- 354. (RESERVED)

355. APPLICATION OF SECTION 63-3027 -- APPORTIONMENT (RULE 355).

Section 63-3027, Idaho Code. If a corporation has business activity both within and without Idaho, and is taxable in

another state as a result of this business activity, the portion of the net income or net loss derived from sources in Idaho will be determined by apportionment pursuant to Section 63-3027, Idaho Code. ()

356. -- 359. (RESERVED)

360. APPLICATION OF SECTION 63-3027 -- COMBINED REPORT (RULE 360).

Section 63-3027, Idaho Code. If a particular trade or business is carried on by a corporation and one (1) or more affiliates, nothing in these rules is to preclude using a combined report in which the entire business income of the trade or business is apportioned pursuant to Section 63-3027, Idaho Code. The use of the combined report is restricted to C corporations. ()

361. -- 364. (RESERVED)

365. USE OF THE COMBINED REPORT (RULE 365).

Section 63-3027, Idaho Code

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. ()

02. Separate Computations. Each included corporation will: ()

a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report; ()

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules; and ()

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. ()

03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See Rule 200 of these rules. ()

04. Nexus. Each corporation is to determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. ()

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, applies. Therefore, only the activities conducted by or on behalf of the corporation is to be considered for this purpose. ()

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. ()

07. Dividends and Other Intangible Income. Dividends and other intangible income is to be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. ()

366. -- 369. (RESERVED)

370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (RULE 370).

Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho allocates all of its nonbusiness income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. ()

371. -- 374. (RESERVED)

375. CONSISTENCY AND UNIFORMITY IN REPORTING (RULE 375).

Section 63-3027, Idaho Code

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for classifying income as business income or nonbusiness income in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ()

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in classifying business and nonbusiness income, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. ()

376. -- 384. (RESERVED)

385. TAXABLE IN ANOTHER STATE: IN GENERAL (RULE 385).

Section 63-3027(c), Idaho Code

01. In General. A taxpayer is subject to the allocation and apportionment provisions of Section 63-3027, Idaho Code, if it has income from business activity that is taxable both within and without Idaho. A taxpayer's income from business activity is taxable without Idaho if the taxpayer is taxable in another state within the meaning of Section 63-3027(c), Idaho Code, as a result of that business activity. A taxpayer is taxable in another state if it meets either of the following tests: ()

a. The taxpayer is subject to one (1) of the taxes specified in Section 63-3027(c)(1), Idaho Code, as a result of its business activity in another state; or ()

b. Another state has jurisdiction to subject the taxpayer to a net income tax as a result of its business activity, regardless of whether the state imposes the tax on the taxpayer. ()

02. Not Taxable in Another State. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business. ()

386. -- 389. (RESERVED)

390. TAXABLE IN ANOTHER STATE: WHEN A TAXPAYER IS SUBJECT TO TAX (RULE 390).

Section 63-3027(c)(1), Idaho Code

01. Subject to Tax. A taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, if it carries on business activity in a state and that state imposes one of those taxes on it. A taxpayer that claims it is subject to one (1) of the taxes specified in Section 63-3027(c)(1), Idaho Code, is to furnish the Tax Commission, at its request, evidence to support this claim. The Tax Commission may request that evidence include proof the taxpayer has filed the required tax return in the other state and has paid any taxes imposed by the law of that state. The taxpayer's failure to provide proof may be considered in determining whether the taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code. ()

02. Concept of Taxability. The concept of taxability in another state is based on the premise that every state in which the taxpayer transacts business may impose an income tax even though every state does not do so. A

state may impose other types of taxes as a substitute for an income tax. Only those taxes specified in Section 63-3027(c)(1), Idaho Code, that are revenue producing rather than regulatory in nature is to be considered in determining taxability in another state. ()

03. Examples of Taxability. ()

a. State A requires each corporation that qualifies or registers in State A to pay the Secretary of State an annual license fee or tax for the privilege of doing business in the state, regardless of whether it exercises the privilege. The amount paid is determined according to the total authorized capital stock of the corporation; the rates progressively increase. The statute sets a minimum fee of fifty dollars (\$50) and a maximum fee of five hundred dollars (\$500). Failure to pay the tax bars a corporation from using the state courts to enforce its rights. State A also imposes a corporation income tax. Corporation X is qualified in State A and pays the required fee to the Secretary of State, but does not transact business in State A, although it may use the courts of State A. Corporation X is not taxable in State A. ()

b. Assume the same facts as in Subsection 390.03.a., except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is subject to the net income tax of State A and is taxable in State A. ()

c. State B requires all corporations qualified or registered in State B to pay the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of: outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3) factor apportionment formula. Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is taxable in State B. ()

d. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state, but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax. ()

04. Voluntary Tax Payment. A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(c)(1), Idaho Code, if the taxpayer voluntarily files and pays the tax when not required to do so by the laws of that state. ()

05. Minimum Tax or Fee. A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(c)(1), Idaho Code if it pays a minimal fee for qualification, organization, or the privilege of doing business in that state, but: ()

a. Does not transact business in that state; or ()

b. Engages in business activity not sufficient for nexus, and the minimum tax bears no relationship to the taxpayer's business activity within that state. ()

c. Example. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty dollar (\$50) minimum tax, although it does not transact business in State A. Corporation X is not taxable in State A. ()

391. -- 394. (RESERVED)

395. TAXABLE IN ANOTHER STATE: WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (RULE 395).

Section 63-3027(c)(2), Idaho Code

01. In General. The test in Section 63-3027(c)(2), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity pursuant to the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax due to Public Law 86-272, Title 15, Sections 381 through 385, United States Code. ()

a. When determining if a state has jurisdiction to subject a taxpayer to a net income tax, the jurisdictional standards applicable to a state of the United States is to also apply to the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. ()

b. The provisions of a treaty between a state and the United States are not considered when determining jurisdiction to tax. ()

02. Example. Corporation X is engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B. ()

396. -- 449. (RESERVED)

450. APPORTIONMENT FORMULA (RULE 450).
Section 63-3027(i), Idaho Code

01. Apportionment Factors. All of a taxpayer's business income is to be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. ()

02. Intercompany Transactions. Intercompany transactions are to be eliminated to the extent necessary to properly compute the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. ()

03. Rounding. The individual factors and the average apportionment factor is to be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. ()

04. Verification of Factors. The taxpayer is to make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code. ()

451. -- 459. (RESERVED)

460. PROPERTY FACTOR: IN GENERAL (RULE 460).
Section 63-3027(k), Idaho Code

01. In General. The property factor of the apportionment formula for each trade or business of the taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the taxable year in the regular course of its trade or business. The term real and tangible personal property includes land, buildings, fixtures, inventory, equipment, and other property of a tangible nature, but does not include coin or currency. ()

02. Nonbusiness Income. Property used in connection with the production of nonbusiness income is to be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income is to be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. ()

03. Average Value. The property factor is to reflect the average value of property includable in the factor. See Rule 490 of these rules. ()

04. Denominator. The denominator of the factor may not exceed the sum of all the numerators. ()

461. -- 464. (RESERVED)

465. PROPERTY FACTOR: PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (RULE 465).

Section 63-3027(k), Idaho Code

01. In General. ()

a. Property is to be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials is to be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. ()

b. Property or equipment under construction during the taxable year, except inventorable goods in process, is to be excluded from the factor until the property is used in the regular course of the taxpayer's trade or business. ()

c. If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property is to be included in the property factor to the extent used. ()

d. Property used in the regular course of the taxpayer's trade or business is to remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or business. ()

02. Examples. ()

a. A taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold. ()

b. Assume the same facts as in Subsection 465.02.a., except the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold. ()

466. -- 469. (RESERVED)

470. PROPERTY FACTOR: CONSISTENCY IN REPORTING (RULE 470).

Section 63-3027(k), Idaho Code

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for valuing property, or for excluding or including property in the property factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ()

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in valuing property and in excluding or including property in the property factor, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. ()

471. -- 474. (RESERVED)

475. PROPERTY FACTOR: NUMERATOR (RULE 475).

Section 63-3027(k), Idaho Code

01. In General. The numerator of the property factor is to include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. ()

02. Property in Transit. Property of the taxpayer that is in transit between locations is to be considered to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it is to be included in the numerator according to the state of destination. ()

03. Mobile or Movable Property. ()

a. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year will be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. ()

b. An automobile assigned to a traveling employee is to be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. ()

c. The value of aircraft used within and without Idaho during the taxable year will be determined by multiplying the value of the aircraft by the ratio of departures from locations in Idaho to total departures. ()

476. -- 479. (RESERVED)

480. PROPERTY FACTOR: VALUATION OF OWNED PROPERTY (RULE 480).

Section 63-3027(l), Idaho Code

01. In General. Property owned by a taxpayer is to be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments at the time of acquisition and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property is to be included in the property factor whether or not they have been expensed for either federal or state tax purposes. ()

02. Examples. ()

a. A taxpayer acquired a factory building in Idaho at a cost of five hundred thousand dollars (\$500,000). Eighteen (18) months later the taxpayer remodeled the building for a cost of one hundred thousand dollars (\$100,000). The taxpayer files its return on the calendar year basis. The taxpayer claimed a depreciation deduction of twenty-two thousand dollars (\$22,000) on its current year return. The value of the building included in the numerator and denominator of the property factor is six hundred thousand dollars (\$600,000). The depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. ()

b. During the current taxable year, X Corporation merged into Y Corporation in a tax-free reorganization pursuant to the Internal Revenue Code. At the time of the merger, X Corporation owned a factory that it built five (5) years earlier at a cost of one million dollars (\$1,000,000). X has been depreciating the factory at the rate of two percent (2%) per year. Its basis in X's hands at the time of the merger is nine hundred thousand dollars (\$900,000). Since Y acquired the property in a tax-free transaction, Y includes the property in its property factor at X's original cost of one million dollars (\$1,000,000). ()

03. Unknown Original Cost. If the original cost of property cannot be determined, the property is included in the factor at its fair market value on the date it was acquired. ()

04. Inventory. Inventory is to be included in the factor according to the valuation method used for

federal income tax purposes. ()

05. Gifts or Inheritance. Property acquired by gift or inheritance is to be included in the factor at its basis pursuant to the Internal Revenue Code. ()

481. -- 484. (RESERVED)

485. PROPERTY FACTOR: VALUATION OF RENTED PROPERTY (RULE 485).
Section 63-3027(l), Idaho Code

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. ()

02. Examples of Subrents. ()

a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market. ()

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business. The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer. ()

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year is to be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. ()

04. Examples of Annual Rental Rate. ()

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or (\$2,500 x 12). ()

b. Assume the same facts as in Paragraph 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or (\$2,500 x 8). ()

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: ()

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. ()

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as

service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent is to be determined by considering the relative values of the rent and the other items. ()

06. Examples of Annual Rent. ()

a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or $(\$12,000 + (1\% \times \$400,000))$. ()

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). ()

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). ()

07. Exclusions. Annual rent does not include any of the following: ()

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. ()

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. ()

08. Leasehold Improvements. Leasehold improvements is to be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements is to be included in the lessee's factor. ()

09. Safe Harbor Lease. Property subject to a safe harbor lease will be reported in the factor of the actual user of the property at original acquisition cost. ()

486. -- 489. (RESERVED)

490. PROPERTY FACTOR: AVERAGING PROPERTY VALUES (RULE 490).

Section 63-3027(m), Idaho Code

01. In General. The average value of property owned by a taxpayer is to be determined by averaging the values at the beginning and end of the taxable year. ()

02. Monthly Averaging. The Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the taxable year. Averaging by monthly values generally applies if there are substantial fluctuations in the property values during the taxable year or if property is acquired or disposed of during the taxable year. ()

03. Rented Property. Rented property is averaged automatically by determining the net annual rental rate of the property as set forth in Rule 485 of these rules. ()

491. -- 499. (RESERVED)

500. PAYROLL FACTOR: IN GENERAL (RULE 500).

Section 63-3027(n), Idaho Code

01. In General. The payroll factor of the apportionment formula for each trade or business of the taxpayer includes the total amount paid for compensation during the taxable year by the taxpayer in the regular course of its trade or business. ()

02. Compensation. For purposes of the payroll factor, compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. ()

a. Compensation includes the value of board, rent, housing, lodging, and other benefits or services the taxpayer furnished to employees in return for personal services if the amounts constitute income to the recipient pursuant to the Internal Revenue Code. ()

b. If employees are not subject to the Internal Revenue Code, for example, those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees is made as if the employees were subject to the Internal Revenue Code. ()

c. If wages paid to employees are capitalized into the cost of an asset that is used in the regular course of the taxpayer's trade or business, these wages are included in the payroll factor. ()

03. Amount Paid. The total amount paid to employees is determined by the taxpayer's accounting method. If the taxpayer uses the accrual method of accounting, all compensation properly accrued is deemed to have been paid. At the election of the taxpayer, compensation paid to employees may be included in the payroll factor by using the cash method if the taxpayer is required to use that method to report compensation for unemployment insurance purposes. ()

04. Employee. For purposes of the payroll factor, employee means any officer of a corporation, or any individual who, pursuant to the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person is considered an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term employees in the FICA who would not be employees pursuant to the usual common-law rules, it may be established that a person who is included as an employee for purposes of the FICA is not an employee for purposes of this rule. ()

05. Exclusions. The following are excluded from the payroll factor: ()

a. Compensation paid to an employee for services connected with the production of nonbusiness income; ()

b. Payments to an independent contractor or a person not properly classifiable as an employee. ()

06. Year to Year Consistency. If a taxpayer departs from or modifies the method used for treating compensation paid in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ()

07. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in treating compensation paid, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. ()

501. -- 504. (RESERVED)

505. PAYROLL FACTOR: DENOMINATOR (RULE 505).
Section 63-3027(n), Idaho Code

01. In General. The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator

of the payroll factor. The denominator may not exceed the sum of all numerators. ()

02. Example. A taxpayer has employees in States A, B, and C. However, in State C the taxpayer is immune from taxation by Public Law 86-272. The compensation paid to employees for services performed in State C is assigned to that state. This compensation is included in the denominator even though the taxpayer is not taxable in State C. ()

506. -- 509. (RESERVED)

510. PAYROLL FACTOR: NUMERATOR (RULE 510).

Section 63-3027(n), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(o), Idaho Code, apply in determining whether compensation is paid in Idaho. It will be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. ()

511. -- 514. (RESERVED)

515. PAYROLL FACTOR: COMPENSATION PAID IN IDAHO (RULE 515).

Section 63-3027(o), Idaho Code

01. In General. Compensation is paid in Idaho if one of the tests in Section 63-3027(o), Idaho Code, is met. ()

02. Definitions. The following definitions are to be used for purposes of the payroll factor: ()

a. Incidental means a service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction. ()

b. Base of operations means the place of a more or less permanent nature where the employee starts his work and where he customarily returns to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to his trade or profession. ()

c. Place from which the service is directed or controlled means the place where the power to direct or control is exercised by the taxpayer. ()

516. -- 524. (RESERVED)

525. SALES FACTOR: IN GENERAL (RULE 525).

Section 63-3027(p), Idaho Code

01. In General. Sales means all gross receipts of a taxpayer not allocated as nonbusiness income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business. ()

02. Examples. ()

a. If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if these taxes are passed on to the buyer or included in the product's selling price. ()

b. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost plus the fee. ()

c. If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items. ()

d. If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property. ()

e. If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions. ()

f. If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. ()

g. If a taxpayer derives receipts from foreign source dividends that are apportionable business income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales. ()

03. Disregarding Gross Receipts. In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules. ()

04. Year to Year Consistency. If a taxpayer departs from or modifies the basis used for excluding or including gross receipts in the sales factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ()

05. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in including or excluding gross receipts, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. ()

526. -- 529. (RESERVED)

530. SALES FACTOR: DENOMINATOR (RULE 530).

Section 63-3027(p), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded by Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators. ()

531. -- 534. (RESERVED)

535. SALES FACTOR: NUMERATOR (RULE 535).

Section 63-3027(p), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. ()

536. -- 539. (RESERVED)

540. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 540).

Section 63-3027(q), Idaho Code

01. Gross Receipts. Gross receipts from sales of tangible personal property, except sales to the United

States Government as discussed in Rule 545 of these rules, are in Idaho if: ()

a. The property is delivered or shipped to a purchaser in Idaho regardless of the f.o.b. point or other conditions of sale; or ()

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho and the taxpayer is not taxable in the state of the purchaser. ()

02. Destination Sales. ()

a. Property is deemed to be delivered or shipped to a purchaser in Idaho if the recipient is in Idaho even though the property is ordered from outside Idaho. Example: A taxpayer, with inventory in State A, sold one hundred thousand dollars (\$100,000) of its products to a purchaser with branch stores in several states including Idaho. The order for the purchase was placed by the purchaser's central purchasing department in State B. Twenty-five thousand dollars (\$25,000) of the purchase order was shipped directly to purchaser's branch store in Idaho. The branch store in Idaho is the purchaser in Idaho with respect to twenty-five thousand dollars (\$25,000) of the taxpayer's sales. ()

b. Property is delivered or shipped to a purchaser in Idaho if the shipment terminates in Idaho, even if the property is subsequently transferred to another state by the purchaser. Example: A taxpayer makes a sale to a purchaser who maintains a central warehouse in Idaho where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Idaho constitute property delivered or shipped to a purchaser in Idaho. ()

03. Purchaser. The term purchaser in Idaho includes the ultimate recipient of the property if at the request of the purchaser the taxpayer in Idaho delivers to or has the property shipped to the ultimate recipient in Idaho. Example: A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Idaho according to the purchaser's instructions. The sale by the taxpayer is in Idaho. ()

04. Diverted Shipment. If a seller ships property from the state of origin to a consignee in another state, and the property is diverted while en route to a purchaser in Idaho, the sales are in Idaho. Example: The taxpayer, a produce grower in State A, begins shipping perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in Idaho where the taxpayer is subject to tax. The sale by the taxpayer is in Idaho. ()

05. Throwback Sales. If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example: A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. ()

06. Third-Party Throwback Sales. If a taxpayer's salesman operating from an office in Idaho makes a sale to a purchaser in another state where the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: ()

a. If the taxpayer is taxable in the state from which the third-party ships the property, the sale is in that state. ()

b. If the taxpayer is not taxable in the state from which the property is shipped, the sale is in Idaho. ()

c. Example. A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer is not taxable in State A. On direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in

State B, the sale is in Idaho. ()

541. -- 544. (RESERVED)

545. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (RULE 545).

Section 63-3027(q), Idaho Code

01. In General. Gross receipts from sales of tangible personal property to the United States Government are in Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. For purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Generally, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, are not sales to the United States Government. ()

02. Examples. ()

a. A taxpayer contracts with the General Services Administration to deliver a truck that was paid for by the United States Government. The sale is a sale to the United States Government. ()

b. A taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a rocket component for one million dollars (\$1,000,000). The sale by the subcontractor to the prime contractor is not a sale to the United States Government. ()

546. -- 549. (RESERVED)

550. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 550).

Section 63-3027(r), Idaho Code

01. In General. Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. ()

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of producing that item of income. The activity includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. ()

a. Income producing activity includes the following: ()

i. The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the use of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service; ()

ii. The sale, rental, leasing, licensing or other use of real property; ()

iii. The rental, leasing, licensing or other use of tangible personal property; and ()

iv. The sale, licensing or other use of intangible personal property. ()

b. The mere holding of intangible personal property is not, by itself, an income producing activity. ()

03. Costs of Performance. Costs of performance are the direct costs determined in a manner consistent with generally accepted accounting principles and according to accepted conditions or practices of the taxpayer's trade or business to perform the income producing activity that gives rise to the particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property that give rise to the particular item of income. ()

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: ()

- a.** The income producing activity is performed wholly in Idaho; or ()
- b.** The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. ()

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: ()

a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. ()

b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho will be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. ()

c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: $((\text{ten (10) bulldozers} \times \text{fifty (50) days}) / (\text{ten (10) bulldozers} \times \text{three hundred sixty five (365) days})) \times \text{total receipts} = \text{receipts attributable to Idaho}$. ()

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. ()

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. ()

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000): $(200 \text{ man hours} / 600 \text{ man hours}) \times \$9,000$. ()

06. Services on Behalf of the Taxpayer. An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to Idaho if such income producing activity is in Idaho. ()

a. Such income producing activity is in Idaho: ()

i. When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in Idaho by the agent or independent contractor. However, if the activity occurs in more than one state, the location where the income producing activity is actually performed will be deemed to be not reasonably determinable at the time of filing under Subparagraph 550.06.a.i. of this rule. ()

ii. If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract. ()

iii. If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or ()

iv. If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile. ()

b. If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under Subparagraphs 550.06.a.i. through 550.06.a.iii. of this rule, or the taxpayer's customer's domicile cannot be determined under Subparagraph 550.06.a.iv. of this rule, or, although determinable, such income producing activity is in a state in which the taxpayer is not taxable, such income producing activity is to be disregarded. ()

551. -- 559. (RESERVED)

560. SPECIAL RULES (RULE 560).
Section 63-3027(s), Idaho Code

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases where the apportionment and allocation provisions contained in Section 63-3027, Idaho Code, produce incongruous results. ()

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: ()

a. Separate accounting; ()

b. The exclusion of one (1) or more of the factors; ()

c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or ()

d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. ()

03. Special Industry Methods. Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in Section 63-3027(s), Idaho Code, or in Rules 560 through 599 of these rules precludes the Tax Commission from establishing appropriate procedures pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code, for determining the apportionment factors for each of these industries. These procedures will be applied uniformly. See Rule 580 of these rules for the

list of the special industries. ()

561. -- 564. (RESERVED)

565. SPECIAL RULES: PROPERTY FACTOR (RULE 565).
Section 63-3027(s), Idaho Code

01. Subrents. ()

a. In General. If the subrents taken into account in determining the net annual rental rate pursuant to Rule 485 of these rules produce a negative or clearly inaccurate value for any item of property, another method that properly reflects the value of rented property may be required by the Tax Commission or requested by the taxpayer. The value may not be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. ()

b. Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars (\$1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars (\$1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand dollars (\$200,000). ()

02. Market Rental Rate. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property is determined based on a reasonable market rental rate for the property. ()

566. -- 569. (RESERVED)

570. SPECIAL RULES: SALES FACTOR (RULE 570).
Section 63-3027(s), Idaho Code

01. Gross Receipts from Intangibles. ()

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the gross receipts are included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. ()

b. Notwithstanding Rule 550 of these rules, gross receipts from the sale of an ownership interest in another entity are included in the sales factor numerator based on the proportion of the entity's operational assets located in Idaho. The amount included is determined by multiplying the gross receipts received by the percentage of the entity's total real and tangible personal property located in Idaho at the time of the sale. ()

c. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the gross receipts are excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest are excluded from the denominator and numerator of the sales factor. ()

d. This rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. ()

02. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses are treated as provided in Subsection 570.02 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the

liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.02 of this rule, each treasury function is considered separately. ()

a. For purposes of Subsection 570.02 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. ()

b. For purposes of Subsection 570.02 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. ()

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. ()

d. Examples. ()

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. ()

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.02 of this rule does not operate to classify those sales as attributable to a treasury function. ()

03. Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property. Notwithstanding the provisions of Rule 550 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property are sourced to the state where the real property is located. ()

571. -- 579. (RESERVED)

580. SPECIAL RULES: SPECIAL INDUSTRIES (RULE 580).

Section 63-3027(s), Idaho Code

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 003.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries are to apportion income in accordance with the applicable MTC regulation: ()

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor is to be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; ()

b. Airlines. The apportionment of income derived by an airline is to be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; ()

c. Railroads. The apportionment of income derived by a railroad is to be computed in accordance with ()

MTC Regulation IV.18.(f). as adopted July 16, 1981; ()

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others is to be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. ()

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting is to be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. ()

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material is to be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. ()

g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. ()

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. ()

581. SPECIAL RULES: REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (RULE 581).

Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations means the following: ()

01. Article IV. Of The Multistate Tax Compact. ()

a. Article IV. means Section 63-3027, Idaho Code. ()

b. Article IV.1 means Section 63-3027(a), Idaho Code. ()

c. Article IV.2 means Section 63-3027(b), Idaho Code. ()

d. Article IV.3 means Section 63-3027(c), Idaho Code. ()

e. Article IV.4 means Section 63-3027(d), Idaho Code. ()

f. Article IV.5 means Section 63-3027(e), Idaho Code. ()

g. Article IV.6 means Section 63-3027(f), Idaho Code. ()

h. Article IV.7 means Section 63-3027(g), Idaho Code. ()

i. Article IV.8 means Section 63-3027(h), Idaho Code. ()

j. Article IV.9 means Section 63-3027(i), Idaho Code. ()

k. Article IV.10 means Section 63-3027(k), Idaho Code. ()

l. Article IV.11 means Section 63-3027(l), Idaho Code. ()

m. Article IV.12 means Section 63-3027(m), Idaho Code. ()

n. Article IV.13 means Section 63-3027(n), Idaho Code. ()

- o.** Article IV.14 means Section 63-3027(o), Idaho Code. ()
 - p.** Article IV.15 means Section 63-3027(p), Idaho Code. ()
 - q.** Article IV.16 means Section 63-3027(q), Idaho Code. ()
 - r.** Article IV.17 means Section 63-3027(r), Idaho Code. ()
 - s.** Article IV.18 means Section 63-3027(s), Idaho Code. ()
- 02. MTC Regulations.** ()
 - a.** Regulation IV.1 means Rules 330 through 354 of these rules. ()
 - b.** Regulation IV.2 means Rule 325 and Rules 355 through 384 of these rules. ()
 - c.** Regulation IV.3 means Rules 385 through 399 of these rules. ()
 - d.** Regulation IV.9 means Rules 450 through 459 of these rules. ()
 - e.** Regulation IV.10 means Rules 460 through 479 of these rules. ()
 - f.** Regulation IV.11 means Rules 480 through 489 of these rules. ()
 - g.** Regulation IV.12 means Rules 490 through 499 of these rules. ()
 - h.** Regulation IV.13 means Rules 500 through 514 of these rules. ()
 - i.** Regulation IV.14 means Rules 515 through 524 of these rules. ()
 - j.** Regulation IV.15 means Rules 525 through 539 of these rules. ()
 - k.** Regulation IV.16 means Rules 540 through 549 of these rules. ()
 - l.** Regulation IV.17 means Rules 550 through 559 of these rules. ()
 - m.** Regulation IV.18.(a) means Rules 560 through 564 of these rules. ()
 - n.** Regulation IV.18.(b) means Rules 565 through 569 of these rules. ()
 - o.** Regulation IV.18.(c) means Rules 570 through 574 of these rules. ()
- 03. Tax Administrator.** Tax Administrator means Tax Commission. ()
- 04. This State.** This state means Idaho. ()
- 05. The Apportionment Percentage.** ()
 - a.** References in MTC Regulation IV.18.(d) to the computation of the apportionment percentage being the total of the property, payroll and sales percentages divided by three (3), is to be replaced with the total of property, payroll, and two (2) times the sales percentages divided by four (4) as required by Section 63-3027(i), Idaho Code. ()
 - b.** Examples. Since the Idaho sales factor is double-weighted, examples using a single-weighted sales factor is to be adjusted accordingly. ()

582. SPECIAL RULES: FINANCIAL INSTITUTIONS (RULE 582).

Section 63-3027(s), Idaho Code

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the MTC “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions” as adopted in Subsection 003.02 of these rules. A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. ()

02. Definition of Financial Institution. “Financial institution” means: ()

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; ()

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; ()

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; ()

d. Any bank or thrift institution incorporated or organized under the laws of any state; ()

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; ()

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; ()

g. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired; ()

h. Any corporation or other business entity that is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Paragraphs 582.02.a. through 582.02.g. ()

i. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. This includes any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. ()

j. Any corporation or business entity that derives more than fifty percent (50%) of its gross income from activities that a person described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. of this rule is authorized to transact. For purposes of this subsection, the computation of gross income does not include income from non-recurring, extraordinary items. ()

03. Exclusion from Paragraph 582.02.j. The Tax Commission is authorized to exclude any person from the application of Paragraph 582.02.j. upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. ()

04. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. ()

05. The Apportionment Percentage. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the

taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) are replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. ()

583. -- 584. (RESERVED)

585. EXCEPTIONS TO APPORTIONMENT FORMULA: SEPARATE ACCOUNTING (RULE 585).

Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. This determination is to be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. ()

586. -- 589. (RESERVED)

590. EXCEPTIONS TO APPORTIONMENT FORMULA: EXCLUSION OF A FACTOR (RULE 590).

Section 63-3027(s), Idaho Code. The apportionment of income provided in Section 63-3027, Idaho Code, requires the use of the three (3) factor apportionment formula described in Section 63-3027(i), Idaho Code. However, if one (1) of the prescribed three (3) factors is inapplicable, the remaining two (2) factors are to be included as numerators of the fraction and the denominator of the fraction are two (2) or three (3) if necessary to maintain double weighting of the sales factor. ()

591. -- 594. (RESERVED)

595. EXCEPTIONS TO APPORTIONMENT FORMULA: ADDITIONAL OR SUBSTITUTE FACTORS (RULE 595).

Section 63-3027(s), Idaho Code. A factor other than the property, payroll, or sales factor may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. ()

596. -- 599. (RESERVED)

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).

Section 63-3027(t), Idaho Code

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho is to allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. ()

02. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. ()

03. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. ()

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions are to be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. ()

a. Dividends received from a real estate investment trust or a regulated investment company and not

included in the pre-apportionment tax base as a result of the federal deduction for dividends paid allowed to the dividend payor are not eliminated as intercompany transactions in computing combined income. ()

b. Internal Revenue Code Section 1248 Dividends. ()

i. Taxpayers Using the Worldwide Filing Method. A corporation included in a worldwide combined group is to treat Section 1248 dividends as dividends for Idaho income tax purposes. An intercompany dividend elimination is allowed to the extent dividends received are paid from current or prior year earnings previously included in income subject to apportionment. ()

ii. Taxpayers Using the Water's Edge Filing Method. A corporation included in a water's edge combined group is to treat Section 1248 dividends as dividends that qualify for the dividend exclusion allowed by Section 63-3027C(c)(1), Idaho Code. ()

c. Dividends received from a stock insurance subsidiary and deducted by a mutual insurance holding company or an intermediate holding company pursuant to Section 41-3821, Idaho Code, are not eliminated as intercompany transactions in computing combined income. ()

05. Insurance Companies. Pursuant to Section 41-405, Idaho Code, payment of an Idaho tax upon an insurance company's premiums will be in lieu of an income tax. ()

a. If an insurance company is a member of a unitary business and pays the Idaho premium tax, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The income tax attributable to the insurance company is to be deducted from the total tax computed in the combined report. Income tax credits that the insurance company may have earned may not be shared with other members of the unitary group. ()

b. If an insurance company is a member of a unitary business and pays a premium tax to a state other than Idaho, or does not pay a premium tax to any state, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The insurance company is liable for the Idaho income tax computed on its activity in Idaho and is not exempt from the income tax as a result of Section 41-405, Idaho Code. ()

601. -- 604. (RESERVED)

605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (RULE 605).
Section 63-3027(t), Idaho Code

01. Income: In General. Income for the worldwide combined group is to be computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. ()

02. Income: Foreign Corporations Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are included in a federal consolidated return is to include in the combined report the taxable income reported on the federal consolidated return. ()

03. Income: Foreign Corporations Not Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are not included in a federal consolidated return, is to include in the combined report either the amount in Subsection 605.03.a. or 605.03.b. as the equivalent of taxable income. The option chosen must be used for all unitary foreign corporations not included in a federal consolidated return. ()

a. The taxpayer may use the financial net income before income taxes as reported to the United States Securities and Exchange Commission (SEC) if required to file with the SEC. If not required to file with the SEC, the taxpayer may use the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. ()

b. The taxpayer may use the financial net income of each foreign corporation adjusted to conform to tax accounting standards as would be required by the Internal Revenue Code if the corporation were a domestic corporation required to file a federal income tax return. ()

04. Consistent Application of Book to Tax Adjustments. If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations is to be made for each unitary foreign corporation included in the combined report and is to be consistently applied in each year for which the worldwide method applies. These adjustments are subject to the record-keeping requirements of the Internal Revenue Code and Treasury Regulations for domestic corporations. ()

05. Apportionment Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used. ()

606. -- 619. (RESERVED)

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).
Section 63-3027, Idaho Code

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation is to report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. ()

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. ()

03. Multistate Partnerships. If a partnership operates in more than one state, its income is to be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. ()

04. Partnership Income as Business Income of the Partner. ()

a. Income. If the income or loss of a partnership is business income or loss to a corporate partner, its share of this net business income or loss is to be apportioned together with all other net business income or loss of the corporation. Business income or loss is defined by Section 63-3027(a)(1), Idaho Code, and Rules 330 through 336 of these rules. ()

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, is to be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(q), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. ()

05. Partnership Income as Nonbusiness Income of Partner. ()

a. Income. If the partnership income or loss is not business income to a corporate partner, the income is nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner is to allocate the nonbusiness income to the state in which it was earned. The corporate partner,

on its Idaho corporation income tax return, is to specifically allocate to Idaho its share of the nonbusiness income attributable to Idaho. ()

b. Factors. If the partnership income or loss is nonbusiness income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation. ()

621. -- 639. (RESERVED)

640. WATER'S EDGE: MAKING THE ELECTION (RULE 640).
Section 63-3027B, Idaho Code

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. ()

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined group for Idaho income tax purposes. If a corporation is not part of a unitary group for which a combined report is required, the corporation cannot make the water's edge election. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ()

a. The election may be made for a year beginning on or after January 1, 1993. The election must be filed with the original tax return for the first year of the election. If the water's edge group changes in a subsequent year through the acquisition or disposition of a corporation with an Idaho filing requirement, a copy of the election is to be attached to the tax return for such taxable year and the changes to the water's edge group is to be noted on the form. See Rule 643 of these rules for Change of Election. ()

b. Any corporation included in the unitary group that files with Idaho a consent to the reasonable production of documents may make the election on behalf of the group. An election made by any member of a unitary group binds all other members regardless of any changes in the unitary group in later taxable years. ()

c. The election must be made on a form provided by the Tax Commission and include a list of each corporation required to file an Idaho income tax return. The election must be signed by an individual authorized to bind all companies to the election. ()

d. Idaho taxpayers having a valid water's edge election is to compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ()

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. ()

641. WATER'S EDGE: ELEMENTS OF A COMBINED REPORT (RULE 641).
Section 63-3027B, Idaho Code

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group is to be eliminated to the extent necessary to properly reflect combined income. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation will be included in the computation of the income of the water's edge combined group. ()

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the group is to be eliminated to the extent necessary to properly

compute the apportionment factors of the water's edge combined group. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation is to be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, is to be included in the sales factor computation. ()

03. Foreign Corporations Filing Protective Returns. A foreign corporation filing a protective Form 1120-F return will not be deemed to be filing a federal income tax return for purposes of taking into account the income and apportionment factors of affiliated corporations in a unitary relationship with the taxpayer solely on the basis of filing this federal return. If subsequent to the filing of the protective 1120-F return it is determined that the foreign corporation had income effectively connected with the United States and was required to file a federal income tax return, the income and apportionment factors of the foreign corporation is required to be included in the combined report of the unitary group for such taxable year and an Idaho return or amended return may be required. ()

642. WATER'S EDGE: LEGAL AND PROCEDURAL REQUIREMENTS (RULE 642).
Section 63-3027B, Idaho Code

01. Required Form. Proper filing of the water's edge election and consent for production of records must be made on the form provided by the Tax Commission and included in the original income tax return for the first tax year to which the election applies. ()

02. Required Information. The following information must be included with each year's tax return for which a water's edge election applies: ()

a. A complete list of all affiliated corporations, foreign and domestic, of which more than twenty percent (20%) of the voting stock is, directly or indirectly, owned or controlled by a common owner; ()

b. Identifying information for each member of the water's edge combined group, including: federal identification number, primary business activities, percent of ownership by members of the combined group, and dates of acquisition or disposition of interest; ()

c. A copy of the federal consolidated return, if applicable; and ()

d. A schedule of taxable income for each possession corporation excluded from the water's edge group pursuant to Section 63-3027B(a), Idaho Code. ()

643. WATER'S EDGE: CHANGE OF ELECTION (RULE 643).
Section 63-3027C, Idaho Code

01. In General. Except as provided in Section 63-3027C(a) (1), Idaho Code, the taxpayer must submit a written petition to the Tax Commission and be granted written permission to change its reporting method from water's edge for any subsequent tax year. ()

a. A change in the reporting method includes conversion from the water's edge filing method to the worldwide filing method as well as the addition of companies previously omitted or the exclusion of companies previously included in the water's edge combined group, except in the case of companies acquired or disposed of during the taxable year. ()

b. The Tax Commission may determine that one or more affiliated corporations should be included or excluded from the water's edge combined group. Income and apportionment factors is to be modified accordingly. ()

02. Written Petition. A written petition must include the following: ()

a. An explanation of the legal or factual basis for requesting the change of reporting method; and ()

b. A computation of the taxpayer's Idaho taxable income and tax liability computed using both the

prior reporting method and the method the taxpayer is petitioning to use for the year of change. ()

03. Due Date for Filing the Written Petition. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. ()

04. Failure to Provide Required Information. Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. ()

05. Approval Attached to Original Return. A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. ()

06. Appeal Rights. A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer is to continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. ()

644. WATER'S EDGE: DISREGARDING THE ELECTION (RULE 644).
Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. ()

645. WATER'S EDGE: TREATMENT OF DIVIDENDS (RULE 645).
Section 63-3027C, Idaho Code

01. Dividends Received from Payors Incorporated Outside the United States. ()

a. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. ()

b. As provided in Section 63-3027C(e)(1), Idaho Code, amounts included in income under sections 951 and 951A of the Internal Revenue Code are treated as dividends from payors outside the fifty (50) states and District of Columbia. ()

c. In order to avoid taxing income that had previously been included in Idaho apportionable income in a prior tax year, the remaining portion of the dividend that was not excluded from Idaho apportionable income under Section 63-3027C(c)(3), Idaho Code, is excluded from Idaho apportionable income if the taxpayer can prove that the income was previously included in Idaho apportionable income in a prior tax year. ()

02. Dividends Received from Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water's edge combined group. ()

03. Deemed Dividends from Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(a), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. ()

04. Dividends from Foreign Sales Corporations. ()

a. As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which

the dividend was paid bears to the total FSC income before taxes for that year. For purposes of computing the dividend elimination, total FSC income before taxes means book income before the deduction of federal income taxes. ()

b. For example, a FSC paid one million dollars (\$1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars (\$10,000,000) and total FSC income before taxes of twenty million dollars (\$20,000,000). The dividends eliminated would be five hundred thousand dollars (\$500,000) computed as follows: $((\$10,000,000 \text{ federal taxable income} / \$20,000,000 \text{ total FSC income before taxes}) \times \$1,000,000 \text{ FSC dividend paid} = \$500,000 \text{ dividend elimination})$. ()

05. Interest Expense Offset. The interest expense offset provided in Section 63-3022M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. ()

646. WATER'S EDGE: DOMESTIC DISCLOSURE SPREADSHEET (RULE 646).
Section 63-3027E, Idaho Code

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed no later than six (6) months after filing the original return unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. ()

02. Spreadsheet Information. The spreadsheet information must be submitted using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet" or on identically formatted forms that disclose the same information. ()

647. -- 699. (RESERVED)

700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: IN GENERAL (RULE 700).
Section 63-3029, Idaho Code

01. Taxpayers Entitled to the Credit. The credit for taxes paid to another state is to be allowed to qualifying individuals, estates, and trusts. ()

a. The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. ()

b. The credit is allowed to part-year resident individuals who were domiciled or residing in Idaho at the time the income was earned in another state. ()

c. The credit is allowed to an estate or trust that is an Idaho resident at the time the income was earned in another state. ()

d. Income earned in another state is to be determined under Section 63-3026A, Idaho Code, and related rules. ()

02. Taxes Eligible for the Credit. The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, estate, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid to another state by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. ()

03. Taxes Not Eligible for the Credit. If any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit is not allowed for income taxes imposed by another state on income not taxed by Idaho. ()

04. Credit Calculated on a State-by-State Basis. The credit and credit limitations are to be calculated

on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. ()

05. Income Tax Payable to Another State. The income tax payable to another state is to be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. ()

06. Limitations. The credit for taxes paid to another state is limited as follows: ()

a. The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, estate, or trust. ()

b. If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit reduces the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three-hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual ($\$400 - \$60 = \$340$). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340). ()

c. The credit may not exceed the proportion of the tax otherwise due to Idaho that the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. ()

i. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ($\$12,000/\$50,000 = 24\% \times \text{tax paid to Idaho}$). ()

ii. See Rule 701 of these rules for information related to part-year residents. ()

d. The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. ()

i. Federal total income of the estate or trust derived from sources in the other state is to be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state is to be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. ()

ii. For example, if a trust sells Oregon property at a gain of thirty-six thousand dollars (\$36,000), which is the only income derived from sources in the other state, and the trust's federal total income is ninety thousand dollars (\$90,000), the credit cannot exceed forty percent (40%) of the tax paid to Idaho ($\$36,000/\$90,000 = 40\% \times \text{tax paid to Idaho}$). ()

07. Rounding. For taxable years beginning in or after 2007, the proration calculated under Section 63-3029, Idaho Code, is to be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%) nor be

less than zero (0). ()

701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: PART-YEAR RESIDENTS (RULE 701).

Section 63-3029, Idaho Code

01. Income Subject to Tax by Both States. ()

a. Individuals. For purposes of the credit for income taxes paid to another state, income subject to tax by both states means the total amount of income an individual receives from sources outside of Idaho during the portion of the year he is domiciled or residing in Idaho. Income received during the portion of the year when the individual was not domiciled or residing in Idaho does not qualify. ()

b. Estates and Trusts. If an estate or trust is determined to be a part-year resident, income subject to tax by both states means the total amount of income the estate or trust receives from sources outside of Idaho during the portion of the year the estate or trust is a resident of Idaho. Income received during the portion of the year when the estate or trust was not a resident of Idaho does not qualify. ()

c. Both the source state and Idaho must impose an income tax on the income for the income to be subject to tax by both states. ()

02. Examples. The following examples assume the taxpayer earned only wage income. ()

a. Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. ()

b. Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. ()

c. Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his income earned during the year since he is domiciled in California. Idaho will tax only the income he earned while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because this income is not earned in another state. If Taxpayer C received other income while residing in Idaho that is taxed by Idaho but sourced to another state, such as gains on the sale of stock, he may be entitled to a credit for taxes paid on this income. ()

702. -- 704. (RESERVED)

705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS FOR TAXABLE YEARS BEGINNING AFTER 2010 (RULE 705).

Section 63-3029A, Idaho Code

01. Qualified Contributions. Contributions must be made in cash or in another monetary form during the taxable year the credit is claimed. Unpaid pledges, goods, or services provided do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. ()

02. Limitations - Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: ()

- a. Fifty percent (50%) of the individual's total income tax liability; or ()
 - b. Five hundred dollars (\$500) if filing a return other than a joint return or one thousand dollars (\$1,000) if filing a joint return. ()
- 03. Limitations - Corporations.** The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: ()
 - a. Ten percent (10%) of the corporation's total income tax liability; or ()
 - b. Five thousand dollars (\$5,000). ()
- 04. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. ()
- 05. Other Limitations.** ()
 - a. This credit is further limited if the credit for qualifying new employees is claimed. ()
 - b. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. ()
- 06. Effect on Itemized Deductions.** The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ()
- 07. Nonprofit Public and Private Museums.** To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. ()

706. -- 709. (RESERVED)

710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).
Section 63-3029B, Idaho Code

- 01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. ()
- 02. Limitations.** The investment tax credit allowable in any taxable year will be limited by the following: ()
 - a. Tax liability. ()
 - i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. ()
 - ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. ()
 - b. Credit for qualifying new employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. ()
 - c. Unitary taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each

corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

d. Nonrefundable credits. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. ()

e. Used Property Limitation. The term used property limitation means the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. ()

03. Carryovers. ()

a. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. ()

b. For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. ()

c. Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. ()

04. Motor Vehicle. Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. ()

05. Expensed Property. The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. ()

06. Bonus Depreciation. The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment when the bonus first-year depreciation was also allowed in computing depreciation for Idaho. ()

711. IDAHO INVESTMENT TAX CREDIT: TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).
Section 63-3029B, Idaho Code

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. ()

a. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ()

b. In the taxable year when a corporation that earned the investment tax credit is acquired or disposed of, only a portion of the tax of the other members of the unitary group may be offset with shared investment tax credit from that corporation. To determine the allowable portion of the tax, a percentage is calculated by dividing the number of days that the corporation that earned the investment tax credit is included in the unitary group's taxable year by the total number of days in the taxable year. The tax for each member with an Idaho filing requirement is multiplied by the percentage. The result is the amount of tax that can be offset with a share of the credit, subject to other limitations imposed by law or related rules. ()

02. Conversion of C Corporation to S Corporation. ()

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains and excess net passive income. The credit is allowed against this tax until the carryover period has expired. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. ()

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation is liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. ()

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year is to be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. ()

a. The distribution to members is made as provided in Rule 785 of these rules. ()

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. ()

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. ()

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit is to be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. ()

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. ()

712. -- 713. (RESERVED)

714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).
Section 63-3029B, Idaho Code

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each taxable year during the recapture period. ()

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. ()

a. Percentage-of-Use Method. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year will be determined by the ratio of departures from locations in Idaho to total departures. ()

b. Property Factor Method. If the property factor numerator option is elected, the qualified investment

is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. ()

i. The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. ()

ii. “Correctly included in the numerator of the Idaho property factor” means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit will be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit will be allowed only on the fifty percent (50%) of the basis of the asset. ()

03. Order of Limitations. The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. ()

04. Examples. ()

a. Idaho Percentage-of-Use Method. In January 2009, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 2009. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). ()

b. Idaho Percentage-of-Use Method -- Assets placed in service within ninety (90) days of year end. A calendar year taxpayer elects the percentage-of-use method for a road grader placed in service on March 1, 2011, with a basis of seventy-five thousand dollars (\$75,000). If eighty percent (80%) of the road grader's hours were logged in Idaho measured between March 1 and December 31, 2011, the qualifying investment in the road grader is sixty thousand dollars (\$60,000) computed at eighty percent (80%) of the asset's basis. If the road grader was placed in service by the same calendar year taxpayer on November 1, 2011, the Idaho qualifying property is measured during the first ninety (90) days of use of the asset. If the percentage of hours logged in Idaho between November 1, 2011, and January 31, 2012, is seventy percent (70%), the qualifying investment in the road grader is fifty-two thousand five hundred dollars (\$52,500) computed at seventy percent (70%) of the asset's basis. ()

c. Idaho Property Factor Method. In January, 2011, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Twenty percent (20%) of its hours were logged in Idaho during the year. In addition to the road grader, the taxpayer also purchased an asphalt layer and a dump truck in January, 2011. Twenty percent (20%) of the dump truck's hours were logged in Idaho during the year. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is thirty percent (30%). The dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The taxpayer would include twenty-five thousand dollars (\$25,000) in the Idaho property factor numerator. The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 2011. ()

d. Order of Limitations. Assume the taxpayer has two (2) asphalt layers costing two hundred thousand dollars (\$200,000) each that are both mobile and used property. Fifty percent (50%) of the hours of both asphalt layers was logged in Idaho during the year. The taxpayer has a two hundred thousand dollar (\$200,000) qualified investment computed by multiplying fifty percent (50%) by four hundred thousand dollars (\$400,000). The used property limitation of one hundred fifty thousand dollars (\$150,000) is applied to the two hundred thousand dollar (\$200,000) qualified investment and the investment tax credit allowed is computed at three percent (3%) of the one hundred fifty thousand dollars (\$150,000). ()

715. IDAHO INVESTMENT TAX CREDIT: RECAPTURE (RULE 715).
Section 63-3029B, Idaho Code

01. In General. If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit will be made. ()

02. Recomputation of the Investment Tax Credit. ()

a. The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify. ()

b. The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04. ()

c. The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture. ()

03. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. ()

04. Applicable Recapture Percentages. For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows: ()

a. If less than one (1) year, use one hundred percent (100%); ()

b. If more than one (1) year but less than two (2) years, use eighty percent (80%); ()

c. If more than two (2) years but less than three (3) years, use sixty percent (60%); ()

d. If more than three (3) years but less than four (4) years, use forty percent (40%); ()

e. If more than four (4) years but less than five (5) years, use twenty percent (20%). ()

716. IDAHO INVESTMENT TAX CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 716).
Section 63-3029B, Idaho Code

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: ()

a. A description of the property; ()

b. The asset number assigned to the item of property, if applicable; ()

- c. The acquisition date and date placed in service; ()
- d. The basis of the property; ()
- e. The class of the property for recovery property or the estimated useful life for nonrecovery property; ()
- f. The designation as new or used property; ()
- g. The location and utilization (the usage both in and outside Idaho) of the property; ()
- h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and ()
- i. The reason for acquisition if acquired prior to January 1, 1995. ()

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: ()

- a. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. ()
- b. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. ()
- c. Records verifying ownership including purchase contracts and cancelled checks. ()
- d. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. ()
- e. Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. ()
- f. Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars are to be calculated according to actual mileage in and outside Idaho. ()
- g. A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. ()

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ()

04. Unitary Taxpayers. Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ()

717. -- 718. (RESERVED)

719. IDAHO INVESTMENT TAX CREDIT: PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).
Section 63-3029B, Idaho Code

01. In General. Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to

January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. ()

02. Terms. As used in this rule: ()

a. Qualifying Taxpayer. A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. ()

i. The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation is to not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group is to determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. ()

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. ()

b. Second Preceding Taxable Year. The term second preceding taxable year means the second preceding taxable year from the taxable year in which the property is placed in service. ()

03. Negative Idaho Taxable Income in Second Preceding Taxable Year. ()

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year is to be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. ()

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. ()

c. Examples of Determining Second Preceding Taxable Year. ()

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. ()

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. ()

iii. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. ()

iv. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June

30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. ()

v. Table of examples of determining second preceding taxable year.

TAXABLE YEAR PROPERTY PLACED IN SERVICE	FIRST PRECEDING TAXABLE YEAR	SECOND PRECEDING TAXABLE YEAR
Calendar year 2003	Calendar year 2002	Calendar year 2001
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

()

d. Unitary Taxpayers. Each corporation included in a unitary combined group is to use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. ()

e. Pass-Through Entities. A taxpayer who is a partnership or an S corporation does not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. ()

f. Return Not Filed. If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer is not entitled to the exemption. ()

04. Used Property Limitation. ()

a. In General. The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment does not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. ()

b. Selection of Items of Used Property. If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty

thousand dollars (\$30,000) of the third item does not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer is made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year.

()

c. Electing Property Tax Exemption on Selected Used Property Items. Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer is to determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year.

()

720. CREDIT FOR IDAHO RESEARCH ACTIVITIES: IN GENERAL (RULE 720).

Section 63-3029G, Idaho Code

01. Definitions. The Idaho credit is computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit.

()

02. Limitations. The credit for Idaho research activities allowable in any taxable year is limited as follows:

()

a. Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits.

()

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code.

()

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules.

()

03. Carryovers. The carryover period for the credit for Idaho research activities is fourteen (14) years.

()

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits.

()

05. Short Taxable Year Calculations. Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations are used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit.

()

721. CREDIT FOR IDAHO RESEARCH ACTIVITIES: ELECTIONS (RULE 721).

Section 63-3029G, Idaho Code

01. Election to Be Treated as a Start-Up Company. Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal

Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities.

- a. The election once made is irrevocable. ()
- b. The election is made by checking the appropriate box on Form 67. ()

c. A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company must use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. For example, if the taxpayer's fiscal year beginning in 2001 is the 8th such taxable year beginning after December 31, 1993 in which the taxpayer had Idaho qualified research expenses, the fixed-base percentage is one-half (1/2) of the percentage that the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years. ()

02. Unitary Sharing. A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code, or Paragraph 720.02.b. of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ()

722. (RESERVED)

723. CREDIT FOR IDAHO RESEARCH ACTIVITIES: RECORD-KEEPING REQUIREMENTS (RULE 723).

Section 63-3029G, Idaho Code

01. Information Required. Each taxpayer must retain and make available, on request, records for each item included in the computation of the credit for Idaho research activities claimed on an Idaho income tax return. The records must include all of the following: ()

- a. Verification that the research was conducted in Idaho; ()
- b. Verification that wages included in the computation were for qualified service performed by an employee in Idaho; ()
- c. Verification that supplies included in the computation were used for research conducted in Idaho; ()
- d. Verification that contract research expenses were for research conducted in Idaho; ()
- e. Verification that the research activities meet the definition of qualified research; and ()
- f. Verification that the amounts included in the Idaho computation are includable in the computation of the federal credit allowed by Section 41, Internal Revenue Code. ()

02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ()

03. Unitary Taxpayers. Corporations claiming the credit for Idaho research activities must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ()

724. -- 729. (RESERVED)

730. CREDIT FOR CONTRIBUTIONS TO IDAHO YOUTH FACILITIES, REHABILITATION FACILITIES AND NONPROFIT SUBSTANCE ABUSE CENTERS (RULE 730).

Section 63-3029C, Idaho Code

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Fees for services provided, room and board, and similar charges are not contributions. ()

02. Limitations: Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: ()

a. Twenty percent (20%) of his total income tax liability; or ()

b. One hundred dollars (\$100) if filing other than a joint return or two hundred dollars (\$200) if filing a joint return. ()

03. Limitations: Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: ()

a. Ten percent (10%) of its total income tax liability; or ()

b. Five hundred dollars (\$500). ()

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. ()

05. Other Limitations. ()

a. This credit is further limited if the credit for qualifying new employees is claimed. ()

b. This credit plus any other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. ()

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ()

731. -- 749. (RESERVED)

750. BROADBAND EQUIPMENT INVESTMENT CREDIT: IN GENERAL (RULE 750).

Section 63-3029I, Idaho Code

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. ()

02. Limitations. The broadband equipment investment credit allowable in any taxable year will be limited as follows: ()

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: ()

i. Seven hundred fifty thousand dollars (\$750,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover

earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. ()

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. ()

03. Carryovers. ()

a. The carryover period for the broadband equipment investment credit is fourteen (14) years. ()

i. The fourteen (14) year carryover period provided by section 63-3029I(7), Idaho Code, extends throughout the fourteen (14) taxable years following the year in which the equipment was installed. The fourteen (14) year carryover period begins to run regardless of whether the taxpayer has sought and received approval from the Idaho public utilities commission (PUC). ()

ii. Once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward pursuant to section 63-3029I(7), Idaho Code. ()

iii. Example: A calendar year filer installed qualifying equipment on July 20, 2001. However, it was not until 2013 that the taxpayer sought and received the approval order from the PUC. The fourteen (14) year carryover period already began to run based on the installation date and will expire at the end of the 2015 taxable year. On March 10, 2013 the taxpayer is preparing his tax returns and considering how much broadband credit is available and to which taxable years it could be applied to. The taxpayer can file an amended return to claim the credit starting with taxable year 2009 (prior years would be out of the statute of limitations for filing an amended return assuming all returns had been timely filed and no other special circumstances had held the period open). The taxpayer must look back to taxable year 2001 (the year of installation) to see how much credit the taxpayer could have used in each taxable year up to 2009 to determine how much credit carryover amount is still available pursuant to the carryover limitations of section 63-3029I(7), Idaho Code. The taxpayer must use up or transfer any unused credit before taxable year 2016; after taxable year 2015, the carry forward period will expire and any unused credit will no longer be available for the taxpayer to apply or transfer. ()

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. ()

04. Taxpayers Entitled to the Credit. Rule 711 of these rules will apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules will be those limitations as provided in Section 63-3029I, Idaho Code. ()

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. ()

751. (RESERVED)

752. BROADBAND EQUIPMENT INVESTMENT CREDIT: RECAPTURE (RULE 752).
Section 63-3029I, Idaho Code

01. In General. If a taxpayer is claiming or has claimed the broadband equipment investment credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit is to be made. See Rule 715 of these rules. ()

02. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. ()

03. Transferred Credit. The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. ()

753. BROADBAND EQUIPMENT INVESTMENT CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 753).
Section 63-3029I, Idaho Code

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the broadband equipment investment credit claimed on an income tax return subject to examination. The records must include all of the following: ()

a. The order from the Idaho Public Utilities Commission confirming that the installed equipment is qualified broadband equipment. ()

b. A description of the property; ()

c. The asset number assigned to the item of property, if applicable; ()

d. The acquisition date and date placed in service; ()

e. The basis of the property; and ()

f. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable. ()

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: ()

a. Source documents supporting the application to the Idaho Public Utilities Commission; ()

b. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information; ()

c. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents; ()

d. Records verifying ownership including purchase contracts and cancelled checks; ()

e. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho; and ()

f. A system that verifies that property on which the broadband equipment investment credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. ()

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ()

04. Unitary Taxpayers. Corporations claiming broadband equipment investment credit must provide a

calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ()

05. Credit Transferred. A taxpayer that transfers the broadband equipment investment credit is to continue to be subject to the record-keeping requirements of this rule for as long as the credit may be carried over by the transferee or until further assessment or deficiency determinations are barred by a period of limitation, whichever is longer. ()

754. -- 770. (RESERVED)

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

01. Residents. ()

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:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2016	\$100	\$100
2015	\$100	\$100
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

For tax years 2015 and after, the credit is one hundred dollars (\$100). ()

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. ()

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. ()

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: ()

a. Received assistance under the federal food stamp program; or ()

b. Was incarcerated. ()

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

- 05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. ()
- 06. Members of the Uniformed Services.** A member of the uniformed services who is: ()
- a.** Domiciled in Idaho is entitled to this credit; ()
- b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. ()
- c.** See Rule 032 of these rules for the definition of member of the uniformed services. ()
- 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. ()
- 08. Claiming the Credit.** ()
- 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. ()
- 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. ()
- 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. ()
- 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. ()
- 772. -- 774. (RESERVED)**
- 775. CREDIT FOR LIVE ORGAN DONATION EXPENSES (RULE 775).**
Section 63-3029K, Idaho Code
- 01. Credit Allowed.** The credit for live organ donation expenses allowed by Section 63-3029K, Idaho Code, applies to live organ donation expenses incurred by a taxpayer during taxable years beginning on or after January 1, 2007. ()
- 02. Limitations.** The credit allowed to an individual for the taxable year in which the live organ donation occurs is limited to the lesser of: ()
- a.** The amount of live organ donation expenses paid by the taxpayer during the taxable year, or ()
- b.** Five thousand dollars (\$5,000). ()
- 03. Live Organ Donation.** A live organ donation means a donation by a living individual who donates the following for transplanting in another individual: ()
- a.** Human bone marrow, or ()

- b.** Any part of an organ including the following: ()
- i.** Intestine, ()
 - ii.** Kidney, ()
 - iii.** Liver, ()
 - iv.** Lung, or ()
 - v.** Pancreas. ()

04. Live Organ Donation Expenses. Qualifying expenses is to be directly related to a live organ donation by the taxpayer or by a dependent of the taxpayer and includes the following: ()

- a.** The unreimbursed cost of travel paid by the taxpayer to and from the place where the donation operation occurred. ()
- b.** Unreimbursed lodging expenses paid by the taxpayer. ()
- c.** Wages or other compensation lost because of the taxpayer's absence from work during the donation procedure and convalescence. ()

05. Carryover. The carryover period for the credit for live organ donation expenses is five (5) years. ()

776. -- 784. (RESERVED)

785. CREDITS: PASS-THROUGH ENTITIES (RULE 785).
Section 63-3029(a), Idaho Code

01. In General. A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. ()

- a.** Partnerships. A credit passes through to a partner based on that partner's distributive share of partnership profits. ()
- b.** S Corporations. A credit passes through to a shareholder based on that shareholder's pro rata share of income or loss. ()
- c.** Estates and Trusts. A credit passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. ()
- d.** Idaho credits may not pass through to partners or owners based on special allocations. ()

02. Limitations. ()

a. In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. ()

b. Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/3) share of the partnership profits. The partnership contributed three thousand dollars (\$3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars (\$1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability. ()

c. Example. Assume the same facts as in Subsection 785.02.b., except Partner X also contributed two hundred dollars (\$200) to a qualifying educational institution. Partner X is treated as contributing one thousand two hundred dollars (\$1,200), to a qualifying educational institution. Since fifty percent (50%) of his contributions, six hundred dollars (\$600) exceeds the limitation, the credit is limited to the lesser of two hundred dollars (\$200) or twenty percent (20%) of his total income tax liability. The credit is not increased because part of the contribution was from Partner X as an individual and part from the partnership. ()

03. Carryovers. Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. ()

04. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. ()

05. Information Provided by a Pass-Through Entity. The pass-through entity is to prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules are to be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. ()

06. Pass-Through Entities That Pay Tax. ()

a. A pass-through entity may apply and may recapture credits that generally pass through to the partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity. ()

b. The partner, shareholder or beneficiary is responsible for the recapture or recomputation of credits passed through to the partner, shareholder, or beneficiary. ()

c. Carryovers that exist after a pass-through entity offsets the tax with credit available to that partner, shareholder or beneficiary, remain a carryover of the partner, shareholder or beneficiary. ()

786. -- 789. (RESERVED)

790. TRANSFER OF CREDIT: IN GENERAL (RULE 790).
Sections 63-3029I and 63-3029J, Idaho Code

01. In General. A credit may be transferred only as specifically allowed in the statute authorizing the credit. The following credits are the only credits that may be transferred: ()

a. The broadband equipment investment credit, as allowed by Section 63-3029I, Idaho Code. ()

02. Terms. For purposes of Rules 790 through 795 of these rules, the following terms have the stated meanings: ()

a. Transferor. The taxpayer who earns the credit and sells, conveys, or transfers the credit to another taxpayer are referred to as the transferor. ()

b. Transferee. The taxpayer who receives the credit from the transferor or intermediary is referred to as the transferee. ()

03. Transfer Limited. ()

a. The broadband equipment investment credit may be transferred to another taxpayer required to file an Idaho income tax return or to an intermediary. The intermediary may use all or a portion of the broadband equipment investment credit or resell the credit to a taxpayer required to file an Idaho income tax return. The broadband equipment investment credit may not be transferred more than two (2) times. ()

b. A taxpayer who receives credit through unitary sharing may not transfer the credit to another taxpayer. ()

791. TRANSFER OF CREDIT: NOTIFICATION OF INTENDED TRANSFER (RULE 791).

Sections 63-3029I and 63-3029J, Idaho Code

01. Timing of Notification. A taxpayer who intends to transfer qualified credit is to notify the Tax Commission in writing of its intent to transfer the credit at least sixty (60) days prior to the date of the transfer. A transfer may not take place prior to the Tax Commission providing its response as to the amount of credit available and the years the credit may be carried forward. ()

02. Information Required. A transferor or intermediary is to notify the Tax Commission by submitting the following information on a form prescribed by the Tax Commission: ()

a. Name, address, and federal employer identification number of the transferor or intermediary; ()

b. Name, address, and federal employer identification number of the transferee; ()

c. Type of credit to be transferred; ()

d. Amount of credit to be transferred; ()

e. Date of intended transfer; ()

f. Signature of authorized individual for transferor or intermediary; and ()

g. A copy of the Idaho Form 68, Idaho Broadband Equipment Investment Credit and required schedules for each tax year the credit being transferred was earned. ()

792. TRANSFER OF CREDIT: POSTING BOND (RULE 792).

Section 63-3029J, Idaho Code

01. Posting Bond or Security. Section 63-3029J, Idaho Code, provides that prior to obtaining the written statement from the Tax Commission that the transferor may transfer the credit, the transferor may be required to secure any liability by posting a bond or security as the Tax Commission may require. The Tax Commission will require the transferor to post a bond or security only if after receiving the request to transfer credit, the Tax Commission deems the requirement necessary. ()

02. Waiver of Bond or Security. If the Tax Commission requires the transferor to secure the liability by posting a bond or security, the transferor may request that the Tax Commission waive the bond requirement if the transferor shows that he is financially responsible. A notice of denial of the bond waiver is to be treated in accordance with Section 63-3045, Idaho Code. A notice of denial of the bond waiver is subject to review in accordance with Section 63-3045B, Idaho Code. ()

793. TRANSFER OF CREDIT: TRANSFeree (RULE 793).

Sections 63-3029I and 63-3029J, Idaho Code

01. Tax Year Credit Available. A transferee may first claim the transferred credit on an income tax return originally filed during the calendar year in which the transfer takes place. However, if the transferee did not claim the transferred credit on his original return filed during the calendar year in which the transfer takes place, he may not amend such return to claim the credit for that tax year. The credit may not be claimed on a tax return that

begins prior to January 1, 2001. ()

02. Copy of Transfer Form Required. The form verifying the transferred credit is to be attached to the income tax return for each taxable year that the credit is claimed or carried over. ()

03. Carryover Period. If a credit is transferred, the transferee is entitled to any remaining carryover period that would have been allowed to the transferor or intermediary had the credit not been transferred. The Tax Commission is to verify the carryover period. The carryover period approved applies to the taxable year of the transferee that begins in the calendar year in which the transferor's taxable year begins. ()

a. Taxpayer A earned the broadband equipment investment credit in his taxable year beginning in 2002. He claimed part of the credit on his return for that year. In October of 2003, Taxpayer A sold the remaining credit to Taxpayer B, an intermediary. Taxpayer B resold the credit in May of 2004 to Taxpayer C. Taxpayer C claimed the credit on his original return for taxable year beginning in 2003, which he filed in November of 2004. Taxpayer C has a thirteen (13) year carryover remaining, the same as Taxpayer B would have been entitled to. ()

794. -- 798. (RESERVED)

799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).
Section 63-3029P, Idaho Code

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. ()

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: ()

- a.** Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; ()
- b.** For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; ()
- c.** Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; ()
- d.** Investment tax credit as authorized by Section 63-3029B, Idaho Code; ()
- e.** Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; ()
- f.** Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; ()
- g.** Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; ()
- h.** Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; ()
- i.** Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and ()
- j.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. ()
- k.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. ()

- l.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. ()
- m.** Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. ()
- n.** Idaho child tax credit as authorized by Section 63-3029L, Idaho Code. ()
- o.** Credit for employer contributions to employee's Idaho college savings program account as authorized by Section 63-3029M, Idaho Code. ()
- 03. Adjustments to Credits.** ()

 - a.** Adjustments to the amount of a credit earned is determined pursuant to the law applicable to the taxable year in which the credit was earned. ()
 - b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit also applies to any taxable years to which the credit was carried over. ()
 - c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned does not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. ()

800. VALID INCOME TAX RETURNS (RULE 800).
Section 63-3030, Idaho Code

- 01. Requirements of a Valid Income Tax Return.** In addition to the requirements set forth in IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 150, an income tax return is to meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. ()
- 02. Copy of Federal Return Required.** A taxpayer is to include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. ()
- 03. Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld is to attach appropriate Forms W-2 and 1099 and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically is to include the W-2 and 1099 information in the electronic record transmitted. ()

801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).
Section 63-3030, Idaho Code

- 01. In General.** Persons who meet the filing requirements under Section 63-3030, Idaho Code, will file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law. ()
- 02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code.** For taxable years beginning prior to January 1, 2012, if an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual will not be required to file an Idaho individual income tax return for that taxable year. ()
- 03. Corporations Included in a Unitary Group.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules. ()

04. Taxpayers Protected Under Public Law 86-272. A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it will be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and sales will be included in the computation of the group factor denominators and its business income will be included in the computation of apportionable income for the unitary group. ()

802. (RESERVED)

803. ROUNDING (RULE 803).

Section 63-113, Idaho Code. Amounts shown or required to be shown on any return, form, statement or other document required to be submitted to the Tax Commission under Title 63, Chapter 30, Idaho Code, will be rounded to the nearest whole dollar. Amounts less than fifty cents (\$.50) are reduced to the whole dollar. Amounts of fifty cents (\$.50) or more are increased to the next whole dollar. ()

804. (RESERVED)

805. JOINT RETURNS (RULE 805).

Sections 63-3031, 32-201, and 32-209, Idaho Code

01. Effect of Filing Status Used on Federal Returns. A married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, is to use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. ()

02. In General. ()

a. Only a married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. ()

b. If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. ()

03. Resident Aliens or United States Citizens Married to Nonresident Aliens. A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election is to be attached to the return for the first taxable year for which the election is to apply. In addition, the statement will include the name, address, and taxpayer identification number of each spouse, and is to be signed by both individuals making the election. ()

806. -- 809. (RESERVED)

810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).

Section 63-3032, Idaho Code

01. Due Date of Returns. ()

a. All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year as defined by the Internal Revenue Code. However, if the time for filing a short taxable year for federal income tax purposes is later than the fifteenth day of the fourth month following the close of the taxable year, the later date will be the date the return is required to be filed with the Tax Commission. ()

b. Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year. ()

02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday, legal holiday, or a holiday recognized by the Internal Revenue Service, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. ()

03. Mail. Section 63-217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010. ()

04. Fifty-Two/Fifty-Three Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. ()

811. -- 814. (RESERVED)

815. EXTENSIONS OF TIME (RULE 815).
Section 63-3033, Idaho Code

01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. ()

02. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. For individuals entitled to this extension of time, interest accrues on the portion of the tax not paid from the extended due date. ()

03. Interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. Exceptions only apply in the case of an individual in a combat zone as allowed by Section 63-3033(g), Idaho Code, and Subsection 815.02 of this rule, and when disaster relief is granted to a taxpayer as allowed under Section 63-114, Idaho Code, and Rule 817 of these rules. A taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. ()

816. (RESERVED)

817. EXTENSIONS OF TIME AS DISASTER RELIEF (RULE 817).
Section 63-114, Idaho Code

01. In General. Section 63-114, Idaho Code, allows the Tax Commission to grant an extension of time for up to one (1) year from the due date to file returns or make payments in the following situations: ()

a. When a taxpayer is adversely affected by a disaster declared by the President of the United States or by a governor of a state or territory of the United States; ()

b. When a taxpayer is entitled to an extension under Section 7508A, Internal Revenue Code, due to a Presidentially declared disaster or a terroristic or military action. ()

02. Penalties and Interest. If an extension of time to file a return or pay tax is allowed under Section 63-114, Idaho Code, penalties and interest will not apply during the extension period. If the taxpayer fails to file by the extended due date, penalties as provided under Section 63-3046, Idaho Code, and interest applies after the extended due date to the date of payment. ()

818. -- 819. (RESERVED)

820. CORPORATE ESTIMATED PAYMENTS: IN GENERAL (RULE 820).
Section 63-3036A, Idaho Code

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho income tax credits, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. ()

02. Computation of Estimated Payments. ()

a. Estimated tax is paid in four (4) payments. Each estimated payment is to be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. ()

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of income tax credits, less income tax credits excluding estimated payments. ()

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. ()

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it recomputes its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. ()

04. Net Operating Loss or Capital Loss Carryover. The allowable net operating loss carryover or capital loss carryover is to be deducted from income for the period before the estimated tax is computed. ()

821. CORPORATE ESTIMATED PAYMENTS: PAYMENTS (RULE 821).
Section 63-3036A, Idaho Code

01. Underpayments. A payment of estimated tax is to be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it applies to the estimated payment then due. ()

02. Overpayments. ()

a. If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit against the next payment only to the extent it exceeds all underpayments of prior estimated payments. ()

b. The overpayment is to be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. ()

c. A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. ()

03. Obligation to File Returns. The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not

relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. ()

822. CORPORATE ESTIMATED PAYMENTS: ANNUALIZED INCOME INSTALLMENT METHOD (RULE 822).

Section 63-3036A, Idaho Code

01. In General. ()

a. If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. ()

b. See Section 6655, Internal Revenue Code, for the determination of annualized income. ()

02. Required Installment. The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: ()

a. Twenty-two and one-half percent (22.5%) for the first period; ()

b. Forty-five percent (45%) for the second period; ()

c. Sixty-seven and one-half percent (67.5%) for the third period; and ()

d. Ninety percent (90%) for the fourth period. ()

03. Computation of Tax. The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. ()

823. CORPORATE ESTIMATED PAYMENTS: SHORT TAXABLE YEAR (RULE 823).

Section 63-3036A, Idaho Code

01. In General. If a short taxable year ends before an estimated payment due date, remaining estimated payments is to be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. ()

02. Examples. ()

a. X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1993 and ending August 31, 1994. For the short taxable year, January 1, 1993, to August 31, 1993, X must make estimated payments of twenty-five percent (25%) of its minimum payment on April 15, 1993, and June 15, 1993. The remaining payment of fifty percent (50%) of the minimum payment, twenty-five percent (25%) for the third payment plus twenty-five percent (25%) for the fourth payment, is due on August 15, 1993, the fifteenth day of the last month of the short taxable year. ()

b. If, in the example in Subsection 823.02.a., X does not meet the requirement to make estimated payments until June 15, 1993, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third payment and twenty-five percent (25%) for the fourth payment. No payment for the first and second reporting period is required on August 15, 1993, the fifteenth day of the last month of the short taxable year. ()

824. CORPORATE ESTIMATED PAYMENTS: MISCELLANEOUS PROVISIONS (RULE 824).

Section 63-3036A, Idaho Code

01. Unitary Groups Filing Group Returns. ()

a. Each corporation included in a group return that is required to make estimated payments separately computes its estimated tax. ()

b. Estimated payments is to be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. ()

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its tax on net recognized built-in gains, excess net passive income and from recapture of Idaho income tax credits. ()

03. Tax-Exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. ()

825. CORPORATE ESTIMATED PAYMENTS: INTEREST ON UNDERPAYMENT (RULE 825).
Section 63-3046A, Idaho Code

01. In General. If a taxpayer is required to pay estimated taxes as provided in Section 63-3036A, Idaho Code, and fails to pay the amount of estimated taxes due, interest is due on the underpaid estimated taxes. ()

02. 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 interest on underpayment of estimated tax will not be recomputed. ()

826. -- 829. (RESERVED)

830. INFORMATION RETURNS (RULE 830).
Section 63-3037, Idaho Code

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: ()

a. Form 1098, Mortgage Interest Statement, if the property was located in Idaho. ()

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. ()

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. ()

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. ()

e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. ()

f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. ()

g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. ()

h. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. ()

02. Submitting Returns. Information returns must be submitted to the Tax Commission through electronic filing or on a paper copy of federal Form 1099. ()

03. Due Date of Information Returns. Information returns are made on a calendar year basis. The due date for information returns submitted through electronic filing or on paper is the last day of February following the close of the calendar year. ()

04. Voluntary Withholding. Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: ()

a. Obtain an Idaho withholding account number as required by Rule 870 of these rules; and ()

b. Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of January. ()

831. -- 854. (RESERVED)

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

856. -- 859. (RESERVED)

860. DONATIONS TO TRUST ACCOUNTS (RULE 860).
Sections 63-3067A, 63-3067B, and 63-3067D, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. ()

861. -- 869. (RESERVED)

870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).

Sections 63-3035 and 63-3036, Idaho Code

01. Idaho Withholding Account Number Required. An Idaho withholding account number is required of: ()

a. Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and ()

b. Each person who withholds Idaho income tax. ()

02. Idaho Withholding Account Numbers Are Not Transferable. If a business is sold, the new employer is to apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity is to apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. ()

871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).

Sections 63-3035 and 63-3036, Idaho Code

01. Employers Other Than Farmers. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: ()

a. The employer is required to withhold for federal purposes; and ()

b. The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho. ()

02. Farmer-Employers. An employer who is a farmer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: ()

a. The farmer-employer is required to withhold for federal purposes; and ()

b. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the agricultural employee. ()

03. Services Performed Within and Without Idaho. An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. ()

04. Exceptions to Withholding Requirements. Withholding is not required if: ()

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. ()

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; ()

c. The compensation is paid to an interstate transportation employee of a rail carrier covered by Title 49, Section 11502, United States Code, who is a nonresident of Idaho; or ()

d. The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or ()

e. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or ()

f. The compensation is paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 46, Section 11108, United States Code; or ()

g. The compensation is exempt from federal withholding. ()

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code

01. Payment of State Income Tax Withheld. ()

a. In General. An employer must remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. ()

b. Semimonthly Filers. ()

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, will remit the tax withheld based on semimonthly withholding periods. The first semimonthly withholding period begins on the first day of the month and ends on the 15th day of the same month with payment made no later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. ()

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
On or After July 1, 2005	\$20,000	\$240,000
On or After July 1, 2019	\$25,000	\$300,000

()

iii. An employer who meets the threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii. of this rule, but only has one (1) monthly pay period, may request approval by the Tax Commission to pay and report monthly. The request should include verification of monthly payroll. ()

c. Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer will remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. ()

02. Filing of Annual Reconciliation Returns. ()

a. In General. An employer must file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return will: ()

i. Report payroll paid during the preceding calendar year; and ()

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted

for the preceding calendar year. ()

b. Due Date of Reconciliation Returns. The annual reconciliation return must be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. ()

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. ()

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. ()

a. The employer must file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment must be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. ()

b. The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. ()

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule will be filed using the proper forms as prescribed by the Tax Commission. The forms will include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. ()

873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).
Section 63-3035, Idaho Code

01. Verification. The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on federal Form W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission will issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. ()

02. Notification. The Tax Commission is to notify the employer of the order. The order is effective immediately on receipt by the employer and is to remain in effect the rest of the calendar year, unless the employee files federal Form W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. ()

03. Petition for Changes. An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission will issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. ()

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).
Sections 63-3035 and 63-3036, Idaho Code

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or altered forms are not acceptable and may be returned to the employer for correction. ()

02. Furnishing Forms W-2 to Employees. The employer must furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. ()

03. Filing Forms W-2 With the Tax Commission. On or before the last day of January, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. ()

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. ()

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. ()

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. ()

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. ()

a. The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. ()

b. The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. ()

875. -- 876. (RESERVED)

877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES (RULE 877).
Sections 63-3022L and 63-3036B, Idaho Code

01. In General. A pass-through entity that is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity that is required to be included in the individual's Idaho taxable income unless exempt from backup withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. ()

02. Exceptions to Backup Withholding. Backup withholding by a pass-through entity is not required on the income of the following pass-through owners and beneficiaries: ()

a. Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. ()

b. Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: ()

i. Is treated as a partnership for purposes of the Internal Revenue Code; and ()

ii. Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year. ()

c. Resident individuals and part-year resident individuals who have income other than from a pass-through entity. ()

d. Nonresident individuals if: ()

i. The pass-through entity has reported and paid the tax relating to the individual on a composite return pursuant to Section 63-3022L, Idaho Code. ()

ii. Such individual's share of income and guaranteed payments of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the income is subject to tax; ()

iii. The income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code; or ()

iv. The individual has signed and the pass-through entity has approved an Idaho nonresident owner agreement. ()

03. Idaho Nonresident Owner Agreement. When an individual signs an Idaho nonresident owner agreement, he agrees to file and pay tax on his share of Idaho income from a pass-through entity. The signed agreement must be the proper form prescribed by the Tax Commission and must be submitted to the pass-through entity each year. The pass-through entity must sign and approve the nonresident owner agreement for it to be valid. Their approval will signify their acknowledgment that they are liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the pass-through entity does not approve the nonresident owner agreement, the pass-through entity must withhold or include the individual in the composite return. The pass-through entity must retain the forms for three years following the end of the taxable year for which it is to apply. ()

04. Payment of Backup Withholding. ()

a. The pass-through entity must withhold amounts from the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld for a taxable year must be remitted to the Tax Commission annually on or before the fifteen day of the fourth month following the end of the taxable year, unless one of the exceptions under Subsection 877.02 of this rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. ()

b. Amounts remitted as backup withholding for a taxable year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his taxable year in which the pass-through entity's taxable year ends. ()

05. Backup Withholding Returns. A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ()

a. The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; ()

b. The amount of tax withheld; ()

c. Name, address, filing option, and social security number of each owner or beneficiary; ()

d. The pass-through entity's name, and federal employer identification number. ()

06. Failure to File Returns or Remit Backup Withholding. Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of backup withholding by the due date may cause interest and penalties to be imposed. ()

878. -- 879. (RESERVED)

880. CREDITS AND REFUNDS (RULE 880).

Section 63-3072, Idaho Code

01. Overpayment. The term overpayment includes: ()

a. A voluntary and unrequested payment greater than an actual tax liability. ()

b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. ()

c. An excessive amount that a pass-through entity withholds pursuant to Section 63-3036B, Idaho Code. ()

d. All amounts erroneously or illegally assessed or collected. ()

e. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. ()

02. Requirements of a Valid Refund Claim. Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: ()

- a.** The basis for the credit or refund claim, and ()
- b.** The amount of the overpayment. ()

03. Timely Claim Required for Refund. ()

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. ()

b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. ()

c. If a claim for credit or refund relates to an overpayment attributable to an Idaho net operating loss carryback incurred in taxable years beginning on and after January 1, 2013, an amended return carrying the loss back must be filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. ()

04. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer is declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. ()

05. Closed Issues. The Tax Commission will deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. ()

06. Limitations on Refunds of Withholding and Estimated Payments. As provided by Section 63-3072(c), Idaho Code, the Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. ()

07. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission will deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission will give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. ()

08. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. ()

09. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. ()

10. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer must submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. ()

881. -- 884. (RESERVED)

885. INTEREST ON REFUNDS (RULE 885).
Sections 63-3073 and 63-3045, Idaho Code

01. In General. Taxpayers will receive interest on refunds of all amounts illegally or erroneously assessed or collected. No interest is payable on refunds of amounts that are voluntary or unrequested payments exceeding the tax due. ()

02. Computation. Except as provided in Subsection 885.03, the Tax Commission is to compute interest on a net refund as follows: ()

a. Taxes erroneously or illegally assessed or collected. Interest is to be computed from the date the excess amount was received or the due date for filing the return to which the amount relates, whichever is later. ()

b. Refunds of income tax withheld. The Tax Commission will pay interest on refunds of withholding if the refund is paid more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. For purposes of this rule, the refund is considered paid on the date it is postmarked. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine

whether interest is to be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return. ()

c. Tentative payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment. ()

03. Refunds from Net Operating Loss and Capital Loss Carrybacks. Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year. ()

886. -- 889. (RESERVED)

890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (RULE 890).
Section 63-3069, Idaho Code

01. Final Determination. The term final determination as used in Section 63-3069, Idaho Code means final federal determination as defined in Section 63-3068(f), Idaho Code. ()

02. Written Notice. ()

a. Written notice will include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. ()

b. Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment does not constitute the required notification. ()

03. Immediate Notification. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within one hundred twenty (120) days of the final determination. ()

891. NOTICE OF ADJUSTMENT OF STATE OR TERRITORY TAX LIABILITY (RULE 891).
Sections 63-3069 and 63-3069A, Idaho Code

01. Final Determination. The term final determination of any deficiency or refund of income tax due to another state or territory as used in Section 63-3069, Idaho Code, means the final resolution of all issues that were adjusted by the other state or territory. ()

02. Written Notice. ()

a. Written notice is to include copies of all reports issued by the other state or territory, and any other documents and schedules required to clarify the adjustments to taxable income of the state or territory. If the final determination results in a refund of Idaho taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. ()

b. Written notice included with an income tax return for a year or years other than the year subject to the adjustment by the state or territory does not constitute the required notification. ()

03. Immediate Notification. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within one hundred twenty (120) days of the final determination. ()

892. -- 894. (RESERVED)

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (RULE 895).

Sections 63-3068 and 63-3069A, Idaho Code

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. ()

02. State or Territory Determination. The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. ()

03. Protest of a Notice of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. ()

04. Waiver of the Period of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver will state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver applies to each corporation included in the combined group. ()

05. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer is to submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3068, Idaho Code. ()

896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (RULE 896).

Section 63-3068(e), Idaho Code

01. In General. A request for prompt action may be made pursuant to Section 63-3068(e), Idaho Code, for an income tax return that is required to be filed for a decedent or an estate of a decedent. The request does not apply to the estate tax imposed by Chapter 4, Title 14, Idaho Code. ()

02. Requirements of a Valid Request for Prompt Action. The personal representative, executor, administrator, or other fiduciary representing the estate of a decedent is to file the request for prompt action in writing with the Tax Commission. The request must meet the following qualifications: ()

- a.** It must be filed after the applicable return has been filed; ()
- b.** It must be filed separately from any other document; ()
- c.** It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and ()
- d.** It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code. ()

03. Applicable Returns. A request for prompt action does not apply to any return filed after the request has been filed. The request applies only to returns reflecting income earned or other activities and transactions occurring during the lifetime of the decedent or by his estate during the period of administration. ()

897. -- 899. (RESERVED)

900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (RULE 900).

Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other

action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals are to have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. ()

901. -- 939. (RESERVED)

940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – DEFINITIONS (RULE 940).

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components means buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

02. New Plant and Building Facilities. New plant and building facilities are facilities where employees are physically employed. ()

03. Investment in New Plant. Investment in new plant means new plant and building facilities: ()

a. That are constructed or erected by the taxpayer, or ()

b. That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition does not qualify as new plant. ()

c. That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

04. Making Capital Investments. The date capital investments are considered made will be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

05. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

06. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may begin on one (1) of the following dates, but not prior to January 1, 2006: ()

i. The date of a physical change to the project site; or ()

ii. The date new employees begin providing personal services at the project site. ()

b. The project period ends at the earliest of: ()

i. The conclusion of the project, ()

ii. Ten (10) years after the beginning of the project; or ()

iii. December 31, 2030. ()

07. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria is to be located at one (1) contiguous site. ()

08. Small Employer Investment Tax Credit. Small employer investment tax credit means the additional income tax credit allowed by Section 63-4403, Idaho Code. ()

09. Small Employer New Jobs Tax Credit. Small employer new jobs tax credit means the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ()

10. Small Employer Real Property Improvement Tax Credit. Small employer real property improvement tax credit means the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ()

11. Small Employer Tax Incentive Criteria. Small employer tax incentive criteria means the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. ()

12. Small Employer Tax Incentives. Small employer tax incentives means the tax incentives allowed by Title 63, Chapter 44, Idaho Code. ()

941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: IN GENERAL (RULE 941).
Sections 63-4401 and 63-4406, Idaho Code

01. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ()

02. Reorganizations, Mergers and Liquidations. The small employer investment tax credit and real property improvement tax credits are subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies will not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. ()

03. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. ()

04. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ()

942. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 942).

Section 63-4402, Idaho Code

01. In General. The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: ()

a. Making capital investment in new plant and building facilities totaling five hundred thousand dollars (\$500,000) or more; ()

b. Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code; ()

c. Employment increases more than the ten (10) new employees described in Paragraph 942.01.b. of this rule will meet the requirements of Section 63-4402(2)(j)(ii)(2), Idaho Code; and ()

d. Once the increase in employment has been reached, maintaining that increased employment in Idaho for the remainder of the project period. ()

02. Certification. A taxpayer is to certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification is accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form includes the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ()

a. A description of the qualifying project; ()

b. The estimated or actual start date of the project; ()

c. The estimated or actual end date of the project; ()

d. The location of the project site or sites; ()

e. The estimated or actual number of new jobs created during the project period; and ()

f. The estimated or actual cost of capital investment in new plant and building facilities for each year in the project period. ()

03. Copy of Certification Form Required. A copy of the certification form will be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ()

943. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943).
Sections 63-4403 and 63-4406, Idaho Code

01. Credit Allowed. ()

a. The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2030. ()

b. The credit applies to qualified investments placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, will not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the qualified investments placed in service during that taxable year will not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. Taxpayers Entitled to the Credit. The small employer investment tax credit is allowed only to

taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Qualified Investments. ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-4403, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. Limitations. The small employer investment tax credit allowable in any taxable year is to be limited as follows: ()

a. The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: ()

i. Seven hundred fifty thousand dollars (\$750,000); or ()

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer investment tax credit is fourteen (14) years. ()

06. Coordination with Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investments in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944).
Sections 63-4404 and 63-4406, Idaho Code

01. Credit Allowed. ()

a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2030. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, will not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year will not qualify for the small employer real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, will not qualify for the small employer real property improvement tax credit. ()

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year will be limited as follows: ()

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ()

i. One hundred twenty-five thousand dollars (\$125,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. ()

945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945).
Sections 63-4405 and 63-4406, Idaho Code

01. Credit Allowed. ()

a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 2030. ()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, will not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, new employees hired during that taxable year will not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ()

02. Taxpayers Entitled to the Credit. The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Calculating Number of Employees. ()

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ()

i. The employee must have worked primarily within the project site for the taxpayer. ()

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()

iv. The employee must have been subject to Idaho income tax withholding. ()

v. The employee must have been covered for Idaho unemployment insurance purposes. ()

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year will be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()

b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()

04. Calculating the Number of New Employees. ()

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()

i. The number of employees for the prior taxable year; or ()

ii. The average of the number of employees for the three (3) prior taxable years. ()

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule will apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years will be made consistent with the computations for the current taxable year. ()

c. The number of new employees will be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

05. Computing the Credit Earned. The taxpayer will identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee will be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee will be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee will be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee will be three thousand dollars (\$3,000). ()

06. Limitations. The small employer new jobs tax credit allowable in any taxable year will be limited as follows: ()

a. The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. ()

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

946. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: RECAPTURE (RULE 946).
Section 63-4407, Idaho Code

01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year will be recaptured. ()

02. Year Deficiency Occurs. Recapture will be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the average number of qualifying employees for a taxable year in the recapture period falls below the average number of qualifying employees for the year in which the credit was earned in Section 63-4405, Idaho Code. ()

03. Early Disposition of Investment in New Plant. ()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount will be computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage will be determined as follows. If the property is disposed of or ceases to

qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) will be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) will be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) will be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) will be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) will be used. ()

04. Failure to Maintain Increased Employment. ()

a. If the average number of qualifying employees for the taxable year in which the credit was earned in Section 63-4405, Idaho Code, is not maintained for the entire recapture period, the recapture amount will be computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage will be determined as follows. If the level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) will be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) will be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) will be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) will be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) will be used. ()

c. Recapture will not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If the investment in new plant is disposed of or otherwise ceases to qualify before the close of the recapture period while in the hands of an acquiring taxpayer who succeeded to unused small employer investment tax credit or small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the acquiring taxpayer will be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture when an acquiring taxpayer succeeded to unused small employer investment tax credit and small employer real property improvement tax credit as provided for in Rule 941.03 of these rules, the recapture period will begin with the date on which the property was placed in service by the transferor taxpayer and will end with the date of the disposition by, or cessation with respect to, the acquiring taxpayer. ()

947. -- 999. (RESERVED)

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 63-3624, 63-3635, and 63-3039, Idaho Code, the State Tax Commission has promulgated rules implementing the provisions of the Idaho Sales Tax Act. They are the State Tax Commission's official statement of policy relating to interpretations and applications of the Idaho Sales Tax Act. ()

001. TITLE AND SCOPE (RULE 001).

01. **Title.** These rules are titled IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules." ()

02. **Scope.** These rules are construed to reach the full jurisdictional extent of the state of Idaho's authority to impose an excise tax upon each sale at retail of the sales price of all property subject to taxation under this act and on the storage, use, or other consumption in this state of tangible personal property. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045B, 63-3049, 63-3620, 63-3620A, 63-3621, 63-3622, 63-3623B, 63-3626, 63-3631, 63-3633, and 63-3634, Idaho Code. ()

003. INCORPORATION BY REFERENCE (RULE 003).

These rules incorporate IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." ()

004. -- 010. (RESERVED)

011. MIXED TRANSACTIONS (RULE 011).

Sections 63-3609, 63-3612, 63-3613, Idaho Code.

01. **Retail Sales of Tangible Personal Property Together with Services.** The sales tax applies to retail sales of tangible personal property. It does not apply to the sale of services except as stated in statute or rule. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill. To determine whether a transaction is a retail sale of tangible personal property or a sale of services, the following tests are applied. ()

a. To determine whether a transfer of tangible personal property is a taxable retail sale or is merely incidental to a service transaction, the proper test is to determine whether the transaction involves a consequential or inconsequential professional or personal service. If the service rendered is inconsequential, then the entire transaction is taxable. If a consequential service is rendered, then it will be determined whether the transfer of the tangible personal property is an inconsequential part of the transaction. If so, then none of the consideration paid is taxable. ()

b. To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction will be determined; that is, is the buyer seeking the service itself, or the property produced by the service. ()

c. When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is taxable while the other is not. ()

02. **Determining the Type of Sale.** To determine whether a specific sale is a sale of tangible personal property, a sale of services or a mixed transaction, all the facts surrounding the case will be studied and the tests described above applied. Here are some examples. ()

a. Example 1: An attorney is retained by a client to prepare the client's will. The attorney prepares the will, sees that it is properly executed and bills the client. The physical document, the will, is then transferred from the attorney to the client. This is a sale of services because the client's object is not to obtain the will itself, but to ensure that their estate is disposed of in a certain way when they die. Since, the transaction between the attorney and the client is not a retail sale of tangible personal property, no sales or use tax applies. However, the attorney pays sales or use tax when the attorney buys stationery and other equipment to prepare the will. Compare Example 5. ()

b. Example 2: The attorney in Example 1 prepares a form book of wills which he intends to sell to other attorneys. The will the attorney prepared in Example 1 is included in the form book. The sale of the form book to other attorneys is a taxable retail sale of tangible personal property. From the buyer's point of view, the object of the sale is to obtain the book, which is tangible personal property. The fact that special skill or knowledge went into the preparation of the book and is reflected in the purchase price does not make the sale of the form book a service transaction. ()

c. Example 3: An architect is hired to prepare construction plans for a house. He prepares the plans and delivers them to his client. As in the example of the attorney preparing the will, this is a sale of services and the transfer of the tangible personal property, the plans, is inconsequential to the transaction. No sales or use tax is due on the sale of the plans. ()

d. Example 4: The architect in Example 3 is asked to provide additional copies of the same plans to his original client or to a third party. The architect copies the plans on a duplicating machine and sells them to the requesting party. This is a taxable retail sale of tangible personal property, since the buyer's object is to obtain the property, the plans. ()

e. Example 5: An artist is commissioned to paint an oil portrait. When the portrait is completed, ownership is transferred to the client who pays the artist a lump-sum amount for the portrait. This is a taxable retail sale of tangible personal property because the buyer's object is to obtain the portrait. If the artist otherwise qualifies as a retailer, he is required to collect and remit sales tax on the sale of the portrait. ()

f. Example 6: An automobile repair shop does repair work for a customer. To do the work, the shop replaces certain parts on the automobile. The repair shop bills its customer an amount for the repair parts and a separate amount for labor. This is a mixed transaction. As long as the sale of the tangible personal property, the parts, and the sale of services, the labor, are separately stated, sales tax is due only on the sale of the parts and not on the charge for labor. However, allocation of the total charge between parts and labor must be reasonable. If part of the charge for parts is unreasonably attributed to the cost of labor, the allocation may be adjusted by the Commission. ()

g. Example 7: A retail clothing store provides needed alterations to items purchased by customers. Even though the sale depends on the alterations being done, the service is incidental to the sale of the property. The entire transaction is taxable, even if the charge for the alteration labor is separately stated. ()

03. Kinds of Services Incidental to the Sale. Two (2) kinds of services rendered incidental to a retail sale are specifically exempt from tax if the charge for the service is separately stated. They are: ()

a. Charges for transportation after the sale. See Section 63-3613, Idaho Code, and Rule 061 of these rules; and ()

b. Installation charges. See Section 63-3613, Idaho Code, and Rule 012 of these rules. ()

04. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for transportation or installation may not be used to avoid tax on the actual sales price of tangible personal property. If the allocation of the total price is unreasonable, the Commission may adjust it. ()

05. Tangible Personal Property Used or Consumed by a Business. Tangible personal property used or consumed by a business in performing a nontaxable service is taxable. See Rule 072 of these rules. ()

012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).
Sections 63-3609(a), 63-3621, 63-3615(b), 63-3622B, Idaho Code

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable. ()

a. A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or speculative builder who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property. ()

b. Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees of a contractor, they are acting as contractors and are consumers just as other contractors. ()

c. Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation. ()

d. The terms “contractor” and “subcontractor” are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. ()

02. Contract. A contract to improve real property may be in any of the following forms. ()

a. Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. ()

b. Cost-plus Contract. A cost-plus contract is an agreement to furnish materials and services at the contractor’s cost plus a fixed sum or percentage of the cost. ()

c. Guaranteed Price Contract. A guaranteed price contract is an agreement to furnish materials and services with a guaranteed price which may not be exceeded. ()

d. Time and Material Contract. A time and material contract is an agreement to sell a specific list of materials and supplies at retail or an agreed price and to complete the work for an additional agreed price or hourly rate for services rendered. ()

e. The contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into, whether it is a lump sum, time and material, or a cost-plus contract. ()

03. Use. As used in this rule, the term use includes exercising any right or power over tangible personal property in performing a contract to improve real property, regardless of who owns the material or if the material is leased. ()

04. Real Property. See Rules 010 and 067 of these rules. ()

05. Use Tax Reporting Number. Contractors need a use tax number if they make purchases on which sales tax has not been charged. In this case, they are required to report and pay the Idaho use tax to the state. If a contractor pays sales tax to his vendors on ALL purchases, he does not have to obtain a use tax number. ()

06. Purchases by Contractors. Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They pay sales or use tax on their purchase of equipment, tools, and supplies. They also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. ()

07. Fuels. A contractor pays tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. ()

08. Custom-Made Goods. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he pays sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. ()

09. Value. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: ()

a. When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the taxable amount is the cost of material to the contractor who fabricated the goods. ()

b. When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. ()

10. Materials Provided by Project Owner. ()

a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he pays sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax. ()

b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is taxable. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property. ()

c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built into a structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable. ()

11. Subcontractor. In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. ()

12. Land Leveling. ()

a. Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they pay tax on equipment, material, and supplies purchased for land leveling. ()

b. Notwithstanding the provisions of Rule 013 of these rules, contractors who crush rock are performing a nontaxable service if the rock is obtained on a construction site, and the crushed rock is used on the same site, for such purposes as backfill, land leveling, site preparation, or site cleanup. The use of such rock, backfill, or other related materials is not taxable; however, such a contractor is not primarily devoted to mining and his use of rock crushing equipment, or other equipment and supplies, does not qualify for exemption under Section 63-3622D, Idaho Code. ()

c. The sale or use of crushed rock that is removed from a construction site and used elsewhere is taxable. See Rule 013 of these rules. ()

13. Exempt Purchases by Contractors. A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska, or in a state where the materials would not be subject to a use tax or other similar excise tax in that state. For example, this exemption applies to a contractor improving real property on certain projects in Washington where he will not owe a use tax on materials incorporated into realty, even though a sales or use tax may be owed by a third party. This exemption only applies to materials incorporated into real estate in a nontaxing state. Tools, supplies, equipment, or any other tangible personal property purchased in Idaho that are not incorporated into realty are taxable when purchased in Idaho. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See Rule 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states where use tax applies to materials incorporated into realty, such as Nevada or Wyoming. ()

14. Cross-References. ()

a. Road and paving contractors, see Rule 013 of these rules. ()

b. Contractor/retailers, see Rule 014 of these rules. ()

c. Well drillers/pump installers, see Rule 015 of these rules. ()

013. ROAD AND PAVING CONTRACTORS (RULE 013).
Sections 63-3609, 63-3615, Idaho Code

01. In General. This rule illustrates the application of Idaho sales and use tax to specific activities of road and paving contractors. The general principles stated in Rule 012 of these rules apply equally to road and paving contractors. ()

02. Road or Paving Contractor. A road or paving contractor is a contractor improving real property. The use of materials over which he exercises right or power in the course of performing the contract is taxable. This is true even if an exempt entity, such as a government agency, owns the material. It is also true if the contractor does the work under the full or partial supervision of the person for whom the contractor is performing the contract. ()

03. Examples. Here are some examples of taxable materials contractors use in paving and road contracts: ()

a. Example 1: A contractor is hired to pave a road for a city. The materials the contractor will use are taxable, regardless of ownership, and include rock, sand, asphalt oil, chemicals, bonding agents, or any other like materials which become the aggregate pavement. ()

b. Example 2: A contractor is hired to chip seal a local road. The chip seal includes a layer of liquid asphalt or similar material applied to the road with an immediate layer of rock chips applied on top of the wet asphalt. A roller sets the rock chips in place. Once this dries, the surface is cleaned and another oil seal or like product is applied. These three items and any other materials used to form the aggregate chip seal are taxable. ()

c. Example 3: A contractor is hired to perform landscaping for the barrow pits and shoulders of a new highway. The highway district provides the grass seed and some bushes for the project. The contractor provides labor to sow the seed, plant the bushes, and labor and materials to provide erosion control, land leveling, contouring, etc. The contractor owes sales or use tax on all materials consumed, including those provided by the highway district. ()

d. Example 4: A contractor is hired to install a new bridge and provide drainage for a new freeway interchange. The highway district provides the bridge components and culverts needed for the project, and the contractor provided all of the remaining materials and the labor for the project. The contractor will owe sales or use

tax on all materials he consumes including the bridge components and culverts provided by the highway district, as well as on the materials the contractor purchased for use on the project. ()

e. Example 5: A contractor is hired to install traffic control lights, signage, and roadway illumination for a rebuilt section of roadway. The highway district provides the traffic control signals and the permanent signage for the highway so that all signage will be consistent throughout the highway district. The contractor owes use tax on the value of the traffic signals and signage provided by the highway district as well as on the cost of electrical wiring, signal wiring, and the lights and light poles, etc., purchased and consumed by the contractor. ()

04. Materials. The sale or use of materials which are extracted and crushed is taxable. Use tax does not apply to the use of natural materials that are secured on site and used without significant change. ()

05. Rock Crushing. The application of the sales or use tax to rock crushing operations depends upon the circumstances of the case. ()

a. A sale of crushing only is a sale of a taxable processing service. In this circumstance the crusher obtains raw material owned by another, crushes the rock, and stockpiles it for subsequent use either by the owner or a third party. Unless an exemption applies, the crusher charges tax on all such sales. ()

b. A contractor who applies crushed rock to the highway pursuant to a contract is a person engaged in improving real property. If the contractor applying the crushed rock purchases the rock, the purchase price will be taxable. If the contractor applies rock owned by another party, the contractor will be responsible for a use tax on the value of the rock, unless the other party paid a sales tax upon its acquisition. This is true even if a government agency supplied the rock. If a recent retail acquisition of the crushed rock exists, the retail price is to be presumed to be the value of the material. If a recent retail sales price does not exist, then value is to be determined by the current acquisition cost of like material from the same or a similar source. For purposes of this section, a retail acquisition within one (1) year of the time of the performance of the contract is to be presumed to be a recent sales price. ()

c. A contractor whose contract calls for him to both crush and apply rock to a road is also subject to sales or use tax on the value of the rock whether the contract is performed for a governmental or private contractee. The value is to be determined by the royalty or similar charge for raw materials. If a royalty or similar charge does not exist, then the value will be determined as the royalty fee or value of like material from a similar source. If the contractor chooses to have the rock crushed by a subcontractor, the measure of the use tax is on the crushed value. ()

d. A sale of rock crushing services to a retailer who will sell the rock is an exempt sale. The sale of crushed rock to a consumer is a taxable sale unless an exemption applies. ()

06. Production Exemption. ()

a. Since a contractor improving real property is defined as the consumer of materials incorporated into realty, he is not producing an article for resale. Therefore, the production exemption does not apply to the use of equipment used by contractors to produce asphalt or concrete which are used to complete paving contracts. ()

b. A business which is primarily devoted to producing crushed rock, asphalt, or concrete which is ultimately sold at retail will qualify for the production exemption. See Idaho Administrative Sales Tax Rules 079 and 082. ()

014. CONTRACTORS/RETAILERS (RULE 014).
Sections 63-3609(a), 63-3610, 63-3620, 63-3621, Idaho Code

01. In General. This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in Rule 012 of these rules also apply to contractor/retailers and should be reviewed along with this rule. ()

02. Contractor/Retailer. Many contractors are also retailers. For example, plumbers, electricians,

carpet layers, cabinet builders, and mechanical contractors can be both contractors and retailers. They are contractors when they install materials in the course of a residential or commercial service call or contract; but when they sell items or materials they don't install; they are retailers and need to collect sales tax from their customers. ()

03. Record Keeping Procedure. A contractor/retailer can follow any consistent procedure to account for inventory and job purchases. ()

a. Example: If the majority of a contractor/retailer's business is performing contracts to improve real property, The contractor/retailer can pay Idaho tax on all purchases and if an item is sold at retail, remit Idaho sales tax collected and request a refund for the tax paid. See Rule 117 of these rules for refund instructions. ()

b. Example: If the majority of the contractor/retailer's business is making retail sales, the contractor/retailer can purchase all inventory without paying tax by giving suppliers a properly completed resale certificate. The contractor/retailer would remit sales tax collected on Idaho retail sales and pay an Idaho use tax on the value of items taken from inventory and used to improve real property. ()

c. Example: A contractor/retailer can opt to use separate accounting procedures for the purchase of resale inventory and job materials. Resale inventory purchases can be made without paying tax by giving suppliers a properly completed resale certificate and pay tax on the purchase of job materials. See Rule 128 of these rules. ()

04. Inventory Withdrawals. When any withdrawal is made from nontaxed inventory, the use tax is due to the state when the material is delivered to the job site, regardless of when it is used in performing a contract. ()

05. Tangible Personal Property vs. Improvements to Real Property. Built-in appliances and related items become fixtures to realty when installed in residential buildings. Such built-in appliances include dishwashers, microwave ovens, stove tops, refrigerators, stove hoods, central vacuum systems, waste disposal units, trash compactors, water softeners, water purification systems, and garage door openers. Some appliances retain the character of personal property such as microwave ovens that are not built-in, freestanding stoves, refrigerators, washers, and dryers. Other rules may apply to commercial, industrial, and other non-residential buildings. See Rule 067 of these rules. ()

06. Sales with Agreement to Install. A regular over-the-counter sale of a complete unit with an agreement to install it is not a contract to improve real property if the item does not become affixed to realty. This applies to sales of stoves, refrigerators, washing machines, dryers, and other electrical appliances. In this case, sales tax is collected from the buyer by the seller on the retail sales price of the item. If the installation charges are properly separated, sales tax is due only on the cost of the unit. ()

07. Sales of Both Tangible Personal Property and Improvements to Real Property. If a contract includes both retail sales of personal property and improvements to real property, the contractor/retailer collects sales tax on the retail portion of the contract. Also, the contractor/retailer does not pay sales tax to their vendor, they pay use tax on the materials used to perform the real property portion of the contract. ()

a. Example: A cabinet builder contracts to build and install kitchen cabinets and build a portable, freestanding china hutch. In the case of the cabinets, the cabinet builder is a contractor improving real property and pays tax on the material costs. In the case of the china hutch, the cabinet builder is a retailer and charges his customer sales tax on the sales price of the hutch, including labor. ()

b. Example: A cabinet builder is hired by Contractor X to fabricate and deliver cabinets to the job site. Contractor X will do the installation. In this case, the cabinet builder is a retailer and charges sales tax to Contractor X on the full sales price, including labor. ()

015. WELL DRILLERS/PUMP INSTALLERS (RULE 015).

Sections 63-2410, 63-2423, 63-3609(a), 63-3621, 63-3615(b), 63-3622B, 63-3622D, 63-3622R, 63-3622W, Idaho Code

01. In General. This rule is meant to explain how Idaho sales and use tax applies to contractors who

drill wells and install pumps. The general principles in Rule 012 and 014 of these rules apply to well drillers and pump installers and should be reviewed along with this rule. ()

02. Types. The types of wells covered by this rule include, but are not limited to: ()

a. Water wells, including those for municipal, domestic, commercial, and industrial purposes, and wells used for agricultural irrigation. ()

b. Monitor wells used to check for contamination or to find the water table. ()

c. Anode wells used to ground power or gas lines. ()

d. Construction wells used for pilings, shoring, and elevator hoists. ()

03. Contractor Improving Real Property. A well driller is a contractor improving real property. In general, the contractor pays sales or use tax on materials and equipment they own and use or over which they exercise right or power while performing a contract. The contractor should not charge sales tax on materials, such as casing, pumps, screens, piping, etc., used to complete a well. Section 63-3609(a), Idaho Code, states that these materials are consumed by the well driller. The contractor pays tax even if the owner of the material is exempt from the tax, such as a government agency. Well drillers may be responsible for use tax on owner-supplied materials. See Rule 012 of this rule. Exemptions are discussed in Subsection 015.05 of this rule. Pumps that are installed with a well, such as a pump that supplies water to land or a building, are presumed to be real property improvements. Pumps that do not supply water to land or buildings and are used in commercial or industrial applications will generally be considered personal property unless they have been so integrated into the real estate that they would be considered a permanent fixture. ()

a. Example: A well driller contracts to drill a water well and install a pump for a homeowner. The contractor bills the homeowner separately for materials and labor as well as the drill bits used. The contractor should pay sales or use tax on his purchase of the materials and drill bits. The contractor should not charge sales tax to the customer since this is a contract to improve real property. ()

b. Example: A well driller contracts to drill a well for an Idaho city. The contractor pays sales or use tax on the materials and pumps used to complete the well, even though the eventual owner of these items is a governmental entity. See Rule 094 of these rules. ()

04. Exemptions. In some cases, exemptions may apply to materials installed by well drillers and pump installers. Note: These exemptions apply only to project materials and not to construction equipment and supplies, such as drilling rigs and drill bits. If a well driller or pump installer makes exempt purchases, he must complete an exemption certificate for the vendor's records. ()

a. Materials installed in a well which will be used primarily for agricultural irrigation are exempt under Section 63-3622W, Idaho Code. The exemption applies even if the materials become part of the real property. Agricultural irrigation includes supplying water to crops, livestock, and fish which are produced for resale. ()

b. Pumps and other equipment used directly in manufacturing or processing are exempt under Section 63-3622D, Idaho Code. Generally, such pumps retain the characteristics of personal property. This exemption applies only to tangible personal property. It does not apply to materials which will become part of real property. Examples include: pumps used directly in food processing; booster pumps and chlorine pumps used directly in manufacturing; and dairy waste pumps. ()

05. Motor Vehicles. In general, drilling rigs and licensed motor vehicles are taxable when purchased by a well driller or pump installer. However, if a vehicle weighs more than twenty-six thousand (26,000) pounds, is used more than ten percent (10%) of the time outside of Idaho, and is registered under the International Registration Plan or similar pro rata plan, its purchase is exempt. See Rule 101 of these rules. This exemption does not apply to repair parts for motor vehicles, or to drilling rigs purchased separately from a motor vehicle. ()

06. Fuel. Motor fuel taxes do not apply, or a refund may be obtained, if the fuel is used to run drilling ()

rigs or other off-road equipment. Fuel purchased for such off-highway use is taxable. See Sections 63-2410 and 63-2423, Idaho Code, and related IDAPA 35.01.05, "Idaho Motor Fuels Tax Rules." ()

016. RETAIL SALE OF ASPHALT, CONCRETE, AND CONCRETE PRODUCTS (RULE 016).

Sections 63-3609(a), 63-3610, 63-3622D, 63-3622W, Idaho Code

01. In General. Asphalt, concrete and concrete products are building materials. The sale of such products to construct, alter, repair, or improve real estate is taxable. Separately stated charges for delivery by the vendor and vendor standby time are not taxable. ()

02. Agricultural Irrigation. Materials purchased for agricultural irrigation are exempt from sales tax whether purchased by the farmer, contractor, or subcontractor. This exemption applies even if the material is permanently affixed to real estate, such as concrete used to line ditches or ponds. See Rule 096 of these rules. The buyer must provide the seller with an exemption certificate. See Rule 128 of these rules. ()

03. Production Exemption. The retailer who produces and sells asphalt or concrete may qualify to claim the production exemption on equipment and supplies used directly to produce the concrete or asphalt for resale. See Rule 079 of these rules. However, trucks used by a ready-mix operator do not qualify for the production exemption because they are used for transportation. Although they may incidentally contribute to the manufacture of the final article, purchases of the truck, trailer, and the truck-mounted concrete mixer, which becomes a part of the motor vehicle, are not exempt from the tax. ()

017. AIRLINES, BUSES, AND RAILWAY DINING CARS (RULE 017).

Sections 63-3612, 63-3613, 63-3621, Idaho Code

01. Sale of Meals. The sale of meals or drinks that are not included in the price of the ticket on commercial aircraft, railway dining cars or buses operating in Idaho is a retail sale. An airline, bus company or passenger train is operating in Idaho if a trip starts or ends in Idaho and part of the trip can be allocated to Idaho. ()

02. Taxable Sales. The gross receipts of such a sale are taxable when the meals, beverages or other tangible personal property are ordered or served within the boundaries of Idaho. It does not matter whether the meals and other property are consumed in Idaho. ()

03. Formula for Taxable Sales. A formula may be used to determine the taxable sales of meals and beverages on the trip if accurate records of actual sales are not kept. The formula is: first, find the percentage of trip miles in Idaho in relation to the total mileage of the trip; and then, multiply this percentage by the total sales of meals or beverages served on the entire trip. ()

04. Meals, Snacks, Beverages or Other Tangible Personal Property. When the price of an airline, bus, or railway ticket includes meals, snacks, beverages, or other tangible personal property, the cost of these goods is subject to use tax. An airline, bus company, or railway that purchases these goods in Idaho, pays Idaho sales tax to the vendor, regardless of where the goods will be distributed to passengers. If these goods are purchased in another state and no sales or use tax has been paid to that state, the cost of the goods distributed to passengers on trips that start or end in Idaho is subject to use tax. In the absence of accurate records, the provider may determine taxable use based on trip miles determined by the formula in Subsection 017.03 of this rule. ()

018. RETAILER DEFINED (RULE 018).

Sections 63-3610, 63-3611, 63-3614, 63-3620, 63-3620F, 63-1804, Idaho Code

01. Retailer. The term retailer is defined in Section 63-3610, Idaho Code. A retailer includes a seller as defined in Section 63-3614, Idaho Code as every person making retail sales to a buyer or consumer, whether as agent, broker, or principal. ()

02. Retailer Engaged in Business in this State. A retailer engaged in business in this state is anyone required to collect and remit Idaho sales and use tax pursuant to Section 63-3611, Idaho Code. ()

03. Retailers Selling Incidental Tangible Personal Property. A person may be a retailer within the meaning of the act although the sale of tangible personal property is incidental to their general business. For example, a plumbing contractor may sell some plumbing supplies as a sideline and thereby become a retailer within the meaning of this act. ()

04. Farmers. Farmers who ordinarily sell their grain, livestock and other horticultural products for resale or processing are not taxable. However, when they sell to ultimate consumers or users, they must obtain a seller's permit and report sales tax on their taxable sales. ()

05. An Agent as a Retailer. Where there is a written agreement between a principal and their agent, dealer or other third party, and such agreement stipulates that the agent, dealer or other third party will be responsible for collection, reporting and payment of sales tax generated by sales, the Tax Commission will treat the position of the agent, dealer or third party as that of a retailer and impose on them the burden of collecting, accounting for, and paying the sales tax to the State Tax Commission. ()

a. However, if for example, a milk route salesman, without such an agreement, makes regular deliveries, collects for the products, and sales tax is included in the total proceeds collected and remitted to the principal for proper crediting, accounting, discounts, etc., then it is the responsibility of the principal to relay the sales tax with proper reporting forms as prescribed by law. ()

b. In some instances, such as the above, and the example of a newspaper delivery boy, the sales are actually made on behalf of the dairy and the newspaper company respectively. In the absence of any such written agreement, the Tax Commission will look to the principal as being responsible for the reporting and payment of the sales tax. ()

019. SALES BY COUNTY SHERIFFS (RULE 019).
Sections 63-3612, 63-3620, Idaho Code

01. Sales. A county sheriff who sells tangible personal property, either as a result of a court order or pursuant to any summary notice and sale foreclosure procedure, will collect and remit sales tax in the same manner as a retailer engaged in business in this state. ()

02. Requirement to Register. There is no requirement for the various sheriff's offices to register with the Commission. Each sheriff's office in the state of Idaho is assigned a seller's permit number and must file Form 850 returns quarterly. ()

020. AUCTIONEER, AGENT, BROKER, DISTRIBUTOR AND FACTORS (RULE 020).
Section 63-3610, Idaho Code

Every auctioneer, agent, broker, distributor and factor acting for a principal, or entrusted with any bill of lading, custom house permit for delivery or any tangible personal property or entrusted with possession of any tangible personal property for the purpose of sale, collects and remits sales tax on those sales. This is true even if the principal or owner of the property would not have had a requirement to do so. ()

021. MULTI-LEVEL MARKETING FIRMS (RULE 021).
Sections 63-3610, 63-3612, Idaho Code

01. Multi-Level Marketing Firm. A multi-level marketing firm is an organization that can convey to a person the right to sell a product and the right to convey those rights to another person. ()

02. Agents. The Idaho Sales Tax Act provides the Commission with the authority to view salesmen, representatives, peddlers, or canvassers as agents of the dealers or distributors under whom they operate or from whom they obtain the tangible personal property sold by them, even if such persons are independent contractors. The Commission may require the dealers or distributors to collect and remit the sales tax on behalf of such agents. ()

03. Requirement of Multi-Level Marketing Firms to Collect Tax. The Commission may, upon the request of the multi-level marketing firm or when it finds evidence of material failure to comply with the Idaho Sales

Tax Act or these rules and when the Commission determines that it is necessary for the efficient administration of such act, require multi-level marketing firms to collect the sales and use tax on all taxable property sold by the multi-level marketing firm through such agents, whether or not the agents are independent contractors. ()

04. Notification. The Commission, upon determination that a multi-level marketing firm is required to collect the tax on taxable sales through its agents, will provide to the multi-level marketing firm, by certified mail, a notification of the sales and use tax remittance requirements imposed by the Commission. ()

a. Beginning with the first reporting period after receipt of the notice, the multi-level marketing firm is responsible for collecting and remitting tax on all sales made by its agents. ()

b. A taxpayer desiring to seek a redetermination of the notice must file a written protest with the Commission within the time limit provided in Section 63-3631, Idaho Code and under the procedures provided by IDAPA 35.02.01.320 - 328, "Tax Administration and Enforcement Administrative Rules." ()

022. DROP SHIPMENTS (RULE 022).

Sections 63-3615A, 63-3619, 63-3620, 63-3621, & 63-3622, Idaho Code

01. In General. Drop shipments refer to shipments made by a seller to someone other than its buyer. For example, a Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate buyer and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer may or may not be required to have an Idaho seller's permit. If the Manufacturer sells directly to the Customer without the presence of a retailer, the Manufacturer is acting as a retailer and the transaction is not a drop shipment. ()

02. Parties to the Contract. The Idaho sales tax is imposed upon sales transactions. Since there is no sales transaction between the Manufacturer and the Customer, the Manufacturer will not be required to collect and remit sales tax from the Customer. ()

03. Sales Tax Responsibilities of the Permitted Manufacturer. If the Manufacturer is required to have a valid Idaho seller's permit, it has sales tax responsibilities as to the sales transaction between itself and the Retailer. ()

a. If the Retailer has an Idaho seller's permit, it will be necessary for the Retailer to provide the Manufacturer with a resale certificate evidencing its intentions to resell Product X. If the Retailer does not provide the resale certificate, then the Manufacturer charges Idaho sales tax on the sale of tangible personal property sold to the Retailer and delivered in Idaho. If the Retailer provides a resale certificate, the Retailer then charges the Customer Idaho sales tax and remits the tax to the Commission together with a proper return. ()

b. If the Retailer is not required to have an Idaho seller's permit, a resale certificate from the Retailer to the Manufacturer is unnecessary. If the Retailer has no nexus with the state of Idaho, it can accrue no sales tax liability and the sale between the Manufacturer and the Retailer is not subject to the jurisdiction of the Commission. The Manufacturer must obtain evidence of this fact in the form of a letter from the Retailer stating that they have no nexus in Idaho or by any other clear and convincing evidence. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. The Customer will be required to file a use tax return and report and remit the use tax on the purchase of Product X. ()

04. Sales Tax Responsibilities of the Unpermitted Manufacturer. If the Manufacturer does not have and is not required to have a valid Idaho seller's permit, it has no sales tax responsibilities as to the sales transaction between itself and the Retailer. ()

a. If the Retailer has an Idaho seller's permit, the Retailer charges the Customer Idaho sales tax and remits the tax to the Commission together with a proper return. ()

b. If the Retailer is not required to have an Idaho seller's permit, the Retailer is under no responsibility to collect Idaho sales tax from the Customer. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and report and remit the use tax on the purchase of Product X. ()

c. The matrix below outlines the sales tax responsibilities of the Manufacturer:

	Retailer (Permitted)	Retailer (No Permit Required)	Customer
Manufacturer (Permitted)	Obtain ST-101 or Collect Tax	Obtain Letter of No Nexus or Collect Tax	Do Not Collect Tax from Customer / Use Tax Owed by Customer
Manufacturer (No Permit Required)	Do Not Collect Tax	Do Not Collect Tax	Do Not Collect Tax from Customer / Use Tax Owed by Customer

()

05. Sales Tax Responsibilities of the Retailer. If the Retailer is required to have a seller's permit, it is responsible for collecting sales tax from the Customer. If the Retailer is not required to have a seller's permit, it is not responsible for collecting sales tax from the Customer. The Customer is responsible to pay use tax to the State of Idaho if purchased from an unpermitted retailer. ()

a. The matrix below outlines the sales tax responsibilities of the Retailer:

	Manufacturer (Permitted)	Manufacturer (No Permit Required)	Customer
Retailer (Permitted)	Provide Valid Resale Certificate	None	Collect Tax from Customer
Retailer (No Permit Required)	Give Letter of No Nexus	None	Do Not Collect Tax from Customer / Use Tax Owed by Customer

()

06. Resale Certificate. If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission if the rules set forth in Rule 128 of these rules are met. ()

023. (RESERVED)

024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).

Sections 63-3612, 63-3613, 63-3616, 63-3622UU, Idaho Code

01. In General. The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. ()

02. Bare Equipment Rental. A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer with a requirement to collect and remit Idaho sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment

owner who primarily rents bare equipment may buy the equipment without paying tax to the vendor by giving the vendor a resale certificate. See Rule 128 of these rules. If the equipment owner uses the equipment for his own benefit or in his own business operations, the equipment owner pays use tax based on a fair market rental value for the period during which he used his own equipment. ()

03. Fully Operated Equipment Rentals. ()

a. A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. ()

b. A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies the equipment or property along with an operator, and the property supplied is of no value to the customer without the operator. ()

c. The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is taxable when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See Rule 073 of these rules. ()

d. If the equipment or property has value to the customer without an operator, then the lease or rental of the equipment or property is a distinct transaction. It is taxable and its price must be stated separately from the price of the service provided by the operator. ()

e. Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the operator, so the leasing company is not required to charge sales tax on the lease of the crane. ()

f. Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a taxable lease. ()

04. Mixed Use of Rental Equipment. ()

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, the equipment owner is the consumer of the equipment while it is used by the operator to perform a service contract. Accordingly, the equipment owner must pay use tax on the fair market rental value of the equipment for that period of time unless he paid tax when he bought the equipment. ()

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he charges sales tax on the rental of the bare equipment even though tax was paid on the original purchase of the property. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. ()

05. Operator Required to Be Paid by Customer. In some cases, an equipment owner supplies equipment along with an operator but a contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental needs to be clearly stated on the face of the invoice or other billing document. The Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. ()

06. Maintenance of Rental Equipment. If the owner who primarily rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. ()

07. Rentals to Exempt Entities. The rental or lease of equipment invoiced directly to an entity exempt

from sales tax, such as the state of Idaho or one (1) of its political subdivisions, is not taxable. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. ()

08. Exempt Equipment Rentals. Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter provides the owner with a properly completed exemption certificate. See Rule 128 of these rules. ()

09. Rental Payments Applied to Future Sales. Rentals to be applied toward a future sale or purchase are taxable. ()

10. Personal Property Tax. A lessor may require reimbursement from the lessee for the personal property tax the lessor pays on leased equipment. A charge for personal property tax will be exempt from sales tax if the lease is for a term of one year or longer; if the property tax is billed as a separate line item; and if the charge is no more than the property tax actually paid by the lessor. ()

11. Out-of-State Rental/Lease. Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. ()

12. Lease-Purchase and Lease with Option to Purchase. ()

a. Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated term of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. ()

b. Lease with option to purchase agreements include transfers in which the personal property owner, lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property at fair market value. The owner/lessor collects sales tax from the lessee at the time each lease payment is charged. If the lessee exercises the option to buy, the lessor/owner collects sales tax from the lessee/buyer on the full remaining purchase price when the option is exercised. ()

13. Cross-References. ()

a. See Rule 025 of these rules on real property rental. ()

b. See Rule 037 of these rules on aircraft and flying services. ()

c. See Rule 038 of these rules on flying clubs. ()

d. See Rule 044 of these rules on trade-in for rental or lease property. ()

e. See Rule 049 of these rules on warranties and service agreements. ()

f. See Rule 073 of these rules on transient equipment. ()

g. See Rule 106 of these rules on motor vehicles. ()

025. THE SALE, LEASE, OR RENTAL OF REAL PROPERTY (RULE 025).
Section 63-3612, Idaho Code

01. In General. The sale, lease, or rental of real property, including office space, living space, lockers, boat docks, billboards, parking spaces, spaces for booths at fairs, and real property storage spaces is not taxable. ()

02. Hotel, Motel, and Campground Accommodations. The charge for providing hotel, motel, and campground accommodations is taxable as provided by Section 63-3612, Idaho Code. See Rule 028 of these rules.

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026. (RESERVED)

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:

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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 buyer, 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.

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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.

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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.

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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.

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e. Computer Software. Computer software, or simply software, is defined as any of the following:

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i. A computer program;

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ii. Any part of a computer program;

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iii. Any sequence of instructions that operates automatic data processing equipment; or

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iv. Information stored in an electronic medium.

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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 needs.

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g. Digital Product. See definition for "Information Stored in an Electronic Medium" in Subsection 027.01.h.

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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."

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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.

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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. ()

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. ()

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. ()

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. ()

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. ()

b. Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 and 027.07 of this rule. ()

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 included in the taxable price. ()

04. Remotely Accessed Computer Software. Remotely accessed computer software is not tangible personal property and charges to use or access such software are not taxable. ()

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the buyer 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 buyer will be entitled to telephone or on-site support services. ()

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is taxable if the software to which the contract applies is taxable. 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 will be controlling. ()

b. If the maintenance contract is optional to the buyer of canned software: ()

i. Then only the portion of the contract fee representing upgrades is taxable if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; ()

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 taxable; ()

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; ()

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. ()

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 receives software updates on storage media. ()

06. Digital Products. Digital music, digital books, digital videos, and digital games are tangible personal property regardless of the delivery or access method but only if the buyer has a permanent right to use the digital music, digital books, digital videos, or digital games. Where the buyer has a permanent right to use these digital products, the sale is taxable. Leases or rentals of these digital products are not taxable. ()

a. Other than digital music, digital books, 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. ()

b. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is taxable if the buyer 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. ()

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 are not taxable. ()

08. 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 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 taxable 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 buyer electronically. ()

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. ()

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 taxable. ()

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, taxable. ()

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. ()

e. Charges for copies produced by means of photocopying, multilithing, or by other means are

taxable. ()

09. Online or Remote Data Storage. Charges to store data on storage media owned and controlled by another party is a nontaxable service. ()

10. Training Services. Separately stated charges for training services are not taxable, 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. ()

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

b. When training materials are provided at no cost to the buyer 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. ()

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 is required to pay sales tax or accrue and remit use tax. ()

11. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not taxable. 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 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. ()

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. ()

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. ()

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. ()

12. 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. ()

028. HOTELS, MOTELS AND CAMPGROUNDS (RULE 028).

Sections 63-1801 through 63-1804, 63-3612(2), 67-4718, 67-4917B, 67-4917C, Idaho Code

01. Fees. Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Travel and Convention taxes and may be subject to the Auditorium or Community Center District sales tax. This includes fees collected for short-term rentals and vacation rentals even when the sale is facilitated by a short-term rental marketplace. These taxes are explained in IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." ()

02. Resale Purchases. Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds may purchase tangible personal property for consumption by their customers without paying tax if the tangible personal property 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. Hotels, motels, lodging operators, short-term rentals, vacation rentals, and

campgrounds must provide a resale certificate to their vendor when purchasing such items for resale. Examples include: ()

- a. Facial tissue, toilet tissue, disposable laundry pickup bags, and paper napkins. ()
- b. Soaps, hair shampoo, hair conditioners, and lotions. ()
- c. Disposable plastic drinking glasses, disposable plastic utensils, disposable shoe shine cloths, and disposable shower caps. ()
- d. Candies, beverages, meals, and newspapers furnished with the room. ()
- e. Room stationery, envelopes, notepads, and matches. ()

03. Taxable Purchases. Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is taxable when purchased by the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. Taxable purchases include property not directly consumed by the customer, property that is not disposable in nature, or property that is depreciated in the books and records of the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. The hotel, motel, lodging operator, short-term rental, vacation rental, or campground is the user and consumer of such supplies and equipment and will pay sales tax on the purchase of such items. Examples include: ()

- a. Bath towels, bath mats, linens, and bedding. ()
- b. Glassware, silverware, and china. ()
- c. Furniture and fixtures. ()
- d. Bibles, room service menus, and directories. ()
- e. Garbage can liners. ()
- f. Any tangible personal property available to the general public. ()

029. PRODUCING, FABRICATING, AND PROCESSING (RULE 029).

Section 63-3612, Idaho Code

01. In General. Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving. ()

a. Example 1: An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price. ()

b. Example 2: An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker. ()

c. Example 3: An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving is taxable. ()

d. Example 4: A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge. ()

e. Example 5: An individual takes a beef to a packing plant and requests that the meat be processed by cutting, wrapping, and freezing the meat to the buyer's specification. The total price paid for this processing is taxable. ()

f. Example 6: A hunter takes a deer to a business which processes smoked meats. Although the material consumed in the smoking process may be minimal, the entire price paid for this processing is taxable. ()

02. Repairing and Reconditioning Distinguished. Producing, fabricating, and processing includes any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced. ()

03. Cross-References. ()

a. Repairs and Renovation of Tangible Personal Property. See Rules 011 and 062 of these rules. ()

b. Fabrications by Contractors. See Rule 012 of these rules. ()

030. ADMISSIONS DEFINED (RULE 030).
Section 63-3612, Idaho Code

01. Admissions. Charges for admission to a place or event in Idaho include the right to remain in a place or use a seat or table or other similar accommodation and are taxable. The charge to gain access to a place or event is taxable whether that charge is designated as a cover charge, minimum charge or any such similar charge. ()

a. When charges for admission allow access to a place or event for a limited period, any additional charge to extend that time is admission and is taxable. ()

b. When a person or organization acquires the sole right to use any place or the right to dispose of or control the admissions to any place with the intent to charge people to attend the event, the amount paid for such right is not subject to sales tax. Such a transaction constitutes a rental for resale. However, when the person or organization sells admission, the tax will apply to the amounts paid for such admission. If the person or organization does not charge people to attend the event, their rental of the recreational facility may be taxable. See Rule 129 of these rules. ()

02. Rental of Tangible Personal Property. When a charge is made only for the rental of tangible personal property such as skates, golf clubs, etc., the rental will be taxable. If a lesser charge is made to a person not desiring to use the property or services offered, this lesser amount will be deemed to represent the amount charged for admission. ()

031. RADIO AND TELECOMMUNICATIONS EQUIPMENT AND LAND MOBILE RADIO SERVICE OF SYSTEMS (RULE 031).
Sections 63-3612, 63-3621, Idaho Code

01. General Rule and Scope. The sale, rental or lease of communication equipment and land mobile radio systems are taxable. This rule describes sales and use tax treatment of telephone terminal equipment or services and land mobile radio systems or service. ()

02. Telephone Terminal Equipment and Services. ()

a. The sale, rental, or lease of telephone terminal equipment is taxable. Telephone terminal equipment

includes, but is not limited to, desk sets, PBX systems, automated answering equipment, cellular telephones and mobile radio telephones. ()

b. Fees for access charges, toll charges, call waiting, call forward, message recording, and similar charges to customers are not taxable. ()

03. Land Mobile Radio Systems or Services. Land mobile radio systems and services, defined by 47 CFR § 90.7, are a regularly interacting group of base, mobile and associated control and fixed relay stations intended to provide land mobile radio communications service over a single area of operation. ()

a. The sale, rental, or lease of terminal equipment or equipment located on the customer's premises is taxable. The equipment includes handsets, mobile telephones, antennae, and like or similar property. ()

b. Separately stated fees for the installation of terminal equipment or equipment that will be located on the customer's premises or is not taxable. ()

c. Separately stated fees for access charges, toll charges, and similar charges are not taxable. ()

04. Provider Equipment. The owner or provider of telephone or land mobile radio systems and services must pay a sales or use tax on any tangible personal property purchased for the use of the business. This includes but is not limited to; equipment or tangible personal property used in receiving or transmitting, excluding the equipment referenced in Subsection 031.02.a., office supplies, repair equipment, accounting or customer billing equipment, and equipment or devices or other property used to maintain or repair land mobile radio systems or services. ()

05. Drop-In Equipment and Inside Wiring. The installation of the drop-in equipment and inside wiring useful or necessary to bring telephonic or radio communication transmissions from a source outside the premises of the user, for example, telephone pole or transmitter, to terminal equipment within the user's premises is an improvement to real property and anyone performing the installation is a contractor. Drop-in equipment and inside wiring includes, but is not limited to, wires, plugs, sockets, receptacles, connectors and similar items. See Rule 012 of these rules for tax treatment of contractors. ()

06. Wireless Telecommunications Equipment. A retailer may give away wireless telecommunications equipment as an incentive to start or continue a contract for telecommunications service. Such a use is exempt from tax pursuant to Section 63-3621(a), Idaho Code. For the purposes of this exemption "telecommunications service" means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information that is offered to the public for compensation. "Telecommunication service" does not include the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, necessary for the selection of such video programming or other programming service, surveying, internet service, alarm monitoring service, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services). ()

032. (RESERVED)

033. SALES OF NEWSPAPERS AND MAGAZINES (RULE 033).
Sections 63-3610, 63-3612, 63-3613, 63-3622, Idaho Code

01. Subscriptions. Subscriptions to newspapers and magazines are sales of tangible personal property. The sale will be taxed if the single copy price of each newspaper or magazine purchased by the subscriber exceeds eleven cents (\$0.11). The single copy price is to be computed on an annual basis regardless of whether the subscription is paid weekly, monthly or on some other periodic basis. ()

02. Single Copy Price. The single copy price is to be computed according to the following formula. (Published subscription price) x (Number of subscription periods in one (1) year) / (Number of issues a subscriber receives in one (1) year) = Single Copy Price. If the single copy price as computed exceeds eleven (\$0.11) cents, the

subscription is taxable. If the single copy price is eleven cents (\$0.11) or less, the subscription price is not taxable.

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03. Computation of Tax. If the subscription price is taxable, the tax is to be computed on the subscription price according to the schedule contained in Section 63-3619, Idaho Code.

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04. Subscription Price. As used in this rule, the terms published subscription price and subscription price mean the total amount charged for purchase and delivery of the newspaper and magazine, except that separately stated postage is to be excluded from the taxable subscription price. It is acceptable business practice for publishers to establish a price for their newspapers as separate weekday-only and Sunday-only issues. The provisions of this rule will be in effect in such cases. When the price is posted as a combined weekday-Sunday price, sales tax will be charged on the combined subscription price.

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05. Individual Sales. Individual or separate sales of newspapers or magazines, except as provided in Subsection 033.06 of this rule for a single price of eleven cents (\$0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents (\$0.11) are taxable according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together with taxable retail sales or other taxable tangible personal property is taxable if the total sales price of all taxable property included in the sale exceeds eleven cents (\$0.11).

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06. Vending Machine Sales. Sales of newspapers or magazines through a vending machine are governed by the provisions of Section 63-3613, Idaho Code, and Rule 058 of these rules, except when the cost of the newspaper is greater than the sales price, tax will be computed on the retail sales price.

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07. Independent Retailer Sales. The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See Rule 128 of these rules. The incidence of sales tax then falls upon the independent retailer who has a seller's permit and will be responsible for collecting and remitting the sales tax on all newspapers thus purchased and resold.

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08. Carriers Less Than Sixteen Years Old. If the carrier is less than sixteen (16) years old, the publisher or other seller's permit holder from whom he or she obtains the newspapers will be responsible for the collection of sales tax and remitting such taxes to the Commission.

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09. Product Consumed by the Publisher. Eight-tenths of one percent (0.8%) of net press run of newspapers or magazines, will be taxed as product consumed by the publisher. Any percentage figure below eight-tenths of one percent (0.8%) is to be supported by accepted accounting methods generally used in the publishing industry. The value of the newspapers used is set at the retail price charged the consumer. Example: (Eight tenths of one percent (0.8%) of Daily Net Press Run) x (Single Copy Retail Price) x (Tax Rate) / Daily Net Press Run = Tax Per Copy.

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10. Single Unit Price and Net Press Run. For purposes of the computation in Subsection 033.09 of this rule single copy price is the amount computed by the formula in Subsection 033.02 of this rule. Net press run is all readable, usable copies, including editorial copies, tearsheets, and archival copies, and excluding spoiled runs or printing waste.

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11. Cross-Reference.

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a. See Rule 058 of these rules, Sales Through Vending Machines.

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b. See Rule 127 of these rules, Free Distribution Newspapers.

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c. See Rule 128 of these rules, Certificates for Resale and Other Exemption Claims.

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034. (RESERVED)

035. LAYAWAY SALES (RULE 035).
Sections 63-3612, 63-3613, Idaho Code

01. In General. Sales tax must be collected on the total sales price of the items on layaway at the time of sale. ()

02. The Time a Sale Occurs. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. ()

a. The sales tax is accrued and remitted to the state based on the tax rate in effect at the time of sale. ()

b. Separately stated nonrefundable layaway service charges are not taxable. ()

036. SIGNS AND BILLBOARDS (RULE 036).
Sections 63-3609, 63-3612, 63-3613, 63-3622, Idaho Code

01. Signs and Billboards as Custom Made Articles. The fabrication, manufacturing, lettering, etc., of advertising or informational signs of whatever description, including, but not limited to, neon signs, display lettering on trucks, display cards, show cards, etc., are considered made-to-order goods or custom made articles and as such are subject to sales tax based upon the total sales price of the completed sign to the user. The sales price includes both material and labor. ()

02. Lease or Rental of Signs. The lease or rental of signs is taxable and sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which in fact a sale, will be treated as a sale and tax collected on the entire sales price at the date upon which the contract is executed. ()

03. Material That Becomes Part of a Sign. The sale of advertising signs may consist of a mixed transaction including both a sale of tangible personal property and a sale of real property. ()

a. Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. Both the materials and labor necessary to fabricate the sign are taxable. Therefore, the entire price of the tangible personal property sold will be taxable to the customer. ()

b. Signs may be attached to poles or mountings that are affixed to real property in such a way that they are intended to remain in place and become a real property improvement. The person installing materials into real property is acting as a contractor and is the consumer of the materials installed, such as the concrete or sign poles. The contractor owes a sales or use tax on the purchase of these materials. ()

04. Road Signs. Road signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of road signs include traffic signs such as speed limit signs and stop signs; street signs; recreational area signs; highway signs such as mileage signs and exit signs; and highway exit service information signs. ()

a. In general, road signs become real property upon installation. Consequently, an installer of road signs acts as a contractor improving real property when performing the installation work. Therefore, a road sign installer is the consumer of all materials used in the installation of the road sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials or had the sign materials provided by the sign owner. However, if the sign owner has already paid sales or use tax on its purchase of the sign materials, the installer will not owe any additional use tax. ()

b. Alternatively, if a road sign is intended to serve a temporary purpose, the road sign does not become real property regardless of the nature of its purpose or how the road sign is affixed to real property. ()

i. Example 1: A contractor installs a stop sign on behalf of a public transportation department to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to the public transportation department. The stop sign remains tangible personal

property while installed. Therefore, the contractor does not owe use tax. ()

ii. Example 2: A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as "Be Prepared to Stop." The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs is taxable to the contractor. ()

05. Custom Painting Directly on Real Property. A sale of custom painting of displays, graphics or signs directly on walls or windows of a building is not considered to be a retail sale of tangible personal property and is not taxable. The sign painter pays sales or use tax on purchases of materials used to paint these custom displays, graphics or signs. ()

06. Billboards. Billboards, which are also referred to as twenty-four (24) sheet posters and painted billboards, are not in the same category as signs covered in this rule. The rental of a billboard is not a rental of tangible personal property under the Idaho Sales Tax Act. Material used in the construction, erection, painting, and maintenance of a billboard is taxable. ()

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

Sections 63-3607A, 63-3612, 63-3613, 63-3622C, 63-3622GG, Idaho Code

01. Definitions. For the purposes of this rule, the following terms have the following meanings: ()

a. Aircraft. The term aircraft means any contrivance now known or hereafter invented, used, or designed, for navigation of or flight in the air. ()

b. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. ()

c. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.06 of this rule. ()

d. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. ()

e. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. ()

f. Nonresident Businesses and Other Organizations. 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. 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 aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. ()

g. Day. For the purpose of this rule any part of a day is a day. ()

h. Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. ()

i. Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a

rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. ()

- j. Public. The public does not include: ()
 - i. Owners or operators of the aircraft; ()
 - ii. Employees of the aircraft owner or operator; ()
 - iii. Guests of the aircraft owner or operator; ()
 - iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; ()
 - v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or ()
 - vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. ()

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: ()

- a. Primarily used to provide passenger or freight services for hire as a common carrier; ()
 - i. Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time. ()
 - ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 50 = 110 hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. ()
- b. Primarily used for emergency transportation of sick or injured persons; ()
- c. That is a fixed-wing aircraft primarily used as an air tactical group supervisor platform under a contract with a governmental entity for wildfire activity; or ()
- d. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: ()
 - i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and ()
 - ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. ()

03. Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts, including those paid for under a warranty or service agreement, are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. ()

04. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. ()

05. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a taxable sale, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. ()

06. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. ()

a. Aircraft purchased, rented, or leased for aerial contracting are taxable. It makes no difference if the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. ()

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. ()

07. Air Ambulance Service. Charges for the emergency transportation of sick or injured persons, including standby time, are not taxable. ()

08. Flying Instructions. Flying instructions or lessons which may include solo flights are a service and the fees are not taxable. ()

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are taxable. ()

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. ()

09. Recreational Flights. Sales and purchase of aircraft used primarily for providing recreational flights are taxable. ()

10. Aircraft Held for Resale. Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. ()

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.05 of this rule. ()

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. ()

c. Parts and oil purchased to repair or maintain aircraft held for resale are not taxable. The aircraft dealer provides the supplier with a properly completed resale certificate. See Rule 128 of these rules. ()

11. Fuel. The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. ()

038. FLYING CLUBS (RULE 038).

Sections 63-3612, 63-3613, 63-3622, Idaho Code

01. In General. A flying club is an association of persons who have purchased or leased aircraft for the purpose of renting the aircraft to club members. The aircraft rentals to the club members are considered bare equipment rentals and are taxable at a reasonable rental value. ()

02. Rental or Sale of Aircraft to Members. The flying club is a retailer who is required to obtain a seller's permit and collect and remit sales tax. The sales tax, at the prevailing tax rate, is to be collected by the flying club and remitted to the Commission in the manner prescribed for other retailers. The tax is applicable whether the aircraft is sold or is rented on an hourly, daily, weekly, monthly, or any other basis. The flying club, primarily engaged in the business of making bare equipment rentals to club members, may purchase or lease the aircraft without paying sales tax by giving to its vendor a valid resale certificate as required by Rule 128 of these rules. ()

03. Other Charges to Members. Charges for membership fees are generally taxable. If the membership fee is in no way related to the rental of the aircraft, the fee is not taxable. Charges for flight instruction, if such charges are separately stated, are not taxable. However, charges for logbooks and flight instruction manuals are taxable. ()

04. Aircraft Repair Parts. If the flying club is responsible for the maintenance of the aircraft, the club may purchase the necessary repair and replacement parts without paying tax by providing a valid resale certificate. See Rule 128 of these rules. ()

05. Cross-Reference. Aircraft and Flying Services see Rule 037 of these rules. ()

039. BULLION, COINS, OR OTHER CURRENCY (RULE 039).

Sections 63-3612, 63-3613, 63-3622V, Idaho Code

01. Sales and Purchases of Bullion. Sales and purchases of precious metal bullion and monetized bullion are exempt from sales tax. ()

a. Precious metal bullion is an elementary precious metal, such as gold, silver, platinum, rhodium and chromium which has been processed by smelting or refining and where the value of the metal depends upon the content and not upon its form. ()

b. Monetized bullion is a coin made of gold, silver or other metals which has been, is or will be used as a medium of exchange under the laws of this state, the United States or any foreign nation. ()

02. Jewelry or Other Works of Art. The exemption does not extend to coins or money sold to create jewelry or other works of art. The exemption also does not extend to sales of coins whose values may be determined by their form, and which are not minted or manufactured as currency. ()

a. Sales of medallions, tokens or other coins created to commemorate a historical event are taxable. However, sales of Idaho commemorative medallions through the Office of the Treasurer of the state of Idaho or its agents are exempt pursuant to Section 63-3622PP, Idaho Code. ()

b. Sales of precious metal ingots are exempt from sales tax. Sales of jewelry items, such as belt buckles, bracelets or necklaces, containing silver dollars or other legal tender or ingots are taxable. ()

c. Sales of coins, such as Krugers the one (1) ounce gold coins of the Republic of South Africa, are exempt, unless incorporated into a jewelry item or other decoration. ()

040. PROFESSIONAL TAXIDERMIST (RULE 040).

Sections 63-3612, 63-3613, Idaho Code

01. In General. The taxidermy profession is subject to Idaho sales and use tax under the category of custom made items. The underlying reason for the custom made section of Idaho Code is to equalize the tax on custom made items to those that could be purchased and sold in channels of trade. When buying an item fabricated

from either a hide or fur pelt, the purchase price is based on the full cost of material and labor. In the instance of the taxidermy profession, the untanned pelt of hide would be the basic raw material from which the finished product was fabricated. ()

02. Fabrication. A deerskin brought to the taxidermist for tanning should be taxed on the price charged by the taxidermist for tanning. If later that tanned skin is taken to a business that fabricates either gloves, moccasins, or jackets, again the fabricator should charge tax on the cost of fabricating the tanned hide making the total tax on the item fabricated comparable with the deerskin, gloves, etc., purchased from a retail store. This also would apply to the mounting of antlers, etc., and even to the making of full mounts of animals. At the time the taxidermist receives the head, the antlers, etc., of the animal from the customer, he has received only a basic piece of material that would be useless until he performs certain functions to place it in a usable or finished condition. ()

03. Materials. All materials, such as mounting material, tanning material, and preservatives may be purchased by the taxidermist tax exempt since he will charge tax on the finished product. He may provide his supplier with a resale certificate. See Rule 128 of these rules. ()

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

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. ()

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 are to collect and remit Idaho sales tax on all taxable sales. Taxability of membership dues depends upon what is provided as a part of the membership dues. Special rules apply to religious organizations. See Rule 086 of these rules. ()

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. The organization holding the function or convention is required to collect and remit Idaho sales tax. 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). Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. ()

b. 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 collect and remit the tax to the state. ()

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. ()

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 is 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. ()

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

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 are taxable. 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. ()

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 taxable. ()

b. If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become taxable and the fraternity or sorority is to obtain an Idaho seller's permit. ()

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. ()

06. Boarding Houses. Sales of meals furnished by boarding houses are taxable, when they are charged separately. This applies even if 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. ()

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 taxable. ()

a. Sales tax applies to the total sales. The posted price is to include a statement that sales tax is included. ()

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

08. Church Organizations. Special rules apply to religious organizations. See Rule 086 of these rules. ()

09. Senior Citizens. Meals sold under programs that provide nutritional meals for the aging under Title III of the Older Americans Act, Public Law 109-365, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals are to obtain an Idaho seller's permit and collect sales tax when selling meals to buyers who are not senior citizens. ()

10. Food or Beverage Tastings. If a participant pays to participate in a food or beverage tasting, the charge to participate in the tasting is taxable. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. ()

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 is 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: ()

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

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

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. ()

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 taxable 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: ()

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. ()

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

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. ()

042. PRICE LABELS (RULE 042).

Price labels, stickers, pricing ink, pricing guns and shelf labels purchased by retailers are property used and consumed by the retailer in the regular course of business and are taxable. Pricing labels that contain product information such as ingredients, nutritional information, or caloric information are not taxable, since the utility of the label does not end with the purchase of the product. ()

043. SALES PRICE OR PURCHASE PRICE DEFINED (RULE 043).

Sections 63-3612 and 63-3613, Idaho Code

01. Sales Price and Purchase Price. The term sales price and purchase price may be used interchangeably. Both mean the price paid by the customer or user to the seller including: ()

a. The cost of transporting goods to the seller. See Rule 061 of these rules. ()

- b.** Manufacturer's or importer's excise tax. See Rule 060 of these rules. ()
- c.** Services agreed to be rendered as part of the sale. ()
- d.** Separately stated labor charges to produce or fabricate made to order goods. See Rule 029 of these rules. ()

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services agreed to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items: ()

a. Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation except those exempted in Section 63-3622OO, Idaho Code. ()

b. Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. ()

c. Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. ()

d. Any charges for warranties, service agreements, insurance coverage, or other services required by the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these charges, the charges are not part of the sales price if separately stated. Also, see Rule 049 of these rules. ()

e. Any fuel surcharges except those charges which the vendor can document are related only to delivery of the property to the end customer. ()

f. Any environmental or disposal fee except those fees directly imposed by a governmental agency. ()

03. Charges Not Included. Sales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price. ()

04. Gratuities. When a gratuity is paid in addition to the price of a meal, no sales tax applies to the gratuity. A gratuity can be paid voluntarily by the customer or be required by the seller. A gratuity is also commonly known as a tip. ()

- a.** If a gratuity does not meet all of the following requirements, the gratuity will be taxable: ()

 - i.** It is paid to the service provider of the meal as additional income to the base wages of the service provider; ()
 - ii.** It is separately stated on the receipt or be voluntarily paid by the customer; and ()
 - iii.** It is not used to avoid sales tax on the actual price of the meal. ()
- b.** For the purposes of Subsection 043.04 of this rule, the following definitions apply: ()

 - i.** Meal. Food or drink prepared for or provided to a customer. ()

ii. Service provider. An individual directly involved in preparing or providing a meal to a customer. This includes, but is not limited to, the server, the busser, the cook and the bartender. This does not include individuals who manage or own the company if they are not directly involved in preparing and providing a meal.

()

05. Service Charges. Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, are included in the taxable sales price, even if the service charges are made in lieu of tips and paid over by the retailer to his employees.

()

044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).

Sections 63-3612, 63-3613, 63-3621, Idaho Code

01. Trade-Ins. A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale.

()

02. Trade-In Allowance. When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, the property traded in meets all of the following criteria:

()

a. The property is consideration delivered by the buyer to the seller;

()

b. The sales documents, executed not later than the time of sale, identify both the property being purchased and the property being traded in; and

()

c. The delivery of the trade-in and the purchase are components of a single transaction.

()

d. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).

()

03. Trade-Downs. A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero (0) and no sales tax is due on the transaction.

()

04. Disallowed Trade-In Allowances.

()

a. Private Party Transactions. A trade-in allowance is not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale.

()

i. Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties pay tax on the fair market value of the vehicle received in the barter.

()

ii. Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000).

()

b. Manufactured Homes, New Park Model Recreational Vehicles, and Modular Buildings. Trade-in allowances are not allowed on the sale of manufactured homes, new park model recreational vehicles, and modular buildings. See IDAPA 35.01.02.048 of these rules.

()

05. Insurance Settlements. An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles

with Tom on that basis. If Tom buys another car, he pays sales tax on the entire sales price of the replacement car.

()

06. Core Charges. Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are taxable. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed.

()

07. Trade-In for Rental/Lease Property. When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor begins charging for the lease or rental. The methods of applying the trade-in value to the lease are:

()

a. The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments.

()

b. The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up.

()

c. A combination of the two (2) methods, above.

()

d. Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000).

()

i. Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment.

()

ii. Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments.

()

iii. Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly.

()

08. Rental/Lease Property Traded-In. When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the taxable sales price may be reduced by the difference between the total trade-in amount and residual buyout.

()

a. Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the taxable sales price.

()

b. Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000).

()

045. RESCINDED SALE, REFUNDS OF PURCHASE PRICE (RULE 045).

Sections 28-2-608, 63-3612, 63-3613, Idaho Code

01. A Rescinded Sale. A transaction in which the seller and buyer place each other in the same positions they were in prior to entering into any taxable transaction; and a transaction which meets the rules of the Uniform Commercial Code for revoking acceptance in whole or in part. See Section 28-2-608, Idaho Code. ()

02. Refund of Remitted Sales Tax. Where a seller has collected and remitted tax on the sale and has refunded it to the buyer on rescission, the Commission will refund or credit the seller accordingly. The burden of proving a rescission is on the person claiming the refund or credit on a rescinded sale. See Rule 117 of these rules. ()

03. Amount Refunded Reduced. If the seller reduces the amount refunded to the buyer on returned merchandise to recover depreciation, buyer usage or other costs, the amount of the reduction is considered a charge by the seller to the buyer for use of the tangible personal property and is taxable in the same manner as a rental. The amount of sales tax refunded to the buyer must be reduced accordingly. ()

04. Restocking Charge. If a seller places a restocking charge on returned merchandise, the charge is not taxable. A restocking charge is a fee charged by a seller to cover his time and expense in returning goods to resale inventory when the buyer has not used the goods in a way that decreases their value. ()

05. Required to Buy Other Property. If the customer, in order to retain the refund, is required to buy other property at a higher price, there is no refund and the amount credited on the subsequent purchase is treated as a trade-in. The seller must charge the customer sales tax on the difference between the amount credited and the sales price of the other property. ()

06. Documentation. In order to obtain refund credit, the seller must keep adequate documents to support his claim for refund or adjustment. ()

046. COATINGS ON TANGIBLE PERSONAL PROPERTY (RULE 046).

Sections 63-3612, 63-3613, Idaho Code

01. Coatings Generally. A coating is a substance covering the surface of tangible personal property usually intended to improve the durability or aesthetic appeal of the tangible personal property to which it is applied. There are a variety of coatings including paint, powder coating, chrome plating, spray-on bedliners, and anodized coatings. Effective July 1, 2014, this rule applies to all types of coatings and it is intended that such coatings receive the same tax treatment. This rule does not apply to coatings applied directly to real property such as paint applied to the walls of a building. ()

02. Coatings are Tangible Personal Property. The materials applied to tangible personal property to produce a coating are tangible personal property both before and after the application process. Therefore, unless an exemption applies, the sale of a coating is a taxable sale. ()

03. Material Charges. Unless an exemption applies, the materials portion of a sale of a coating is taxable. If the seller is unable to measure the exact amount of material used, a reasonable method of estimation is acceptable. ()

04. Nontaxable Labor Charges. In any of the following circumstances, the labor to apply a coating will be nontaxable labor: ()

a. A previous coating is removed and replaced with a new coating, regardless of any differences in quality between the two (2) coatings. ()

b. A coating is applied to used tangible personal property on top of an already existing coating. ()

c. Example 1: A vendor applies a spray-on bedliner to an individual's truck bed. The truck bed surface is already coated with automotive paint. The materials charge is taxable, but the labor is not taxable. ()

05. Taxable Labor Charges. In any of the following circumstances, the labor to apply a coating will be taxable labor: ()

a. A coating is applied to new tangible personal property, regardless of whether the tangible personal property already has a coating except those exempted in Section 63-3622OO, Idaho Code. ()

b. A coating is applied to new or used tangible personal property that has never been previously coated. ()

06. Separate Statement. For circumstances under which the labor portion of the transaction is exempt, both materials and labor are to be separately stated on the customer's billing statement. If there is no separate statement of materials and labor, the entire transaction is taxable. ()

07. Used Tangible Personal Property. For purposes of this rule, tangible personal property is used if the tangible personal property has been previously put to the use for which it was intended. If a contractor hires someone to apply a coating to tangible personal property that the contractor intends to incorporate into real property, the tangible personal property has not been put to the use for which it was intended and is considered new tangible personal property. ()

a. Example 1: A contractor hires someone to apply a coating to metal ducting. The contractor intends to incorporate the metal ducts into a ventilation system in a building. Since the ducting has not yet been put to the use for which it was intended, it is not used tangible personal property and all labor and material charges will be taxable. ()

b. Example 2: A person buys a piece of furniture for use in the home. The person uses the drawers for a year before hiring someone to apply a stain to the drawers. At that point, the drawers are used tangible personal property. If the drawers had a previous coating of any kind, the labor to apply the stain will be nontaxable. If the drawers had no previous coating, the labor to apply the stain will be taxable. ()

c. Example 3: A company buys equipment from a supplier. Before the equipment is ever put to the use for which it was intended, the company takes the equipment to be coated by a different supplier. Since the equipment has not yet been put to the use for which it was intended, it is new tangible personal property. Regardless of whether the equipment already has a coating, both the materials and labor to apply the new coating are taxable. ()

08. Tangible Personal Property Held for Resale. For new or used tangible personal property held by a seller as part of its inventory, any labor costs incurred to apply a coating to the tangible personal property and charged to the end consumer are taxable services agreed to be rendered as part of the sale of the tangible personal property. The labor charges are exempt only if the sale of the tangible personal property is exempt or if the labor is exempted by Section 63-3622OO, Idaho Code. However, if the seller pays a third party to apply a coating to tangible personal property in its inventory, the seller may claim a resale exemption on the transaction. ()

a. Example 1: A dealership has a used truck in its inventory. A customer will purchase the truck on the condition that the dealership will apply a spray-on bedliner. The dealership hires another company to apply the spray-on bedliner and pays three hundred dollars (\$300) for the job (split evenly between materials and labor). The dealership fills out a resale exemption certificate for the spray-on bedliner company. No tax should be charged on this transaction. The dealership then charges its customer five hundred dollars (\$500) (split evenly between materials and labor) and separately states these charges from the sales price of the truck. The materials charge is a taxable sale of tangible personal property. The labor charge is a taxable service agreed to be rendered as part of the sale of the truck. The dealership charges tax on the entire five hundred dollars (\$500). ()

09. Exemptions. Like any sale of tangible personal property, if the customer provides a valid exemption certificate to the seller claiming an exemption that applies to the transaction, the seller has no obligation to collect sales tax on the transaction. The seller maintains a copy of the exemption certificate on file. See Rule 128 of

these rules for additional information. ()

047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS (RULE 047).

Sections 63-3612, 63-3613, Idaho Code

01. In General. Fees charged for services performed by outfitters, guides, dude ranches, hunting and fishing lodges, or camps are charges for the use of, or privilege of using, tangible personal property or other facilities for recreation. Fees charged by outfitters and like operations for providing outdoor recreational services are taxable. ()

a. An outfitter is any person who holds himself out to the public for hire to conduct outdoor recreational activities, including: hunting animals or birds; float or power boating of rivers, lakes, and streams; fishing; hiking; skiing; hazardous desert or mountain excursions; and other recreational activities. ()

b. A guide is a person employed by an outfitter to furnish personal services for the conduct of outdoor recreational activities. ()

02. Services Performed in More Than One State. When an outfitter's service to a client takes place in more than one (1) state, and the customer receives an invoice from the outfitter that separately displays the Idaho portion of the charges from those of the other states, only the Idaho portion is subject to Idaho sales tax. ()

a. When an outfitter's service to a client takes place in more than one (1) state and the outfitter fails to separately state the Idaho portion of the charges from those of other states, sales tax must be charged on the total amount. ()

03. Government Use Fee. Land and water use fees imposed on outfitters, such as the three percent (3%) fee paid to the U.S. Forest Service, are not taxable when separately stated on the customer's invoice. ()

04. Prepaid Travel Expense. When an outfitter's invoice separately states prepaid travel expenses such as lodging, and the outfitter has paid sales tax, when applicable, to vendors providing the travel services, the outfitter will not be required to tax that portion of his bill to the customer. Example: An outfitter's bill to a client for a seven (7) day hunt and prepaid travel expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	\$500	\$0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	\$50	\$0.00 (none)
7 Day Hunt	\$1,500	\$75.00 (on 100%)

()

05. Lodging. If an outfitter provides overnight lodging for a client at a facility operated by the outfitter, charges for the lodging are taxable and hotel/motel taxes as provided by IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules," Rule 011. ()

06. Equipment Rental. When an outfitter rents equipment such as ground sheets, sleeping bags, rain gear, boots and dry bags, to his client for use during the recreational activity, sales tax must be charged on the equipment rental. ()

07. Game Processing, Packing, and Taxidermy. When an outfitter bills a client for game processing, packing, or taxidermy services, sales tax must be charged on the entire fee to the client. The outfitter will provide the vendor of the services with a properly completed resale certificate. ()

08. Preurchased Hunting and Fishing Licenses. When an outfitter purchases a hunting or fishing license for a client and separately states the fee on the billing to the client, no sales tax applies to the license fee. ()

09. Travel Agency Services. ()

a. When outfitter services are purchased by a client through a travel agency and the outfitter bills the travel agency for the fee, the amount billed to the travel agency is taxable. In this case, the agency is acting as an agent for the client and the additional fee charged by the agency to the client is not taxable. ()

b. When outfitter services are arranged for a client by a travel agency but the outfitter bills the client, the amount billed to the client is taxable. In this case, the agency is acting as the agent of the outfitter and the fee paid to the travel agency by the outfitter cannot be deducted from the measure of the taxable sale. Even if the outfitter separately states the travel agency fee on his billing to the client, he is required to charge tax on the total amount. ()

c. When an outfitter, Outfitter X, books a client and hires a second outfitter, Outfitter Y, to provide the services to the client, Outfitter X is required to charge the client sales tax on the full fee. Outfitter Y can obtain a resale certificate from Outfitter X otherwise, Outfitter Y has a requirement to charge sales tax on the services provided to Outfitter X. ()

10. Purchases by Outfitters and Like Operations. ()

a. Outfitters must pay tax when purchasing equipment and supplies for use in their business. Examples include boats, rafts, oars, motors, horses, tack, llamas, transportation equipment, camp gear, cooking gear, animal feed, brochures, and promotional give-away items. ()

b. When an outfitter maintains an inventory of gear, such as ground sheets, sleeping bags, boots, rain gear, and dry bags, which is exclusively held for rental to clients, the outfitter may purchase the gear without tax in the manner previously described. The outfitter may purchase gear without paying tax only if the gear is rented to clients as a separate line item on the invoice to the client and sales tax is charged to the client. If gear is provided to clients as a part of the outfitter package fee, the outfitter must pay tax when purchasing the gear. ()

c. When an outfitter arranges travel accommodations for his client and pays the vendors of lodging, and restaurant or catered meals, he must pay sales tax, as well as other applicable hotel/motel taxes, to the vendors. When an outfitter purchases food that he will prepare and furnish to clients, no sales tax applies if the outfitter provides a resale certificate. The outfitter must then collect a tax from his client on the sale of the furnished food. Alternatively, an outfitter may buy food and pay tax on the purchase. Under this alternative, the outfitter will include the cost of the food in his nontaxable charges to his client. ()

d. When an outfitter purchases the services of a taxidermist or meat processor on behalf of his client, he should not pay tax to the vendor by providing the vendor with a properly completed resale certificate. The outfitter must charge tax to his client on this fee. ()

11. Federal Preemption. The National Maritime Transportation Security Act of 2002, enacted November 25, 2002, prohibits the states from imposing tax on any vessel or other water craft, or its passengers or crew if the vessel or water craft is operating on any navigable waters. The Tax Commission interprets this statute to mean that states are prohibited from taxing sales of rafting and jet boating trips if they occur on navigable waters. See 33 U.S.C. Section 5. If Congress repeals the preemption sales of rafting trips will become taxable on the effective date of the repeal. This interpretation is subject to judicial review and could change, depending on rulings from state or federal courts. ()

048. MANUFACTURED HOMES (MOBILE HOMES) AND MODULAR BUILDINGS (RULE 048).
Sections 39-4105, 39-4301, 63-3605J, 63-3606, 63-3612, 63-3613, 63-3621, Idaho Code

01. New Manufactured Home. When a manufactured home is sold at retail for the first time, it is taxable on fifty-five percent (55%) of the purchase price. The purchase price of a new manufactured home includes all component parts and any setup or transportation fees charged by the dealer. No trade-in allowance is permitted. ()

02. Modular Building. When a modular building is sold at retail, it is taxed on fifty-five percent (55%) of the purchase price including all component parts. No trade-in allowance is permitted. ()

03. Used Manufactured Home. Only the sale of a new manufactured home is taxable. After the first sale at retail of a manufactured home, any subsequent retail sale of the unit is a sale of a used manufactured home. The sale of a used manufactured home is exempt from tax, whether or not the original sale was taxable and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used manufactured homes is to maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes. ()

04. Sale of Office Trailer. An office trailer is a structure which is built on a permanent chassis, is transportable in one (1) or more sections and is designed for use as an office. An office trailer does not qualify as a manufactured home, because it is not designed for use as a dwelling, nor does it qualify as a modular building, because it is not designed to be affixed to real property. When an office trailer is sold at retail, it is taxed on one hundred percent (100%) of the purchase price, including all furniture, fixtures, and appliances, whether the office trailer is new or used. ()

05. Component Parts. Component parts include items incorporated by the manufacturer which remain unchanged at the time of the original retail sale, such as sinks, cabinetry, closet doors, central heating and cooling, garbage disposals, water heaters, and carpeting. Refrigerators, ranges, draperies, and wood burning stoves placed in the unit by the manufacturer are also component parts. ()

06. Noncomponent Parts. All fixtures, furniture, furnishings, appliances, and attachments not incorporated as a component part of a new modular building or manufactured home are taxable separately and distinctly from the sales price of the modular building or manufactured home. Such items are to be separately stated on the sales invoice and tax will be assessed on the separately stated items on their full retail value. ()

07. Repairs. Repairs to or renovations of used modular buildings or manufactured homes are repairs to real property, irrespective of whether the unit is affixed to real property or whether the unit is held for resale. Materials used to repair or renovate a used modular building or manufactured home are taxable at the time of purchase or use tax at the time of use. ()

049. WARRANTIES AND SERVICE AGREEMENTS (RULE 049).
Sections 63-3612, 63-3613, Idaho Code

01. Warranties and Service Agreements. Warranties or service agreements may be furnished by the manufacturer or seller upon the sale, lease, or rental of tangible personal property by any of the following means: ()

a. Including the price of the warranty or service agreement as part of the sales, lease, or rental price of the tangible personal property. ()

b. Separately stating the price of the warranty or service agreement, but requiring the purchase of the warranty or service agreement as a condition of the sale, lease, or rental of tangible personal property. ()

c. Allowing the buyer the option of purchasing a separately stated warranty or service agreement. ()

02. Separate Optional Contract. Service agreements may also be offered as a separate optional contract on tangible personal property not owned or sold by the seller of the service agreement. ()

03. Services Agreed to be Rendered. Services agreed to be rendered as a condition of a warranty or service agreement may be performed by the seller of the warranty or service agreement or by any dealer or repair facility that the seller may appoint to perform the repair or service. ()

04. Non-Optional Warranty or Service Agreement. If the warranty or service agreement is required as a condition of the sale, lease, or rental of tangible personal property, the gross sales price is taxable whether or not

the charge for the warranty or service agreement is separately stated from the sales price of the tangible personal property. ()

a. When parts are replaced by the seller of the warranty or service agreement, no tax is imposed on the purchase of the parts by the seller. The parts replaced are considered to have been taxed at the time the warranty or service agreement was sold. ()

b. When a third-party dealer or repair facility performs the repair, the seller of the warranty or service agreement may provide the repairer with a resale certificate. See Rule 128 of these rules. ()

05. Optional Warranty or Service Agreement. If the warranty or service agreement is optional to the buyer, no sales tax is charged on the sale of the warranty or service agreement. A taxable transaction occurs when the seller of the warranty or service agreement performs the repair. ()

a. If the seller of the warranty or service agreement performs the repair and purchases parts for the repair or uses parts from his inventory, he will pay sales or use tax upon the parts when they are applied by him. ()

b. When a third-party dealer or repair facility performs the repair and bills the seller of the warranty or service agreement, the third-party dealer or repair facility will separately state and charge sales tax on the parts to the seller of the warranty or service agreement. ()

c. The seller of the warranty or service agreement will pay sales or use tax on parts for the repairs, even if the buyer qualifies for any exemption under the Idaho Sales and Use Tax Act or rules. ()

06. Parts in Addition to Warranty Fee. Regardless of any of the above, if the seller of the warranty or service agreement fee, sales tax is charged to the buyer on the sales price of the parts. ()

07. Replacement Parts and Maintenance Supplies. As used in this rule, a warranty or service agreement applies to replacement parts and maintenance supplies that become a part of the tangible personal property that is being serviced. The sale of other tangible personal property, such as paper for a copy machine, must be separately stated from any warranty or service agreement fee and sales tax charged to the buyer. ()

08. Cross-Reference. ()

a. See Section 037.03 of these rules. Sales of Aircraft Repair Parts to Nonresidents. ()

050. VETERINARIANS AND VETERINARY SUPPLIES (RULE 050).
Sections 63-3612, 63-3613, 63-3622, 63-3622D, Idaho Code

01. In General. Fees charged by a veterinarian for professional services are not taxable. Tangible personal property used or consumed by a veterinarian or sold by a veterinarian is taxable in accordance with the provisions of this rule. ()

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 owed by the veterinarian. ()

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. ()

04. Retail Sales of Drugs and Supplies. The sale of drugs and veterinary supplies is a retail sale and veterinarians making such sales collect and remit sales tax on those sales. However, the sale of drugs and veterinary supplies to a person operating 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 of these rules. ()

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. ()

051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES (RULE 051).
Sections 63-3612, 63-3613, Idaho Code

01. Adjustments That Apply After Tax Calculation. Tax must be charged before deducting the following: ()

a. Cash discounts. A cash discount is a discount offered by a retailer to a buyer as an inducement for prompt payment. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence. ()

b. Manufacturer's rebates. A manufacturer's rebate means a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer. Except as provided by Subsection 051.02 of this rule, sales tax is computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received by the buyer from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price taxable. Rebates paid by a retailer to the consumer will also be included in the taxable price if the retailer has been reimbursed by a third party, such as the manufacturer. ()

c. Manufacturer's discount. A manufacturer's discount is a price reduction offered by a manufacturer to a consumer for purchasing their product from a retailer who is then reimbursed that amount by that manufacturer. Sales tax is computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the buyer to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer. ()

d. Food Stamps and WIC. Purchases of food with coupons issued under the Federal Food Stamp Program or food checks issued by the Federal Special Supplemental Food Program for Women, Infants, and Children, (WIC), are exempt from sales or use tax. When a buyer uses manufacturer's discount coupons along with food stamps or WIC checks to purchase food items that qualify under these programs, the discount value of the coupon is taxable. For example, a food stamp recipient purchases fifteen dollars (\$15) worth of eligible food, surrenders manufacturer's discount coupons valued at two dollars (\$2), and pays with thirteen dollars (\$13) in food stamps. Sales tax is due on the two dollar (\$2) discounted amount. The buyer may not use food stamps or WIC checks to pay sales tax due. ()

02. Adjustments That Apply Before Tax Calculation. Tax is charged after the deduction of the following: ()

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the buyer. ()

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a buyer which is conditioned upon the recipient making a purchase from the retailer. However, if a retailer is reimbursed by a manufacturer or other third party, the transaction is not a retailer's rebate and the rebate amount is included in the taxable sales price. This would be the case when a buyer sends the rebate claim to the retailer, the retailer sends the rebate amount to the buyer and the manufacturer reimburses the retailer. ()

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price. ()

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a buyer of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax if the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice shows the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule. ()

03. Coupon Books. ()

a. The sale of a coupon book that contains coupons offering discounts is deemed to be the sale of an intangible and is therefore not taxable. ()

b. When the buyer of a coupon book redeems one (1) of the coupons, the discount allowed by the coupon is not included in the taxable sales price if the retailer is not reimbursed by a manufacturer or other third party. ()

04. Donated Goods. The donor is the consumer of donated goods and must pay sales or use tax on the purchase price of the goods. ()

05. Gift Certificates. A gift certificate purchased from a vendor entitles a recipient to tangible personal property or services when presented to the vendor. The purchase of a gift certificate is not a taxable transaction. When the gift certificate is presented for redemption a sale is consummated. If the sale is a transfer of tangible personal property, the vendor collects sales tax at the time of sale. Tax applies to the purchase price of the tangible personal property, irrespective of any cash refunded on any difference between the face value of the gift certificate and the purchase price. If the sale is for services not taxable under the Sales Tax Act, the vendor will not collect sales tax. ()

06. Buy One Get One Free Discounts. If a retailer offers a "buy one get one free" discount in which the buyer purchases an item and receives another item of the same kind at no additional charge, the taxable sales price is the actual price paid after the discount is taken. Use tax is not applicable to the item sold at no charge; however, if a manufacturer's discount allows the buyer to receive a free item for which the retailer will be reimbursed by the manufacturer the taxable sales price is the full amount before the discount is calculated. ()

07. Complimentary Gift with Purchase of an Item. ()

a. If a retailer offers a complimentary item to a customer at the time of, and in connection with, the sale of tangible personal property, the gift is considered a part of the sale. The item given away is deemed to be purchased for resale by the retailer; however, if the sale is of an item exempt from tax and the sale of the gift item would have been taxable, the retailer is responsible for use tax on the gift. This subsection applies only to sales of tangible personal property. ()

i. Example: A retailer advertises that every buyer of a refrigerator will receive a bike at no additional charge. Since both the bike and the refrigerator were purchased for resale, the retailer would not owe tax when it purchases either. When it sells the bike together with the refrigerator, the taxable amount is the sales price of the refrigerator. ()

ii. Example: A retailer offers to give a free coffee mug to anyone who purchases fifteen (15) gallons of gas. Since the sale of the gasoline is exempt pursuant to Section 63-3622C, Idaho Code, the retailer would not charge any tax to the buyer. The retailer must pay use tax on its purchase price of the coffee mug. ()

b. If a retailer offers to give away a promotional item to anyone with no purchase required, then the retailer did not purchase the promotional item for resale. The retailer pays sales or use tax on its purchase price of the promotional items given away. ()

c. This rule applies only to items given away by sellers of tangible personal property. See Rule 028 of these rules for items given away by hotels and motels. See Rule 041 of these rules for items given away by

restaurants. ()

052. SALE OF TANGIBLE PERSONAL PROPERTY RELATING TO FUNERAL SERVICES (RULE 052).

Sections 54-1103, 63-3609, 63-3612, 63-3613, 63-3622, 63-3622U, Idaho Code

01. In General. The sale of tangible personal property relating to funeral services by a licensed funeral establishment is exempt from tax. ()

02. Sales by Licensed Funeral Directors. The exemption applies only when, at the time of sale, the seller is a person holding a valid funeral director's license issued pursuant to the authority of Title 54, Chapter 11, Idaho Code. A sale made by any seller not so licensed is not exempt under this provision. For example, a casket sold by a licensed funeral director as part of a funeral service is exempt. The funeral director's purchase of the casket is a purchase for resale and, therefore, excluded from the tax. The purchase of a memorial marker is not an integral part of the funeral service. Accordingly, it is not included within the exemption for tangible personal property related to a funeral service. The purchase of a memorial marker, therefore, is a taxable transaction regardless of whether it is sold by a licensed funeral director or by another. Sales of tombstones and grave markers, which are embedded in the sod or set on foundations, are taxable. The retail selling price includes the charge for cutting, shaping, polishing and lettering. ()

03. Purchases by Licensed Funeral Directors. The exemption does not include the sales to and purchases by funeral directors of equipment and supplies used and consumed by funeral directors in the course of providing funeral services. The funeral director's purchase of equipment and supplies used for embalming and preparing bodies for burial and all other tangible personal property used or consumed by the funeral director in the course of his business operations to which title does not pass from the funeral director is taxable. ()

04. Caskets, Vaults, and Burial Receptacles. Caskets, vaults and burial receptacles are exempt when sold by a licensed funeral director as a part of funeral services, even though they may be improvements to real property. The funeral director is not a person engaged in improving real property within the meaning of Section 63-3609(a), Idaho Code; and, therefore, his purchase of these items is not taxable. However, the construction of a building for use as a mausoleum is an improvement to real property and the sale or use of the materials for the construction of the mausoleum creates a taxable incident and is taxed in the same manner as other persons improving real property. See Rule 012 of these rules. ()

05. Use Tax. When licensed funeral directors purchase equipment and supplies from suppliers who do not collect and remit Idaho sales tax, the funeral directors will be required to report and remit use tax on their taxable purchases. ()

06. Documenting Purchases for Resale. Funeral directors purchasing tangible personal property for resale will be required to document the purchase for resale by providing their seller with a resale certificate. See Rule 128 of these rules. The purchase by the funeral director of such items as caskets and special clothing is a purchase for resale, even though the sale of the same property by the funeral director is exempt. ()

07. Seller's Permit Required. A funeral director is to apply for and maintain a valid seller's permit. The seller's permit number and sales tax returns are used to report use tax on those items which are subject to use tax. The funeral director should also report sales tax on the isolated retail sales of tangible personal property which may be made but which are not related to the providing of any funeral service. ()

053. FEES CHARGED FOR FAX SERVICES (RULE 053).

Sections 63-3612, 63-3616, Idaho Code

01. Sending a Fax. A fee charged for sending a fax is not taxable. ()

02. Receiving a Fax. A fee charged by a print shop, hotel, or other retailer to a person receiving and printing a fax is a fee charged for a photocopy and is a taxable sale of tangible personal property. ()

054. PERSONS ENGAGED IN PRINTING (RULE 054).

Sections 63-3612, 63-3613, 63-3616, 63-3621, 63-3622, Idaho Code

01. Private Printing Plants. Persons operating private printing plants in conjunction with their principal business pay sales or use tax on the purchase of equipment and supplies used to produce display signs, advertising brochures, and other materials for their own consumption. ()

02. Printing upon Special Order. Persons primarily engaged in the printing of tangible personal property upon special order for a consideration may purchase equipment and supplies directly used to produce such property exempt from sales or use tax. ()

a. The sale of typography, art work, photoengraving, electros, mats, stereotypes, hand or machine composition, lithographic plates or negatives, electrotypes, etc., to a person primarily engaged in the printing of tangible personal property for a consideration, and to be used directly by such person is deemed essentially sales of service or exempt materials and not taxable. ()

b. When purchasing goods exempt from tax, the printer provides the seller with a properly completed exemption certificate. See Rule 128 of these rules. ()

03. Sales by Persons Engaged in Printing. Fees charged to ultimate consumers for printing of tangible personal property upon special order are taxable. ()

a. Printing of tangible personal property includes imprinting and all processes or operations connected with the preparation of paper or paper-like substances, the reproduction thereon of characters or designs and the alteration or modification of such substances by finishing and binding. ()

b. Upon such final sales, charges for materials, labor and production of fabrication or typography, author's alterations, art work, photo engravings, electros, mats, stereotypes, hand or machine composition, lithographic plates or negatives, electrotypes, etc., and binding and finishing services are included in the taxable sales price whether the various charges are separately stated or not. ()

c. The following charges, if separately stated, are not included in the taxable sale price: ()

i. Charges for postage as part of the printed item; or ()

ii. Charges for addressing, stamping, sealing, inserting or wrapping in connection of a direct mail advertising in which items of tangible personal property and service are supplied. ()

04. Advertising Inserts. As used in this rule, advertising inserts means printed advertising distributed concurrently with, but printed separately from, a newspaper, magazine, or other publication. ()

a. The sale of advertising inserts by a printer or other supplier to an advertiser for use by the advertiser in the promotion of its business or products, and not for resale by the advertiser, is a taxable sale of tangible personal property. If, for any reason, the seller of the advertising inserts fails to collect sales tax on the sale of the advertising inserts to the advertiser, the advertiser is subject to use tax on its use of advertising inserts in Idaho. ()

b. When an advertiser contracts for the distribution of advertising inserts to locations within this state, a taxable use by the advertiser occurs. The contracted distribution constitutes an exercise of right or power over the advertising inserts by the advertiser. The person performing the distribution services may be a publisher, printer, distributor of a newspaper, magazines, or other publication, or any other person performing distribution services. ()

c. A contract between an advertiser and a publisher of a newspaper, magazine, or other publication, whereby the publisher sells advertising space in its publication is not a taxable sale. ()

05. Labels and Other Printed Matter Sold to Manufacturers. Sales of labels or name plates, and the printing thereon, to manufacturers, producers, or wholesale merchants where the purpose of the buyer is to affix the label or name plate to his own product, or the container thereof will not be taxable. ()

a. Sale of package inserts, individual folding boxes and setup boxes, and the printing thereon to manufacturers, or producers, to accompany their own manufactured products, and to pass to the ultimate consumer upon final sales of the manufactured product contained or described therein, are presumed to be made for the purpose of resale. ()

b. Sale of direction sheets, instruction books, or manuals to a manufacturer, producer, wholesale or retail merchant, to be supplied with his product at no separate charge, are not taxable. If a separate charge is made for such sheets, books, manuals, or pamphlets, the manufacturer, etc., is required to collect and remit sales tax. ()

055. PERSONS ENGAGED IN ADVERTISING (RULE 055).

Sections 63-3612, 63-3613, 63-3621, 63-3622, Idaho Code

01. In General. Advertising agencies, television stations, radio stations, graphic artists, and other persons engaged in advertising may be engaged in either the rendering of professional services or the sale of tangible personal property or both. When such persons are engaged in the sale of tangible personal property, they are retailers and are required to collect and remit sales tax on the property sold. When such persons are engaged in the rendering of professional services, no sales tax applies to the service. Whether the sale is a sale of professional services or of tangible personal property is determined by the object of the transaction, i.e., is the object sought by the buyer the service per se or the tangible personal property produced by the service. Determining whether the sale is a sale of professional services or of tangible personal property is a question of fact is determined in view of all the facts and circumstances of each transaction. ()

02. Advertising Agency as Agent of Client or as Non-Agent. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies act as agents of their clients in acquiring tangible personal property, they are neither buyers of the property with respect to the supplier nor sellers of the property with respect to their principals. To the extent advertising agencies act on their own behalf in acquiring tangible personal property they are buyers of the property with respect to the supplier. Generally, they are sellers of any of the property so acquired which they deliver to, or cause to be delivered to, their clients or to third parties for the benefit of their client. They are also sellers of any of the property which they retain but title to which they transfer to their client. ()

a. Items acquired from outside sources. All acquisitions by advertising agencies of tangible personal property are purchases by the agencies on their own behalf for resale or use unless the agency clearly establishes with respect to any acquisition that is acting as agent for its client. ()

b. To establish that an acquisition was made as agent for its client the agency is required to: ()

i. Clearly disclose to the supplier the name of the client for whom the agency is acting as agent; ()

ii. Obtain, prior to the acquisition, and retain written evidence of agent status with the clients; and ()

iii. Clearly state on the billing to its client that it is acting as agent for its client and that tax has been paid to the supplier or use tax has been accrued by the agency on behalf of the client. ()

c. The agency fee billed to the client, whether or not separately stated, is not taxable. The agency, in its records, is required to retain evidence of the payment of the tax. The agency may make no use of the property for its own account, such as charging the item to the account of more than one client. An advertising agency purchasing tangible personal property as an agent on behalf of its client may not issue a resale certificate, as provided by Rule 128 of these rules, to the supplier. It will be presumed that an advertising agency who issues a resale certificate to its supplier is purchasing the tangible personal property on its own behalf for resale and is not acting as an agent for its client. ()

03. Items Prepared by Agency. Advertising agencies are sellers of all items of tangible personal

property produced, printed, or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees. ()

04. Media Advertising and Advertisements. Media advertising is the use of mass media as a means by which to reach a wide audience, viewers, listeners, or readers, with an advertisement to promote a product, service, issue, or personality. Mass media is defined as radio, television, cable television, newspapers, periodicals, trade journals, or other such media which is capable of reaching a mass audience with an identical message. The object sought by the buyer purchasing media advertising is the intangible professional service of the seller. The sale of media advertising is a sale of professional service and is a nontaxable transaction. The transfer of tangible personal property is inconsequential to the services rendered. ()

a. Radio and television advertisement. Sales tax does not apply to the amount charged to produce or create advertisements which are to be broadcast by a radio or television station. It makes no difference whether the producer or creator sends the advertisement directly to the broadcast facility or to the advertiser, who in turn distributes the commercial to a broadcast facility. ()

b. Radio and television dubs. Charges for dubs which are produced from a master copy of a radio or television commercial or broadcast are not taxable so long as they are for distribution to other broadcasting facilities. Sales tax will apply to the sale of radio or television commercial or broadcast dubs which are not for distribution to a broadcast facility and are sold to a customer for another use. The measure of the tax will be the total price charged for the copies. ()

c. Magazine, newspaper, and periodical advertisements. Sales tax does not apply to the amount charged to a customer to produce camera ready artwork, veloxs, and other forms of artwork which are to be reproduced in and distributed as part of a mass media publication. Examples of such media publications are magazines, newspapers, trade journals, and periodicals. ()

d. Print media advertisement copies. Sales tax will apply to charges for reprints of a print media advertisement sold to a customer. The measure of the tax will be the price charged for the reprints. ()

05. Sales of Non-Media Advertising. Non-media advertising is any form of advertising which does not use the mass media in reaching the targeted audience. Examples of such advertising are posters, brochures, pamphlets, handbills, displays, business forms, stationery, business cards, key chains, cups and glasses, pens, pencils, t-shirts, and other similar items. The object sought by the buyer is the tangible personal property. If the advertising agency is the agent of its client, the sale is between the supplier of the tangible personal property and the client and is taxable based on the price charged by the supplier to the client. If the advertising agency is NOT the agent of its client, then the purchase from the supplier is for resale. The sale from the agency to its client is a retail sale and is subject to tax based upon the entire amount charged to the customer by the advertising agency, including separately stated fees for: ()

a. Artwork produced by the advertising agency, including all materials, design fees, and labor to develop and produce the artwork, lettering, and designs used in the finished non-media advertising. ()

b. Artwork, lettering, and designs purchased from a graphic artist. ()

c. Photographs, negatives, and other similar items whether purchased from a commercial photographer or produced in-house by the advertising agency. ()

d. Professional modeling fees. ()

e. Printing charges, whether printed by the advertising agency or a commercial printer, including any markup or service charge. ()

f. All other charges to the customer for services agreed to be rendered by the advertising agency as part of the sale of non-media advertising. ()

06. Sale of Custom Made Audio-Visual Films and Audio Recordings. A custom made audio-visual film or audio recording is a film or recording whose intended purpose is not for media advertising. Examples of custom audio recordings include those to be used with a slide show presentation, designed to be played alone for information purposes or in-store advertising, or other similar purposes. Examples of custom films are safety films, training films, filmed newsletters, in-store audio-visual advertising, and other audio-visual films not sold for media advertising. ()

a. The object of the buyer is to obtain the tangible personal property. The fact that the charge for the tangible personal property, the film or recording, is principally derived from labor or creativity of the maker of the property does not transform the sale of the tangible personal property into a sale of services. ()

b. If the advertising agency is the agent of its client, the sale is between the supplier of the tangible personal property and the client and is taxable based on the price charged by the supplier to the client. If the advertising agency is not the agent of its client, then the purchase from the supplier is for resale. The sale from the agency to its client is a retail sale and is taxable based upon all charges for copy writing, directing, producing, photographing, acting, vocal artists, recording, editing, mixing, and other similar charges to produce a finished film or audio recording. ()

07. Sales of Design Services. Determining whether design fees are taxable will depend on the object of the transaction. A fee charged to a customer for creation and design of a logo, product or business trademark, letterhead, or similar item which does not involve the transfer of tangible personal property beyond that which is required to convey the design to the customer, is a sale of services and is not taxable. When design fees are services agreed to be rendered as a part of the sale of tangible personal property, sales tax will apply to the design fee. Tax does not apply to such fees when an agency acts as an agent. See Subsection 055.07.e. of this rule. ()

a. Example 1: A graphic artist is commissioned to design a business logo for a client. The artist completes the design and delivers it to the client. The transaction is a service transaction. The transfer of the tangible personal property is inconsequential to the services rendered. No sales tax is due on the transaction. ()

b. NOTE: Subsections 055.07.b. through 055.07.d. of this rule assume no agent relationship. Example 2: An advertising agency is commissioned by a client to design a trademark for its business and provide stationery with the trademark printed on it. On the charges billed to the client, the design fee is separately stated from the charges for printing the stationery and the paper stock. The advertising agency charges sales tax on the entire amount charged. The object of the transaction is to obtain tangible personal property, the stationery. The services agreed to be rendered, the design, are inconsequential to the transaction. ()

c. Example 3: An advertising agency is commissioned by a client to design a logo for its business and provide stationery printed with the logo. The advertising agency commissions a graphic artist to design the logo. The sale of the design by the graphic artist to the advertising agency is a sale of services and is not taxable. The object sought by the advertising agency is the services of the graphic artist. The advertising agency then prints the stationery and bills the client. As the object sought by the client is tangible personal property, the stationery, the advertising agency charges the client sales tax on the entire fee billed, including the design fee. ()

d. Example 4: An agency is commissioned to design, produce, and provide one thousand (1,000) copies of a corporation's annual report. As the object sought by the client is the tangible personal property, annual reports, the entire fee to the client is taxable. ()

e. NOTE: This subsection assumes an agent relationship. Example 5: An advertising agency is commissioned to design an annual report. As agent for its client, the agency orders one thousand (1,000) copies from a printer. The charge for the design is a nontaxable service. The charge for the printed reports is taxable. ()

08. Purchases by Radio and Television Broadcasters. Section 63-3622S, Idaho Code, provides an exemption from tax for purchases of tangible personal property directly used and consumed in the production and broadcasting of radio and television programs by businesses primarily devoted to such production and broadcasting. ()

a. When broadcasters purchase tangible personal property to be directly used and consumed in the

production of television or radio advertising, no sales tax applies if they give their vendors a properly executed exemption certificate. See Rule 128 of these rules. ()

b. When a radio or television broadcaster produces custom films or audio recordings that will not be broadcast, the exemption provided by Section 63-3622S, Idaho Code, does not apply. Purchases of tangible personal property will be taxed as provided by Subsection 055.06.b. of this rule. ()

09. Purchases by Advertising Agencies, Graphic Artists, and Similar Operations. Persons engaged in advertising and graphic artists may provide both nontaxable services and taxable sales of tangible personal property. ()

a. When providing nontaxable services, including producing media advertising and providing design services which do not involve the sale of tangible personal property, the agency/artist pays tax on purchases of: Art supplies, such as poster board, paper products, inks, letters, and paints; amount charged by others to produce veloxs, negatives, lithographic plates, electrotpe, and other such items; photographic work; prerecorded music and sounds; and props, costumes, and backdrops. ()

b. When engaged in the retail sale of tangible personal property, such as the sale of non-media advertising items, custom films, custom audio recordings, or printed goods, the producer/agency/artist, when purchasing tangible personal property to be incorporated into the product for resale, may provide vendors with a properly executed resale certificate. See Rule 128 of these rules. Items considered to be directly incorporated into the product for resale include purchases of: Art supplies such as poster board, paper products, inks, letters, and paints; amounts charged by others to produce veloxs, negatives, lithographic plates, electrotpe, and other such items; photographic works; prerecorded sounds and music; and printing charges. ()

c. Purchases from photographers. The sale of photographic prints, photostats, negatives, film, and other articles of tangible personal property are taxable sales. See Rule 056 of these rules. Photographs, film, negatives, photostats, and other tangible personal property purchased by an advertising agency which are to be incorporated into media advertising are taxable. The total selling price on which sales tax will be charged is the amount charged by the photographer for shooting, developing, processing, and printing the photograph, film, negative, etc. Separately stated charges for travel expenses incurred by the photographer while under contract to an advertising agency for such items as travel, food, and lodging which are reimbursed by the advertising agency are not taxable. Photographs, film, negatives, photostats, and other tangible personal property purchased for resale, see, Subsection 055.09.b. of this rule. ()

d. Rental of recording or production studios and equipment. Sales tax will apply to the rental of a recording studio, audio-visual production studio, recording equipment, and audio-visual production equipment, when the owner of the equipment does not furnish the personnel to operate the equipment and relinquishes total operational control of the equipment. A taxable rental also occurs if the studio personnel merely render incidental services such as maintenance and repair. No sales tax will apply to the rental of a recording studio, audio-visual production studio, recording equipment, and audio-visual production equipment when the personnel to operate the equipment is furnished with the rental of the equipment. ()

e. Accounting. Persons engaged in the rendering of advertising or graphic artist services may elect to follow any consistent procedure in purchasing art supplies and other tangible personal property from their vendors which are to be incorporated into services or tangible personal property sold to their customers. The artist/agency may wish to purchase all art and graphics supplies without tax from their vendors by issuing a resale certificate. In this case the artist/agency will keep a record of all supplies withdrawn from inventory for use in nontaxable advertising services and pay use tax on these supplies. If the bulk or majority of the artist/agency's work is nontaxable media advertising or design services, the artist/agency may wish to pay tax on all of their purchases, keep a record of all retail sales, and regularly take a credit against the sales and use tax due for tax originally paid upon purchases. If the artist/agency engages in major jobs, they may want to use separate accounting procedures and make purchases of supplies for inventory without tax by issuing a resale certificate. Purchases for a specific job would be made with or without tax dependent upon the taxable nature of the sale to the client. In all cases, art and graphic supplies are those items which are directly incorporated into the artwork or advertisement, such as paint, ink, colored pencils and markers, lettering, poster board, and other such consumable items. Items on which tax is required to be paid include rulers, triangles, t-squares, paint brushes, razor or artist knife blades, any other artist tool, office supplies and

equipment, props, sets, wardrobes, costumes, and other equipment. ()

10. Cross-References. ()

a. Newspapers and periodicals. See Rules 033 and 079 of these rules. ()

b. Signs. See Rule 036 of these rules. ()

c. Persons engaged in printing. See Rule 054 of these rules. ()

d. Motion picture films. See Rule 087 of these rules. ()

e. Resale certificates-purchases for resale. See Rule 128 of these rules. ()

056. PHOTOGRAPHERS AND PHOTOFINISHERS (RULE 056).

Sections 63-3616, 63-3622, 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 buyer on storage media. Sales of digital photographs are taxable when sold and delivered to the buyer 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 buyer electronically. ()

02. Sales by Photographers and Photofinishers. ()

a. When photographers or photofinishers sell films, frames, cameras, printed photographs, digital photographs delivered on storage media, photostats, blueprints, etc., they are making a sale of a completed article of tangible personal property and they are required to collect the tax on the total sales price unless an exemption applies. ()

b. When photographers or photofinishers render service, such as retouching, tinting, or coloring of print photographs belonging to others, they are performing taxable processing services and are to 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. ()

c. Photographers may charge a sitting fee which may be separately stated from any charges for the photographs. 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 taxable. See Rule 029 of these rules. ()

03. Sales to Photographers and Photofinishers. ()

a. Photographers 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 image is captured. Therefore, photographers 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. ()

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. ()

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. ()

057. DRY CLEANERS, LAUNDRIES, LAUNDROMATS, AND LINEN SUPPLIERS (RULE 057).
Sections 63-3612, 63-3622, 63-3622X, Idaho Code

01. Dry Cleaners and Laundries. Dry cleaners perform a service and are not required to collect tax from their customers. Dry cleaners pay sales or use tax on purchases of cleaning supplies, hangers, plastic bags and other supplies used in the performance of this service. The purchases of dry-to-dry transfer systems by dry cleaners are exempt from sales and use tax. This exemption applies only to the purchase of entire systems and does not apply to purchases of repair parts for such systems. ()

02. Linen Suppliers. ()

a. Linen supply firms or laundries which furnish such items as sheets, pillowslips, towels, uniforms, diapers, etc., collect and remit sales tax based on the rental charge. The sales tax will also apply to the rental of shop towels, floor mats for building entrances, dust mops, room deodorizers and any other tangible personal property rented or leased for building maintenance or service. The entire price charged for such rentals is taxable unless a reasonable charge for cleaning is separately stated. If the allocation between rental and cleaning fees is unreasonable, the Commission may deem the entire fee, or any portion thereof, to be taxable. ()

b. Items acquired by these firms which are purchased for resale, rental or lease in the ordinary course of business, may be purchased exempt from sales tax if a properly executed resale certificate is provided to the seller, in accordance with Rule 128 of these rules. ()

03. Laundromats. ()

a. Receipts from coin-operated washers and dryers are not taxable. Sales of cleaning supplies such as soap or bleach through coin operated vending machines, are taxable as provided by Rule 058 of these rules. ()

b. Persons engaged in the laundromat business must pay sales or use tax when purchasing washers, dryers, and other tangible personal property for the operation of their business. ()

058. SALES THROUGH VENDING MACHINES (RULE 058).
Sections 63-3612, 63-3622, 63-3622L, 63-3622X, Idaho Code

01. In General. The sale of tangible personal property through a vending machine is a taxable transaction. The term vending machine means any mechanical device which, without the assistance of a human cashier, dispenses tangible personal property to a buyer who deposits cash in the device. Video games and other coin operated amusement devices are not vending machines. Fees paid for the use of coin operated amusement devices are not subject to sales tax pursuant to Section 63-3623B, Idaho Code. See Rule 109 of these rules. ()

02. Amount Taxable. Pursuant to Section 63-3613, Idaho Code, sales of items through a vending machine for amounts from twelve cents (\$0.12) through one dollar (\$1) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for more than one dollar (\$1) are taxable on the retail sales price. Sales of items for a price of eleven cents (\$0.11) or less are exempt from tax pursuant to Section 63-3622L, Idaho Code. ()

03. Requirement to Obtain a Seller's Permit. Vendors who sell tangible personal property through a vending machine are to obtain a seller's permit. Only one seller's permit is required; however, each vending machine operated by the vendor is to conspicuously display the vendor's name, address, and seller's permit number. When multiple vending machines are placed in a single location, the owner's name, address, and seller's permit number need be displayed only once. ()

04. Calculation of Tax. The following examples show how vending machine operators calculate the amount of sales tax due: ()

a. Example 1: Corporation A's business activity consists only of sales through vending machines in various locations in the state of Idaho. All of the items sold in the vending machines are sold for a unit price of twelve cents (\$0.12) or more but none are sold for a price greater than one dollar (\$1). During the month of July, Corporation A's total sales from the vending machine sales were ten thousand dollars (\$10,000). Corporation A purchased the items sold during that one (1) month period for eight thousand dollars (\$8,000). The company made no nontaxable or exempt sales. Corporation A should file a sales and use tax return for the month of July, computing and reporting its taxable sales as follows. Numbers correspond to line numbers on the return.

Line 1.	Total sales	\$9,360
Line 2.	Less nontaxable sales	\$0
Line 3.	Net taxable sales	\$9,360
Line 1 computed as follows:		
	8,000 x 117%	= \$9,360

()

b. Example 2: During the month of July, Corporation B had total Idaho sales in the amount of ten thousand dollars (\$10,000). In addition to sales through vending machines, the corporation made over-the-counter sales, all of which were taxable, in the amount of two thousand dollars (\$2,000). The remaining eight thousand dollars (\$8,000) constituted sales through vending machines, of which one thousand dollars (\$1,000) was for items with a unit retail price of over one dollar (\$1). The other seven thousand dollars (\$7,000) were sales of items through vending machines with a unit retail price of fifty cents (\$0.50) each. The items sold during the month for fifty cents (\$0.50) each were purchased by Corporation B for five thousand dollars (\$5,000).

The amount to report as taxable sales is:

Taxable Sales = \$2,000 (over the counter items) + \$5,850 (\$5,000 of purchases of items selling for \$.50 x 117%) + (\$1,000 ÷ (1 + tax rate expressed as a decimal) (items sold through vending machines for more than one dollar (\$1)). Assuming a 6% tax rate this amount would be \$1,000 divided by 1.06 or \$943.40.

Note that if a vendor sells some items for more than one dollar (\$1) the sales tax is included in the total sales. This amount is divided by one (1) plus the current tax rate expressed as a decimal, to determine the sales before sales tax. ()

05. Cross-References. ()

a. Amusement devices, see Rule 109 of these rules. ()

b. Money operated dispensing equipment, see Rule 095 of these rules. ()

c. Sales of newspapers through vending machines, see Rule 033 of these rules. ()

059. SALES BY FLORISTS (RULE 059).
Sections 63-3612, 63-3613, Idaho Code

01. Sales. Florists are retailers engaged in the business of selling tangible personal property and are to collect and remit sales tax from the buyer. ()

a. Charges for creating, processing, fabricating, or setting up floral or plant arrangements are taxable, even if separately stated. ()

b. Separately stated delivery charges, relating only to the transportation of the product after the sale, are not taxable. ()

02. Rentals. The lease of rental of potted plants, palms, artificial wreaths and flowers, or other tangible personal property is taxable. ()

03. Sales. Sales tax is required to be collected on orders taken by an Idaho florist or nursery that will be fulfilled by another florist or nursery, the delivery will take place. The florist or nursery fulfilling this order is not required collect sales tax. ()

a. Telephone, wire, and handling charges in connection with these sales are part of the taxable sales price. ()

04. Street Vendors. The above applies to individuals and street vendors as well as florists who maintain a regular place of business. ()

060. FEDERAL EXCISE TAXES AND RETAILERS TAXES (RULE 060).
Sections 63-3612, 63-3613, 63-3621, Idaho Code

01. General Rule. The taxable sales price includes any amount required to be paid by a retailer or his customer as a federal importer's or manufacturer's excise tax. ()

a. Example. Federal taxes on: tobacco products, distilled spirits, beer, cheese, mixed flour, processed and renovated butter. ()

b. Example. Any federal tax payable to the wholesaler, importer, manufacturer or other producers, such as taxes on gasoline, automobiles, tires, sporting goods, or other tangible personal property when sold by the wholesaler, importer, manufacturer, or other producer. ()

02. Excluded Federal Taxes. Federal taxes imposed directly on retail sales, such as those imposed by Section 4051, Internal Revenue Code, are excluded from the taxable sales price. ()

061. TRANSPORTATION, FREIGHT, AND HANDLING CHARGES (RULE 061).
Sections 63-3612, 63-3613, Idaho Code

01. In General. Whether or not transportation and handling charges are separately stated, the sales price includes any charges made for delivery of goods to the seller. Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes. ()

02. Charges Not Separately Stated. Regardless of other provisions of this rule, transportation and handling charges which are not separately stated are included in the taxable sales price. ()

03. Example 1: Charges for Delivery to the Seller. A customer orders goods from a retailer. The goods are shipped to a catalog store where the customer picks them up. A charge to the customer for delivery to the store is a charge for delivery to the seller and is included in the taxable sales price. ()

04. Example 2: Freight-In Taxable. A seller of construction equipment orders a part for a customer. The seller separately states on the invoice charges for freight-in to the seller and freight-out to the consumer. The charges for freight-in are part of the taxable sales price. The charges for freight-out are not taxable. ()

05. Example 3: Delivery by Retailer. A consumer orders building materials from a retailer. The

retailer delivers the goods to the buyer by means of the retailer's delivery van. The retailer separately states the charge for transportation and handling of the building materials. Since the charge is for delivery to the consumer, it is not subject to sales tax. ()

06. Example 4: Use of Transportation Charges as a Means of Avoiding Sales Tax. Seller offers to give away merchandise worth approximately twenty dollars (\$20) if the buyer pays shipping of nineteen dollars and ninety-five cents (\$19.95). The entire price of nineteen dollars and ninety-five cents (\$19.95) is taxable. ()

07. Demurrage. Demurrage charges are not taxable if right, power, and control of the ship, freight car, or truck remains with the transportation company. Demurrage is defined as a charge by a transportation company to its customer for detaining a ship, freight car, or truck beyond the time allowed for loading or unloading. ()

062. REPAIRS SALE OF PARTS AND MATERIAL (RULE 062).
Section 63-3612, 63-3613, 63-3622, Idaho Code

01. In General. Repairs normally require both material and labor. Persons engaged in the business of repairing, renovating or altering tangible personal property owned by others are required to collect sales tax upon the parts or material required in the repair or renovation of the property. ()

02. Separate Statement of Parts or Materials. The sales price of parts or materials need to be separately stated and sales tax is charged on these parts or materials. Separately stated repair labor is not taxable. If parts and materials are not separately stated from the repair labor, the total amount for parts and repair labor is taxable. ()

03. Repairs Covered by Insurance Benefits. Repairs, the costs of which are covered by insurance benefits, are treated the same as otherwise described in this rule. Sales tax is to be collected on the parts and materials. Separately stated repair labor is not taxable. ()

04. Incidental Material. In some instances, because of the small amount of materials used in a repair job, the value of the material may be insignificant to the entire repair cost. For example, incidental amounts of material are sometimes used in repairs made to tires, clothing, watches, and shoes. If materials such as buttons, thread, watch parts, tire valve cores and stems are incidental to the repair they will be taxed when purchased by the repairman. Other examples of materials which are incidental to repairs are touch-up paint and soldering materials used in car repairs. Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined. ()

05. Shop Supplies. Dealer/repair shops should not charge sales tax on shop supplies that are consumed during the repair, such as spray bottles, buffer pads, towels, masking tape, solvents, sandpaper, and other items that have no specific identifiable value billed to the customer and which do not become a part of the item being repaired. These supplies are taxable when purchased by the dealer/repair shop and should not be included as part of the taxable amount billed to the customer. ()

06. Repairs Versus Fabrications. Repairs and renovations to tangible personal property must not be confused with fabrications of tangible personal property. Fabricated tangible personal property is subject to sales tax on the entire price whether the parts and materials are separately stated or not. See Rules 011 and 029 of these rules. ()

07. Parts for Resale. When a repair shop buys parts that will be resold to its customers or an auto dealer buys parts to install in a car which is being reconditioned for sale, they should not pay tax to the supplier if they provide the documents required by Rule 128 of these rules. ()

063. BAD DEBTS AND REPOSSESSIONS (RULE 063).
Sections 63-3612, 63-3613, 63-3619, 63-3626, Idaho Code

01. In General. Sales tax is collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer. ()

02. Rules for Unsecured Credit Sales. The following rules apply to unsecured credit sales: ()

a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he can make an adjustment on his sales tax return or apply for a refund of taxes according to this rule. ()

b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought is included in the amount financed and charged off as a bad debt for income tax purposes. ()

c. A written claim for the refund may also be filed with the Commission within three (3) years from the time the tax was paid to the Commission. The Commission will review all such refund claims. See Rule 117 of these rules, Refund Claims. ()

03. Rules for Secured Credit Sales. The following rules apply to secured credit sales: ()

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. ()

b. If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. ()

c. If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral. ()

d. If merchandise is repossessed and is subsequently resold at retail, sales tax is computed on the sales price and collected and remitted the same as on other retail sales. ()

04. Application to Taxpayers. The following rules apply to taxpayers who remit sales tax on an accrual basis but report income tax on a cash basis or are not required to file income tax returns. ()

a. Retailers are required to remit sales tax on an accrual basis, even though their accounting records and income tax returns may be prepared on the cash basis of accounting. ()

b. For taxpayers who keep their records and file income tax returns on a cash basis, a worthless account cannot be written off as a bad debt because it has not been recognized as income in the taxpayer's books. These retailers may still claim a bad debt for sales tax purposes. The claim should be made at the same time and in the same way discussed in Subsections 063.02 and 063.03 of this rule, even though the bad debt does not appear on the retailer's income tax return. ()

c. For taxpayers who are not required to file income tax returns, the claim should be made the same way discussed in Subsections 063.02 and 063.03 of this rule. ()

d. As these claims cannot be verified against the income tax returns of these taxpayers, sufficient evidence must be attached to the sales tax return to prove that the account has become worthless, that the tax was remitted by the retailer, and that the retailer did not receive payment of the tax from the buyer. ()

05. Amount of Credit Allowed. The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax. ()

a. Example: Assume the tax rate is six percent (6%). A retailer sells a thirty thousand dollar (\$30,000) forklift for thirty-one thousand eight hundred dollars (\$31,800) including sales tax. The buyer pays a five thousand dollar (\$5,000) down payment and finances the balance. The buyer later defaults and the retailer repossesses the forklift and sells it at a public auction for six thousand dollars (\$6,000). At the time of repossession the buyer owes

seventeen thousand five hundred forty-five dollars (\$17,545) including the financed sales tax. After the sale the amount that the retailer writes off is eleven thousand five hundred forty-five dollars (\$11,545). The sales tax bad debt write off is six hundred fifty-three dollars (\$653).

Total taxable sale	\$30,000
6% sales tax	\$1,800
Total sale	\$31,800
Down payment	(\$5,000)
Total financed	\$26,800
Payment to principal after sale	(\$9,255)
Amount realized at public sale	(\$6,000)
Total bad debt	\$11,545
Sales tax portion of bad debt $\$11,545 - (11,545 / 1.06) =$	\$653

()

b. Example: A car dealer makes a taxable sale of an automobile for fourteen thousand nine hundred dollars (\$14,900) along with an extended warranty for five hundred dollars (\$500), a documentation fee of one hundred dollars (\$100), a title fee of eight dollars (\$8) and credit insurance for one hundred dollars (\$100). The customer pays one thousand dollars (\$1,000) cash and trades in a car worth ten thousand dollars (\$10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars (\$6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand nine hundred eight dollar (\$10,908) loan after paying five hundred dollars (\$500) towards the principal. The customer damages the automobile in an accident leaving the collateral worthless. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars (\$5,000) of the total fifteen thousand nine hundred eight dollar (\$15,908) cost was taxable.

Sales price of vehicle	\$14,900
Documentation fee	\$100
Extended warranty	\$500
Credit insurance	\$100
Title fee	\$8
Trade-in	(\$10,000)
Sales tax	\$300
Subtotal	\$5,908
Down payment	(\$1,000)
Invoice total	\$4,908
Amount financed	\$10,908
Payment to principal after sale	(\$500)
Amount of bad debt	\$10,408

Amount of down payment used to pay sales tax:	
	$(\$300 / \$5,908) = 5.08\%$
	$.0508 \times \$1,000 = \50.80
Amount of sales tax financed:	
	$\$300 - \$50.80 = \$249.20$
Percentage of loan representing sales tax:	
	$\$249.20 / \$10,908 = 2.28\%$
Sales tax paid by payments to principal:	
	$\$500 \times 0.228 = \11.40
Amount of bad debt write-off:	
	$\$249.20 - \$11.40 = \$237.80$

()

06. Bad Debt Collected at a Later Date. If a bad debt account is collected later, the retailer must pay tax on the amount collected. ()

07. To Claim Credit for a Bad Debt. Credit for bad debts for sales tax purposes may be claimed by the retailer that made the original sale and paid the sales tax to the state. Financial institutions or other third parties who are the assignees of the retailer may claim a bad debt for sales tax on property for which they provided financing, if the amount financed includes the sales tax remitted on the sale of the property. The person claiming the credit must be the person who ultimately bears the loss if the buyer of the property defaults on the obligation to repay. ()

08. Cross-Reference. Rescinded Sale. See Rule 045 of these rules. ()

064. (RESERVED)

065. TIRES BALANCING, STUDDING, AND SIPING (RULE 065).
Sections 63-36112, 63-3613, 63-3619, Idaho Code

01. Services Subject to Sales Tax. Sales tax applies to the amount charged for services agreed to be performed in conjunction with the sale of a tire. Examples of such taxable services are balancing, studding, siping, or similar charges. Sales tax will apply to the total amount charged for the tire, the services, and the materials used to perform the services. ()

02. Services Not Subject to Sales Tax. ()

a. Sales tax does not apply to the amount charged for balancing, studding, or siping a tire owned by the customer. ()

b. Sales tax does not apply to a separately stated fee to mount or install a tire whether sold new or owned by the customer. ()

c. The person performing the nontaxable service pays use tax on the value of the materials used in performing the service. ()

03. Materials Used in Performing a Service. Studs, wheel weights, valve stems, cores, patches, and similar items are materials that may be used to perform both a taxable and nontaxable service. The seller may elect to use any consistent method in determining the value and the amount of materials used in performing taxable and nontaxable services. ()

a. The allocation of materials may be determined using a percentage basis. Example: The seller determined through some reasonable basis that sixty percent (60%) of the studs purchased for resale are used in tires that are purchased from him. The remaining forty percent (40%) are used in tires owned by customers and brought in

for studding. Use tax will apply to the forty percent (40%) used in studding customer owned tires. As sales tax applies to the entire fee charged for studding a tire sold to a customer, the remaining sixty percent (60%) of the studs will not be subject to use tax, but are included in the amount subject to sales tax imposed on the buyer. ()

b. The allocation may be determined based on the value of the material used in performing both taxable and nontaxable services. ()

c. The allocation may be determined using any other method that will allow a reasonable allocation of materials used in both a taxable and nontaxable service. ()

04. Cross-Reference. Repairs. See Rule 062 of these rules. ()

066. CONTRACTOR'S USE OF TANGIBLE PERSONAL PROPERTY (RULE 066).
Sections 63-3609(a), 63-3620, 63-3621, Idaho Code

01. Use. The term use includes the exercise of any right or power over tangible personal property in the performance of a contract, regardless of whether title to the tangible personal property is vested in the contractor or the tangible personal property is leased. ()

02. Contractors Use of Tangible Personal Property. If title to the tangible personal property is vested in an entity not entitled to the production exemption, use tax will apply to the contractor. For contractors improving real property, see Rule 012 of these rules. ()

03. Exception. The Sales Tax Act provides only one (1) exception. If title to the tangible personal property is vested in a person entitled to the production exemption (see Rule 079 of these rules), the contractor's use of the property will also be exempt. ()

067. REAL PROPERTY (RULE 067).
Sections 63-3609, 63-3612, 63-3616, Idaho Code

01. Real Property. For the purpose of these rules, the term real property means land and improvements or fixtures to the land. ()

02. Improvements or Fixtures. Improvements or fixtures to real property include: ()

a. Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. ()

b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. ()

c. Property which increases the market value or productivity on a relatively permanent basis. ()

03. Three Factor Test. A three (3) factor test may be applied to determine whether an article has become a fixture to real property. The three (3) tests to be applied are: ()

a. Annexation to the realty, either actual or constructive. ()

b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. ()

c. Intention to make the article a permanent addition to the realty. ()

04. Example 1: The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to

the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention is determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. ()

05. Example 2: The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. ()

06. Personal Property Incidental to the Sale of Real Property. This rule does not affect the provisions of Section 63-3609(b), Idaho Code. ()

07. Store Fixtures. Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term “store fixtures” includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: ()

a. It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or ()

b. It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. ()

08. Fiber Optic and Communication Cable. Fiber optic and communication cable installed in a building is presumed to be a real property improvement. ()

068. COLLECTION OF TAX (RULE 068).
Section 63-3619, Idaho Code

01. In General. Idaho Sales Tax is an excise tax which is imposed upon each sale at retail. The tax is computed at the time of each sale and the tax on the total sales for the reporting period, usually monthly, will be reported and paid on or before the due date as established by Rule 105 of these rules. ()

02. Sales Tax to Be Collected by Retailer. Sales tax is to be collected by the retailer from the customer. The tax will be computed on and collected for all credit, installment, conditional or similar sales when made or, in the case of rentals, when the rental is charged. ()

03. Computation of Tax. The retailer will compute the tax upon the total sale to a buyer at a given time and not upon each individual item purchased. ()

04. Tax Rate. For the purpose of these rules, the terms “tax rate” or “rate” means the current tax rate as defined in Sections 63-3619 and 63-3621, Idaho Code. References to the tax rate in these rules may not reflect the current rate in effect. ()

05. Bracket System for Six Percent Tax Rate. Beginning October 1, 2006, the sales tax rate is six percent (6%). The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale. ()

a. Multiply six cents (\$0.06) for every whole dollar included in the sale, and ()

b. Add for each additional fractional dollar amount of sale the corresponding tax below:

Dollar Amount of Sale	Tax	
0.00 - 0.03	-	.00
0.04 - 0.20	-	.01
0.21 - 0.37	-	.02
0.38 - 0.53	-	.03
0.54 - 0.70	-	.04
0.71 - 0.87	-	.05
0.88 - 0.99	-	.06

However, sales to a total amount of eleven cents (\$0.11) or less are exempt from tax. ()

06. Tax to Be Separately Displayed. The amount of tax collected by the retailer is to be displayed separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale. The retailer may retain any amount collected under the bracket system which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting that tax. ()

07. Reimbursement of Tax From the Buyer to the Seller. If the seller does not collect the sales tax at the time of the sale and it is later determined that sales tax should have been collected, the seller can then collect the sales tax from the buyer if the delinquent tax has been paid by the seller. The legal incidence of the tax is intended to fall upon the buyer, Section 63-3619, Idaho Code. ()

a. Example: The Commission determines that certain nontaxed sales by a seller are subject to sales tax and that the seller did not collect the tax and did not have documentation supporting exemption from the sales tax. The Commission issued a Notice of Deficiency Determination to the seller imposing the tax and interest. The assessment then paid by the seller entitles the seller to reimbursement from the buyer. ()

b. The seller is also entitled to collect reimbursement from the buyer of the interest paid on the taxes assessed. ()

c. The seller is not entitled to reimbursement from the buyer for penalties imposed as part of the assessment against the seller. ()

d. The receivable established by the seller seeking reimbursement from the buyer is not subject to expiration of the statute of limitations provided in Section 63-3633, Idaho Code. ()

069. INTERSTATE COMMERCE (RULE 069).

Sections 63-3612, 63-3613, 63-3621, Idaho Code

When tangible personal property is located within the state of Idaho at the time of sale and is delivered within the state of Idaho, such sale is taxable irrespective of where the parties to the contract of sale are located and where the contract was made or accepted or the funds paid. Example: A Washington-based interstate trucking firm hires an Idaho repair facility to install parts on a disabled truck. The trucking firm takes delivery of the repaired vehicle in Idaho. The sale of the parts is subject to Idaho sales tax. ()

070. PERMITS (RULE 070).

Section 63-3620, Idaho Code

01. Requirements for Obtaining Permits. All retailers, wholesalers and other persons required to

collect sales tax must obtain a permit from the Commission before engaging in business. No fee is required for the initial sales tax permit. ()

a. Every wholesaler, retailer or other person required to collect sales tax must apply for a permit on the form prescribed by the Commission. Application forms may be obtained by contacting any Commission office. The application for a permit must list each place of business operated by the same person, firm or corporation. The permit must be posted in a conspicuous place at each location for which it is issued. A separate permit number must be obtained for each business name. ()

b. Example 1: Corporation A operates the businesses named B, C, and D. Three (3) permit numbers are required, regardless of how many locations operate using the business names B, C, and D. ()

c. Example 2: Corporation E operates three locations, using the business name F. Only one permit number is needed, since all locations have the same business name. ()

02. Out-of-State Seller. An out-of-state seller desiring to conduct business as a seller within Idaho needs a seller's permit. This requirement also applies to any salesmen user's agents who solicit orders for nonresident sellers. ()

03. Sales in Leased Premises. When any established business leases a portion of its shelves, counters or floor space to other persons selling tangible personal property to consumers, the sales from such leased department may be included in the tax return of the lessor. When the lessee conducts the leased department in the same manner as a separate business and keeps separate business records, the lessee must apply for a sales tax permit. ()

04. Cancellation of Sales Tax Permits. It is the responsibility of a permit holder to notify the Commission in writing immediately upon any change in ownership of the permitted business or upon complete or partial termination of the permit holder's business. Complete or partial termination of a permit holder's business includes the lease of part or all of the business or business location to another party who will be responsible for remitting the sales tax. This notice must include the following information. ()

a. This notice must include the date of closure, date of sale or date of lease. If the permit holder does not continue to operate a business under that permit number, the notice must state that the permit should be canceled. The permit holder must return the permit or send a written statement that the permit has been destroyed. If the permit holder has sold or leased his business, the notice must state the last day of operation and the name of the new owner or lessee. ()

b. If this information is not furnished to the Commission and the new owner or lessee continues operation of the business on the previous owner's or operator's permit, without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated a business under the previous owner's permit. ()

05. Suspension of Sales Tax Permits. The permit holder must notify the Commission in writing of the anticipated discontinuation of a business due to seasonal operation or for any other reason. This notice must contain the date of closure and anticipated date of reopening. Upon receipt of this information, returns will be suspended during the period of closure. ()

06. Requirements of Holding a Seller's Permit. A seller's permit may be held only by persons actively engaged in making retail sales subject to Idaho sales tax. Any person holding a permit who fails to meet this requirement must surrender the permit to the Commission for cancellation. If a permit is held by a person who has reported no sales for a period of twelve (12) consecutive months, the Commission may revoke the permit and require the holder to return the permit to the Commission or provide a sworn statement that the permit has been destroyed by the holder. ()

07. Seller's Permit and Sales Tax Permit. The terms seller's permit and sales tax permit may be used interchangeably. Both refer to the permit issued to a person desiring to engage in business in Idaho as a retailer. ()

08. Temporary Seller's Permits. The Commission may issue temporary seller's permits valid for the period of time shown on the face of the permit. No temporary seller's permit will be issued for a period of time greater than ninety (90) days. ()

071. (RESERVED)

072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).
Sections 63-3615, 63-3621, 63-3622, 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 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. ()

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. ()

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. ()

04. Specifically Excluded from the Definition of Both Use and Storage Are: ()

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

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 buyer 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 buyer that displays separate statement of the tax relieves the buyer of the use tax requirements. ()

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 buyer reports and remits the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. ()

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. ()

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. ()

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. ()

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. ()

08. Use Undeterminable at Time of Purchase. In some cases a buyer 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 buyer 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 buyer may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The buyer will maintain adequate accounting control to insure that use tax is properly accrued on all taxable property. ()

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. ()

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 calculates 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. ()

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 calculates use tax on the total inventoried cost including the additional labor. ()

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

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. ()

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. ()

e. Example 3. A retailer buys shirts without paying tax for resale inventory. The shirts cost the retailer ten dollars (\$10) each. The retailer withdraws ten (10) of the shirts from inventory and donates them to a sports team they are sponsoring. The retailer owes use tax on one hundred dollars (\$100). ()

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (RULE 073).
Sections 63-3615, 63-3621, 63-3621A, Idaho Code

01. Equipment Brought into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03 of this rule. For property a contractor fabricates to install into Idaho real property, see Rule 012 of these rules. ()

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. ()

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. ()

a. A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. ()

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he will need written approval from the Commission to use this option. ()

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. ()

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, assuming a rate of six percent (6%), totals nine hundred dollars (\$900). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. ()

e. Example: The same contractor in the previous example returns to Idaho within the same twelve (12) months with the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000). As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's six percent (6%) use tax on its present value of ninety-five thousand dollars (\$95,000) x six percent (6%) = five thousand seven hundred dollars (\$5,700). Credit of two thousand six hundred dollars (\$2,600) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the nine hundred dollar (\$900) credit already used on rentals. The contractor owes three thousand one hundred dollars (\$3,100) of use tax to Idaho. ()

04. Licensed Motor Vehicles. A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents, nonresident college students, and temporarily assigned military personnel in Idaho. See Rule 107 of these rules. ()

074. DONATIONS TO POLITICAL SUBDIVISIONS AND CERTAIN NONPROFIT ORGANIZATIONS OF TANGIBLE PERSONAL PROPERTY USED FOR IMPROVEMENTS TO REAL PROPERTY (RULE 074).

Sections 63-3609, 63-3612, 63-3613, 63-3621, 63-3622O, Idaho Code

01. Donated Property. Effective July 1, 1991, there is an exemption from the use tax for the donation of tangible personal property which is incorporated into real property, when donated to the state of Idaho, political subdivisions of this state, or a nonprofit organization as defined in Section 63-3622O, Idaho Code. The exemption applies whether the tangible personal property is incorporated into real property by the donee, a contractor or subcontractor or any other person. ()

02. Purchase of Donated Items. This exemption does not apply to sales tax which is applicable to the purchase of tangible personal property which will be donated to the state of Idaho, its political subdivisions, or qualified nonprofit organizations, for incorporation into real property. ()

03. Property Not Incorporated into Real Property. This exemption does not apply to the sales or use tax applicable to tangible personal property donated to the state of Idaho, its political subdivisions, or qualified nonprofit organizations when the property donated will not be incorporated into real property. ()

a. Example 1: A concrete company removes from inventory and donates twenty (20) yards of redi-mix concrete to a nonprofit Idaho college for the footings of a storage building. Another contractor who is donating labor for erection of the building places the redi-mix concrete. Neither the redi-mix concrete company nor the contractor owe use tax. ()

b. Example 2: The same concrete company donates twenty (20) yards of redi-mix concrete to a nonprofit organization which is not listed in Section 63-3622O, Idaho Code. The concrete company owes use tax on the cost of the materials removed from inventory for the donation. ()

c. Example 3: A contractor buys materials from a local lumber yard which they donate to the nonprofit Idaho college to be used in building a storage building. This contractor pays sales tax on the material because the law provides exemption only from use tax. ()

d. Example 4: A local automobile dealer takes three vehicles from inventory and donates them to the athletic department of an Idaho university. The exemption does not apply. The automobile dealer owes use tax on his cost of the vehicles because the vehicles will not become improvements to real property. ()

075. -- 076. (RESERVED)

077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL (RULE 077).
Section 63-3622BB, Idaho Code

01. Exclusive Financing Exemption Under Section 63-3622BB(1), Idaho Code. The purchase of certain tangible personal property used in connection with certain activities at the Idaho National Laboratory (INL) is exempt from sales and use tax. To qualify for this exemption, the property needs to be tangible personal property primarily or directly used or consumed in research, development, experimental and testing activities, exclusively financed by the United States Government. ()

a. Qualifying Activity. Research, development, experimental, and testing activity means any activity of an original investigation, for the advancement of scientific knowledge in a field of laboratory science, engineering or technology and does not have an actual commercial application. ()

b. Real Property. The exemption does not apply to real property or to tangible personal property which will become improvements or fixtures to real property. See Rules 012 and 067 of these rules. ()

c. Incidental Use of Property. This exemption does not extend to the incidental use of any tangible personal property which fails to meet the test of primary or direct use or consumption. ()

i. Areas of support which are considered incidental include: communications equipment; office equipment and supplies; janitorial equipment and supplies; training equipment and supplies; dosimetry or radiation monitoring equipment which lacks the capability of giving an immediate indication and would not result in an immediate evacuation of personnel or shutdown of equipment; subscriptions or technical manuals which provide technology not primarily used or directly connected to the research activity; and hot and cold laundry operations. ()

ii. Materials of common support which are considered incidental include: clothing for weather protection or of a reusable nature; hand tools which are not subject to contamination at the time of initial use; protective coverings which are protection from other than radiation or are of a reusable nature; and all safety equipment and supplies which do not protect from direct radiation exposure. ()

d. Property Directly Used or Consumed. Tangible personal property primarily or directly used or consumed in a research and development activity to perform quality assurance on research equipment is tax exempt. Items of a general support nature, such as coveralls, are taxable. ()

e. Parts for Equipment. The use of tangible personal property which becomes a component part of research equipment being calibrated within a calibration lab is tax exempt; whereas, the use of parts and equipment in calibrating or for the repair of other maintenance equipment is taxable. ()

f. Radioactive Waste. The initial containment or storage of radioactive waste is an exempt use. Any further processing or transporting of such waste not relating to a research and development activity is a taxable use. ()

g. Motor Vehicles. The purchase of any motor vehicle licensed or required to be licensed by the laws of this state is taxable. ()

h. Agreements with Contractors. The Commission may enter into agreements with contractors engaged in research at the INL prescribing methods by which the contractor or contractors may accrue use tax based on the accounting procedures required by the U.S. Department of Energy. ()

02. Percentage of Tangible Personal Property Exemption Under Section 63-3622BB(2), Idaho Code. If a facility is used by the United States or one (1) of its management and operating contractors for research and development activities at the INL and also is used by a person or persons in addition to the United States or one (1) of its management and operating contractors, there is exempted from the taxes imposed by this chapter a percentage of each sale or use of tangible personal property used or consumed at or for the benefit of the facility in the amount that the research and development activities of the United States or its management and operating contractors bear to the total use of the facility by all persons. The Commission will calculate, review, and verify the allocation provided for in this section. ()

078. MOTOR FUELS (RULE 078).
Sections 63-3621, 63-3622C, 63-3622D, 63-3622G, Idaho Code

01. Exemptions. ()

a. Motor fuels, including gasoline, diesel and gaseous fuels, upon which the taxes are imposed by Title 63, Chapter 24, Idaho Code, are exempt from sales and use taxes. IDAPA 35.01.05, "Idaho Motor Fuels Tax Administrative Rules," explains in detail which petroleum and gaseous products are taxable as motor fuel. Also exempt are purchases upon which motor fuels taxes have been paid. If such purchases are later included in credits or refunds for motor fuels taxes paid and not subject to taxes imposed by Title 63, Chapter 24, Idaho Code, and no other exemption applies, sales and use taxes will be applicable. ()

b. Fuel may be exempt under Section 63-3622(D), Idaho Code. ()

c. Fuel used as heating fuel may be exempt if it qualifies under the exemption for space heating materials. See Rule 088 of this rule. ()

d. The sale or use of fuel for subsequent use outside this state and fuel brought into this state in the fuel tanks of vehicles in interstate commerce may be exempt. Carriers engaging in interstate commerce are required to maintain sufficient verifiable statistical data to substantiate any exemption claimed for fuel purchased in Idaho for use outside this state. In the case of a substantial change in the mode of operation of the carrier or other circumstances that would cause the statistical data to be invalid, the carrier is required to review and adjust the exemption claimed accordingly. ()

02. Exclusion from Exemption. Purchase or use of any fuels may be subject to sales and use taxes if no other exemption applies. Examples include, without limitation: ()

a. Fuel used by a road contractor in the operation of construction equipment or operation of stationary

engines to generate electricity, unless all of the electricity generated is used primarily and directly in the processing, manufacturing or fabricating of tangible personal property to be sold at retail. ()

b. Fuel used by private contractors in off-road vehicles in the performance of contracts with any governmental instrumentality. ()

079. PRODUCTION EXEMPTION (RULE 079).
Sections 63-3622, 63-3622D, 63-3622HH, 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: ()

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. ()

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: ()

i. The business of custom farming or operating a farm or ranch for profit. ()

ii. The business of contract mining or operating a mine for profit. ()

iii. Businesses devoted to processing tangible personal property for use as fuel for the production of energy. ()

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. ()

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. ()

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. ()

c. To qualify for the production exemption, a business sells 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. ()

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: ()

a. Raw materials that become an ingredient or component part of the product which is produced. ()

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 is the primary use of the equipment and supplies and they will be used directly in the production process. ()

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. ()

d. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production

equipment. ()

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

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

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

h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. ()

i. Equipment used primarily to fabricate production equipment. ()

j. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

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. See Rule 083 of these rules regarding farming. ()

05. Taxable Purchases. The production exemption does not include any of the following: ()

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. ()

b. Repair parts for any equipment which does not qualify for the production exemption. ()

c. Office equipment and supplies. ()

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. ()

e. Equipment and supplies used in selling and distribution activities. ()

f. 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. ()

g. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. ()

h. Transportation equipment and supplies. ()

i. Aircraft of any type and supplies. ()

j. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. ()

k. Other incidental items not directly used in production. ()

l. Fuel used in equipment while performing activities that do not qualify for the production exemption. ()

- m.** Recreation-related vehicles as described in 63-3622HH, Idaho Code, regardless of use. ()
- n.** Parts to repair recreation-related vehicles. ()
- o.** Equipment used primarily to construct, improve, alter or repair real property. ()

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. ()

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. ()

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

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. ()

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. ()

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. ()

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. ()

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. ()

080. LUMBER MANUFACTURING (RULE 080).

Sections 63-3622, 63-3622D, 63-3622HH, Idaho Code

This rule is intended to illustrate the application of the production exemption to the lumber manufacturing industry. The provisions of this rule are based upon the usual methods of doing business used in the industry generally. Factual differences in the manner in which a specific taxpayer may conduct its business can result in determinations different from those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules will control. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. This rule is limited in application to the manufacturing of rough and finished lumber and does not encompass the manufacturing of plywood, particleboard, veneer, or paper products. ()

01. Nontaxable Activities. Generally considered as nontaxable activities are the following: ()

a. Log receiving including log loaders, cranes, and front end loaders. ()

b. Log deck/log pond including log loading equipment and boats moving logs from the storage area to the debarker; sprinkler equipment when used for prevention of product deterioration; and devices used to detect metal in logs. ()

- c. Debarking equipment used to strip bark from logs including conveyor equipment for moving debarked logs further into the mill or for conveying bark when bark is used as boiler fuel or when conveying bark to a further processing stage. ()
 - d. Chipper, used to produce chips including chip storage bins and pneumatic conveyors. ()
 - e. Mill deck, as used for grading and cutting to length. ()
 - f. Headrig/shotgun, as used for sawing logs. ()
 - g. Edger, as used for edging rough lumber. ()
 - h. Trimmer, as used for trimming to length. ()
 - i. Resaw, as used for producing the proper thickness. ()
 - j. Green chain, as used to determine according to size and species the amount of time required in the dry kiln. ()
 - k. Dry kiln, as used to reduce moisture content. This exemption encompasses fire brick, steam pipe and fans inside the kiln but does not include improvements to real property. ()
 - l. Unstackers. ()
 - m. Planers, as used for finishing, grading and grade stamping of specialty products. ()
 - n. Boiler when used for the generation of steam used to operate production equipment. ()
 - o. Powerhouse when used to generate power used to operate production equipment. ()
 - p. Waste collection, as used for the collection of waste products for use as fuel for the boiler, generally referred to as hog fuel. ()
 - q. Lumber wrap and steel strapping used for packaging material. ()
 - r. Pollution control equipment when required by a state or federal agency. ()
 - s. Equipment used primarily to install exempt equipment. ()
 - t. Equipment used primarily to fabricate exempt equipment. ()
 - u. Safety equipment and supplies required by a state or federal agency and used in a production area. ()
 - v. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()
- 02. **Taxable Activities.** Generally considered as taxable activities are the following: ()
 - a. Saw filing activities using saw filing equipment and saw filing supplies. ()
 - b. Shipping, including loading equipment and strapping, seals, and binders used in shipping activities to secure lumber on railroad cars, trucks, etc. ()
 - c. Cleanup. ()

- d. Equipment used to repair or maintain production equipment. ()
- e. Equipment used primarily to construct, improve, alter or repair real property. ()
- f. Safety equipment and supplies used in an area where no manufacturing occurs such as an office, or which are not required by a state or federal agency even if used in a production area. ()
- g. Other items specifically identified as taxable in Rule 079 of these rules. ()

03. Exemption Certificate. Persons engaged in lumber manufacturing who wish to purchase goods that qualify for this exemption without paying sales tax complete an exemption certificate. See Rule 128 of these rules. ()

081. UNDERGROUND MINING (RULE 081).

Sections 63-3605B, 63-3622, 63-3622D, 63-3622HH, 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. ()

- 01. Nontaxable Purchases.** The following are generally considered nontaxable: ()
- a. Development of known ore deposits, including diamond drilling and other activities to develop levels, laterals, crosscuts, drifts, stopes, raises and shafts. ()
 - b. Support materials, including, timber, concrete, rock bolts, shotcrete, matting, and equipment used to install them. ()
 - 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. ()
 - d. Blasting to facilitate the extraction of ore using explosives, caps, fuses, etc. ()
 - 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. ()
 - 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. ()
 - 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. ()
 - 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. ()
 - i. Backfilling to pump tailings back underground as hydraulic sandfill to backfill mined-out areas using, pumps, sumps, pipe, and concrete. ()
 - j. Personal equipment including hard hats, miners' lights, belts, and batteries. ()
 - k. Sampling/assaying for quality control purposes. ()
 - l. Safety equipment and supplies required by a state or federal agency when used directly in a mining area. ()

- m.** Equipment used primarily to install production equipment. ()
- n.** Equipment used primarily to fabricate production equipment. ()
- o.** Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()
- 02. Taxable Purchases.** The following are generally considered taxable: ()

 - a.** Diamond drilling activities used for exploration. ()
 - b.** Air ventilation and conditioning if an improvement to real property including fans, motors, vent ducts; coolers; and air doors. ()
 - c.** Water lines and pumps used to remove water from the mine if improvements to real property. ()
 - 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. ()
 - 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. ()
 - f.** Sampling/assaying for purposes other than quality control. ()
 - g.** Other items specifically identified as taxable in Rule 079 of these rules. ()
- 03. Exemption Certificate.** To claim this exemption underground miners will complete an exemption certificate for the seller's records. See Rule 128 of these rules. ()

082. ABOVEGROUND, OPEN PIT, MINING (RULE 082).

Sections 47-701, 47-701A, 63-3605H, 63-3622, 63-3622D, 63-3622X, Idaho Code

This rule is meant to show how the production exemption applies to the aboveground, open pit, mining industry. This rule is based on the usual methods of doing business in the industry. Differences in the way a specific taxpayer conducts his business can result in determinations different than those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules apply. Determinations of taxability are made based on primary use of the equipment. This rule applies only to aboveground mining activities commonly referred to as open pit mining. Mining does not include soil extraction. ()

- 01. Exempt Purchases.** The following are generally considered nontaxable: ()

 - a.** Drilling and blasting, to loosen overburden for removal or, to define limits of existing ore bodies using track drills, rotary drills, and compressors to operate them, drill rods, drill bits, explosives, caps, fuses, etc., for this purpose. ()
 - b.** Ore and overburden extraction and removal using front end loaders, track loaders, power shovels, backhoes, scoop loaders, and similar equipment used to extract and load ore or strip and load overburden. ()
 - c.** Hauling of ore and overburden to stockpiles, loading sites, or disposal sites on the mine site using scrapers, carryalls, and off-highway trucks and trailers. ()
 - d.** Ore sorting, grading, sizing, and crushing operations, including unloading from transport devices using bulldozers, front end loaders, crushers, conveyors, and similar equipment. ()

- Code. e. Pollution control equipment required by a state or federal agency. See Section 63-3622X, Idaho ()
- f. Safety equipment and supplies required by a state or federal agency when directly used in a mining area. ()
- g. Equipment used primarily to fabricate or install production equipment. ()
- h. Equipment such as cranes, manlifts, and scissorlifts, used primarily to install production equipment. ()
- i. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()
- 02. Taxable Purchases.** The following are generally considered taxable: ()
- a. Exploration, where the primary purpose is to discover new ore bodies using equipment, including rotary drills, drill rigs, blasting equipment, seismic equipment, cats, bulldozers, and other materials and supplies, primarily used for such activities. ()
- b. Real property improvements, construction, and maintenance activities, including materials and equipment used primarily for constructing or maintaining buildings, fences, railroads, concrete pads and footings, and roads. Equipment, including cranes, concrete equipment, and post hole diggers primarily used for such purposes. Materials and supplies, including lumber, steel, roofing, trusses, fence posts, gates, and wire; and concrete, rebar, and remesh. ()
- c. Maintenance and cleanup activities, including those where the primary purpose is to maintain equipment and facilities or cleanup grounds and roads, except where cleanup activities are done primarily to recover ore. Shop or other equipment used primarily to repair, clean, or maintain production equipment, including welders, lathes, shop tools, hoists, cranes, mechanics' trucks, oiling trucks and trailers, steam cleaners, and testing equipment. Shop and other materials and supplies which will not become a component part of production equipment. ()
- d. Land reclamation activities, including activities where mined ore pits or panels are filled in, shaped, and reseeded, including seed or seedlings, fertilizers, soil conditioners, soil, and bulldozers, scrapers, and seed drills primarily used for this purpose; however, equipment primarily used for ore and overburden extraction and loading is exempt, even though this equipment is also used in land reclamation. ()
- e. Transportation of personnel and materials, including transportation to and from worksites or about the mine in general using buses, people movers, trailers, trucks, or similar equipment. ()
- f. Equipment and supplies used in transportation activities where ore or overburden is moved between geographically separated mine sites, processing plants or disposal sites, if 1) a substantial break in the production activities occurs, and 2) the activity does not sort, grade, size, crush, or in some other way further process the ore. Transportation activities include loading, transporting, unloading, and stockpiling. A substantial break in the production activities occurs when the product is transported between geographically separated production sites by means of public roads, waterways, airways, railways, or any other public means. The production facility to which the product is transported is a separate processing facility, and the equipment and supplies used to transport the product taxable. Examples of taxable equipment include: trucks and trailers, whether licensed or unlicensed; railroad equipment; barges and other watercraft; pipelines; conveyors; front end loaders; and bulldozers. If the means of transport to processing plants, smelters, etc., does not constitute a substantial break in the process, such as a slurry line directly from the mine to the plant, then the loading and unloading activities are not taxable. ()
- g. Personnel support activities, including facilities, equipment, and supplies for eating, sleeping, and recreation. Examples include eating trailers, utensils and food, clothing provided to employees at no charge, and pool tables, beds, and linen. ()

- h. Other items specifically identified as taxable in Rule 079 of these rules. ()

03. Exemption Certificate. To claim the production exemption, above ground miners will complete an exemption certificate for the seller's records. See Rule 128 of these rules. ()

083. FARMING AND RANCHING (RULE 083).

Sections 63-3603, 63-3622, 63-3622D, 63-3622HH, 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. ()

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. ()

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. ()

03. Directly Used. The term "directly used or consumed in or during" farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including the planting, growing, harvesting, storage and removal from storage of crops and other agricultural products, and movement of crops and produce from the place of harvest to the place of initial storage. ()

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: ()

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

05. Disinfectants Used in the Dairy Industry. Disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats, or other milking equipment are exempt. ()

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. ()

07. Plants. Plants, such as orchard trees and grape vines, are exempt. ()

08. Quality Control. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

09. The Farming Exemption Does Not Include: ()

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. ()

b. Food and supplies purchased for barnyard and household pets, such as cat and dog food, are taxable. 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. ()

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 taxable. ()

d. Motor vehicles required to be licensed are taxable 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 taxable. ()

e. Other items specifically identified as taxable in Rule 079 of these rules. ()

10. Exemption Certificate. Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax need to complete an exemption certificate. See Rule 128 of these rules. ()

084. CONTAINERS RETURNABLE/NONRETURNABLE (RULE 084).
Sections 63-3622, 63-3622E, Idaho Code

01. Container. A container encloses or will enclose tangible personal property which is sold at wholesale or retail. A container may be comprised of one (1) or more components. Items used as shipping supplies which do not enclose the product are not considered to be containers. Example: Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container. ()

02. Containers Exempt from Tax. The following containers are exempt from sales or use tax: ()

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the container and sells the contents with the container at retail or wholesale, including cans, barrels, boxes, cartons, grocery sacks, disposable soft drink cups and lids, and other to-go fast food containers. ()

b. Returnable containers when the container, along with the contents, is sold at retail if the fee for the container is separately stated, including returnable beer kegs, returnable barrels, and returnable pallets. ()

c. Returnable containers when sold back to retailers or manufacturers for refilling. ()

d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the container is separately billed, including containers for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. ()

03. Taxable Containers. Containers subject to sales and use tax include containers used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners. ()

04. Supplies. Shipping, selling, or distribution supplies are not considered to be containers and are taxable when purchased by the shipper, seller, or distributor, such as: ()

a. Shipping pallets and lumber stickers when not banded or shrink wrapped to the product to be sold, thereby not becoming a part of the container. ()

b. Banding or binders used to secure goods to transportation equipment. ()

c. Price stickers and address labels affixed to containers that do not provide any product information such as weight, quantity, nutritional value, or other necessary product description. See Rule 042 of these rules. ()

d. Example: Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a taxable shipping supply subject to the tax. ()

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (RULE 085).
Sections 63-3622 and 63-3622O, Idaho Code

01. In General. The Sales Tax Act does not provide any general exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See Rule 086 of these rules. ()

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. ()

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. ()

04. Hospitals. In addition to the health related entities listed in Section 63-3622O, Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital needs to be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in Chapter 13, Title 39, Idaho Code, or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities unless the organization qualifies for an exemption under Section 63-3622O, Idaho Code. ()

05. Idaho Foodbank Warehouse, Inc. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. ()

a. Example 1: The XYZ Corporation buys food from a grocer to donate to the Idaho Foodbank Warehouse, Inc. The XYZ Corporation pays sales tax on the purchase since they are not purchasing the food for resale and no other exemption applies. ()

b. Example 2: The Idaho Food Bank Warehouse, Inc. buys office supplies. No tax is due on the purchase. ()

06. Food Banks and Soup Kitchens. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to grow, store, prepare, or serve food are exempt from sales and use taxes. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. This exemption does not extend to the sale, purchase, or use of licensed motor vehicles by food banks or soup kitchens. ()

a. Example 1: A grocer removes food from their inventory of goods held for resale to donate to a food bank or soup kitchen. The grocer is exempt from the use tax on their cost of the inventory donated. ()

b. Example 2: The XYZ Corporation buys food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax is paid on the purchase. ()

c. Example 3: A food bank buys a licensed motor vehicle. The purchase is subject to sales tax because the motor vehicle is not used to grow, prepare, or serve food. ()

07. **Red Cross.** See Rule 094 of these rules. ()

08. **Nonsale Clothiers.** Nonprofit organizations, one of whose primary functions is to provide clothing to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be removed from a resale inventory and donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. ()

a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. ()

b. Example 2: A nonprofit, nonsale clothier buys clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store charges the organization sales tax on the bed sheets. ()

09. **Exemption Certificate.** The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Rule 128 of these rules. ()

10. **Literature.** The sale, purchase, use, or other consumption of literature, pamphlets, periodicals, tracts, books, tapes, audio CDs, and other literature which is produced in a machine readable format that are both published and sold by an entity qualified under Section 501(c)(3) of the Internal Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder. ()

11. **Sales by Nonprofit Organizations.** An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to buyers not exempt from tax. When an exempt organization qualifies as a retailer the organization is to register with the Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There are two (2) exceptions to this rule. ()

a. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes. ()

b. Sales of admissions by an entity qualified under Section 501(c)(3) of the Internal Revenue Code, or by an organization conducting an exempt function defined in Section 527 of the Internal Revenue Code when: ()

i. The event is not predominately recreational or commercial; and ()

ii. Any entertainment value included in the admission charge is minimal when compared to the charge for admission; and ()

iii. Such entity has paid a sales or use tax on taxable purchases or tangible personal property or services consumed during the event. ()

12. **Senior Citizen Centers.** Sales to certain senior citizen centers are exempt from sales tax. The definition of "senior citizen center" in Section 63-3622O, Idaho Code, is the same as the definition of a "multipurpose senior center" as defined in the Older Americans Act, Title 42, Section 3002, United States Code. To qualify for the exemption the center needs to have been granted exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Long-term care facilities do not qualify for this exemption. ()

13. **Free Dental Clinics.** Sales to and purchases by organizations providing free dental care to children are exempt from sales and use tax. For the purposes of this exemption "children" means persons under the age of

eighteen (18). To qualify for the exemption property or services need to be: ()

- a. Purchased by an organization whose primary purpose is providing free dental care to children; and ()
- b. Primarily used by an organization whose primary purpose is providing free dental care to children. ()

086. SALES AND PURCHASES BY RELIGIOUS ORGANIZATIONS (RULE 086).

Sections 63-3612, 63-3622, 63-3622J, 63-3622KK, Idaho Code

01. In General. The Sales Tax Act does not provide a general exemption from sales or use tax for religious organizations. Other than the exemptions discussed in this rule, sales and purchases by religious organizations are taxable. ()

02. Meals Sold by a Church to Members Only. An exemption is provided by Section 63-3622J, Idaho Code, for the sale of meals by a church to its members at a church function. For the exemption to apply, the meals have to be sold to members only. ()

a. If the meal is open to members only, the church can buy the food without paying tax by providing the vendor with a properly completed exemption certificate or, if the church holds an Idaho seller's permit number, it may provide the vendor with a properly completed resale certificate. See Rule 128 of these rules. ()

b. If the meal is open to persons other than members of the church, this exemption does not apply. See Subsection 086.03 of this rule. ()

c. Food purchased to prepare meals which are not sold by the church, such as meals for resident pastors or for nuns living in a convent or associated with a hospital, is taxable. ()

03. Incidental Sales by Religious Corporations or Societies. Incidental sales by religious organizations are exempt from sales taxes by Section 63-3622KK, Idaho Code. The exemption applies to sales of tangible personal property and other sales defined as subject to sales tax by the Idaho Code, including taxes imposed on providing hotel/motel and campground accommodations. For the exemption to apply, the following conditions need to be met: ()

a. If selling tangible personal property, the goods sold either have been taxed when purchased by the organization or received as a gift. ()

b. The proceeds from the sales made by the organization are used exclusively in the programs of the organization which may include any combination of religious worship, education, and recreation. ()

c. The sale may not be made to the general public in the open market in regular business competition. ()

d. Example 1: A church has a used clothing store. The items sold are not exempt from the sales tax because the store makes sales to the general public in regular competition with similar enterprises. ()

e. Example 2: A church holds an annual pancake breakfast in its basement. The meal is advertised and open to the public. If the church pays tax on the breakfast ingredients, it is not required to collect sales tax on the sale of the meals. Although the meal is open to the general public, the church is not in regular competition with other food-serving enterprises. ()

f. Example 3: A school owned by a religious corporation sells school supplies and meals only to its students. If the school pays tax when it purchases these items, it is not required to collect sales tax on the sales to its students. If, however, the school has a bookstore or cafeteria which is open to the general public, it does collect sales tax. ()

g. Example 4: A school owned by a religious corporation sells admissions to its students to attend athletic events through the sale of activity cards, and also sells admissions to the general public. The school will collect sales tax on all admission sales. The sale is open to the general public and is in regular competition with other recreational events to which admissions are charged. ()

04. Sales of Literature by a Nonprofit Corporation. Literature which is both published and sold by qualifying nonprofit corporations is exempt from sales tax. Refer to Rule 085 of these rules. ()

087. LEASE OR RENTAL OF MOTION PICTURE TELEVISION FILM (RULE 087).

Sections 63-3612, 63-3613, 63-3622, Idaho Code

The sales tax or use tax is not applicable to rentals or leases of motion picture film to theaters or other exhibiting enterprises where admission to the showing of films is taxable. In the case of radio and television stations, the purchase of films, tapes or records is exempt. ()

088. SALE OR PURCHASE OF MATTER USED TO PRODUCE HEAT BY BURNING (RULE 088).

Sections 63-3612, 63-3613, 63-3622, 63-3622G, Idaho Code

01. Scope. Matter used to produce heat by burning includes natural gas, liquefied propane, coal, wood, oil, petroleum, and their by-products. ()

02. Limitation. The phrase used to produce heat by burning means the act of incineration of materials defined in Subsection 088.01 of this rule in a furnace or similar device for the purpose of raising or maintaining the temperature in an enclosed space, dwelling, or building including a building under construction, and includes heating water and cooking. Heating fuel delivered in bulk to a dwelling or building for this purpose and properly identified as such by the vendor in his books and records, on the delivery ticket, and invoice to the customer relieves the vendor of the responsibility to obtain a sales tax exemption certificate, from the buyer. ()

03. Liquefied Propane. Sales of liquefied propane in units of fifteen (15) gallons or less, identified in the vendor's records as cylinder sales, will be considered to be used to produce heat by burning as defined in Subsection 088.02 of this rule. These sales will not require that a sales tax exemption certificate be obtained from the buyer, and is exempt from the tax regardless of the use to which the buyer places the liquefied propane. ()

04. Documentation of Other Exempt Sales. All other sales of natural gas, liquefied propane, coal, wood, oil, petroleum, and its by-products are taxable, unless specifically exempted or excluded elsewhere in the Sales Tax Act. Such exempted or excluded sales are documented in the following manner: ()

a. If purchased for resale, the vendor obtains a properly executed resale certificate. See Rule 128 of these rules. ()

b. If purchased to produce heat by burning as defined in Subsection 088.02 of this rule and not bulk delivered to the customer by the vendor, the vendor either obtains a properly executed exemption certificate from the buyer, or requires the buyer to complete a stamped or imprinted statement on the face of the sales invoice containing the following language:

I certify that the gas I have purchased will be used in a furnace or similar device for the purpose of water heating, cooking, or raising or maintaining the temperature in an enclosed space, dwelling, or building.

This tax exemption statement qualifies if this statement is signed by the buyer and the name and address of the buyer is shown on the invoice.

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

BUYER'S SIGNATURE

The signature of the buyer on this statement be in addition to any other signature required on the invoice. ()

c. If the buyer claims an exemption from the tax for reasons other than heat by burning, a properly executed exemption certificate will need to be obtained. See Rule 128 of these rules. ()

089. BOY SCOUT, GIRL SCOUT AND 4-H GROUP SALES AND PURCHASES (RULE 089).
Sections 63-3612, 63-3613, 63-3622, 63-3622GK, Idaho Code

01. Sales by Scout and 4-H Groups. In general, when a Scout or 4-H group makes retail sales to their members or to the public, they are a retailer and need to obtain an Idaho seller's permit number. ()

a. Sales to Members. Tangible personal property sold to members is subject to sales tax, including badges, insignia, uniforms, and magazines. Camp fees are subject to sales tax. Dues charged to members are not taxable. ()

b. Sales by Members. Sales of tangible personal property by members, such as cookies, food, and magazines are taxable. The club is responsible for the collection and remittance of the tax. ()

c. Sales of Animals. Sales of animals in conjunction with a fair or at the Western Idaho Spring Lamb Sale by 4-H or FFA club members are not taxable. ()

02. Purchases by Scout and 4-H Groups. ()

a. When a fee is charged to members to attend a camp, the food for the camp may be purchased by the club without paying tax. The club provides the retailers of the food a properly completed resale certificate. See Rule 128 of these rules. ()

b. Other tangible personal property purchased for resale to members of the club or to the public may be purchased without tax as in Subsection 089.02.a. of this rule. ()

c. Materials and supplies purchased by the club for its own use are taxable. The club pays tax to the vendor. ()

090. GAS, WATER, ELECTRICITY DELIVERED TO CUSTOMERS (RULE 090).
Section 63-3622F, Idaho Code

01. In General. Gas, water and electricity delivered to customers includes those products of public or private utility service or user's cooperative or similar organizations when sold to customers for the customer's use. ()

02. Telephone Service. Electricity includes the dial tone for telephone utility service. ()

091. SALES TO INDIANS (RULE 091).

01. Sales to Indians. Indians make sales tax free purchases if these purchases are made within the boundaries of an Indian Reservation. The retailer will retain documentation supporting the fact that a buyer is an enrolled member of an Indian tribe. Presentation of an identification card issued by one (1) of the Indian tribes will be acceptable for this purpose. ()

02. Records. The retailer will maintain records in support of these exempt sales. Any of the following methods are accepted by the Commission: ()

a. Recording of the buyer's name and number from the buyer's tribal identification card on the sales slip. ()

b. Recording the name and number from the buyer's tribal identification card on the cash register tape beside the record of the purchase. ()

c. Completion of an exemption certificate recording the number from the buyer's tribal identification card. ()

03. Sales of Motor Vehicles to Indians. See Rule 107 of these rules. ()

092. OUT-OF-STATE SALES (RULE 092).
Sections 63-3612, 63-3613, 63-3622Q, Idaho Code

01. Out-of-State Sales. Section 63-3622Q, Idaho Code, does not distinguish between purchases made by Idaho residents and nonresidents. The purchase of tangible personal property for delivery by the seller outside the state through either a common carrier, U.S. mails or seller's delivery service is not subject to Idaho sales tax. ()

02. Records. The seller will maintain records to support the exemption claimed in this fashion. Shipping data in the form of bills of lading, postal receipts or invoices setting forth the out-of-state destination with adequate supporting documentation will be accepted as evidence of the exemption. ()

093. SALES AND USE TAX LIABILITY OF FEDERAL AND STATE CREDIT UNIONS, NATIONAL AND STATE BANKS, AND FEDERAL AND STATE SAVINGS AND LOAN ASSOCIATIONS (RULE 093).
Sections 26-2138, 26-2186, 63-3612, 63-3613, Idaho Code

01. Purchases by Credit Unions. Purchases by Federal Credit Unions are exempt from sales and use tax under the provisions of 12 U.S.C. 1768. Purchases by state-chartered credit unions are exempted from sales and use tax by Section 26-2138, Idaho Code, and purchases by Idaho corporate credit unions are exempted from sales and use tax by Section 26-2186, Idaho Code. ()

02. Purchases by Banks and Savings and Loan Associations. Purchases by national and state banks, as well as federal and state savings and loan associations, are subject to sales and use tax. ()

03. Sales by Credit Unions, Banks, Savings and Loan Associations. When acting as a retailer, all retail sales made by credit unions, banks, and savings and loan associations are subject to sales tax. ()

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (RULE 094).
Sections 63-3609, 63-3612, 63-3613, 63-3622, 63-3622O, Idaho Code

01. In General. This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. ()

02. Extent of Exemptions. The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. ()

03. Political Subdivisions. Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. ()

04. Purchases by Contractors. Contractors are consumers under Idaho tax law. Purchases made by contractors are taxable even though they are to be applied to use on a state or political subdivision construction project. ()

05. Sales by Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. ()

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See Rule 058 of these rules. ()

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, and fund raising events. ()

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See Rule 030 of these rules. ()

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. ()

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. ()

f. The examples cited above are not inclusive. ()

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. Federal law also prevents the state of Idaho from imposing sales tax on any sales by the federal government or its instrumentalities. For purposes of Idaho sales and use tax, the American Red Cross is an instrumentality of the federal government. ()

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are taxable if delivery occurs in this state. ()

095. MONEY-OPERATED DISPENSING EQUIPMENT (RULE 095).
Sections 63-3612, 63-3613, 63-3622, 63-3622II, Idaho Code

01. Money-Operated Dispensing Equipment. The sale, purchase, lease, or rental of money-operated dispensing equipment is exempt from tax if the equipment is only used to dispense a tangible product, amusement, or service on which a retail sales tax is imposed by the state of Idaho. ()

a. Money-operated dispensing equipment includes equipment operated by a debit or credit card. ()

02. Parts, Kits, or Supplies. This exemption does not apply to parts, kits, or supplies used to repair, refurbish, or upgrade the dispensing equipment. Refer to Section 63-3622II, Idaho Code. ()

096. IRRIGATION EQUIPMENT AND SUPPLIES (RULE 096).
Section 63-3622W, Idaho Code

01. Agricultural Irrigation. The Sales Tax Act exempts all irrigation equipment and supplies which are used directly for agricultural irrigation. To qualify for the exemption, the irrigation equipment or supplies need to be used directly and primarily for agricultural irrigation purposes. If the use of the equipment or supplies is only incidental or only indirectly related to the agricultural irrigation process, the exemption will not apply. Examples include: ()

a. An off-highway motorbike or all-terrain vehicle, ATV, used to transport men or equipment is indirectly related to the irrigation process. ()

b. Irrigation boots worn to protect the irrigator are incidental to the process and are taxable. ()

02. Nonagricultural Irrigation Equipment or Supplies. Irrigation equipment or supplies used for any purpose other than agriculture are not exempt. For example, irrigation pipelines or sprinkler systems used on a golf course are taxable. ()

03. Real Property Improvements. The exemption applies regardless of whether the equipment becomes a part of real estate. It is not necessary to distinguish between pipeline which retains its identity as tangible personal property and pipeline which may become incorporated into real property such as buried mainline pipe. ()

04. Title to Equipment. The exemption applies regardless of whether the equipment is installed by a farmer, a contractor, or a subcontractor. The incidence of tax will not turn upon the determination of whether title to the irrigation equipment passed at the time of sale or subsequent to installation. ()

05. Exemption Certificate. A buyer's right to the exemption is documented by the use of an exemption certificate in the manner prescribed by Rule 128 of these rules. ()

097. YARD SALES (RULE 097).
Sections 63-3622, 63-3622K, Idaho Code

01. In General. Tangible personal property may be sold tax exempt at a home yard sale if the yard sale meets the qualifications specified in this rule. A home yard sale is characterized by the following: ()

a. The sale is of short duration lasting no more than a few days. ()

b. The seller is not in the business of regularly selling the same or similar property as that which is offered for sale at the yard sale. ()

c. The items offered for sale at the yard sale are not items which are specifically purchased for the purpose of reselling them. ()

d. The items offered for sale are owned by the seller, no consignment sales may be made. ()

e. The sale is conducted on the residential premises of the seller. ()

02. Exempt Yard Sales. An individual seller may only conduct two (2) exempt yard sales in the course of one (1) calendar year. Two (2) or more sellers may join together to conduct a single yard sale which will be considered to be a sale conducted by both such sellers. A home yard sale will include sales referred to as garage sales, moving sales, and other similar such sales if the prerequisites of this rule are otherwise met. ()

098. FOREIGN DIPLOMATS (RULE 098).
Sections 63-3610, 63-3622, 63-3622O, Idaho Code

01. In General. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The cards are nontransferable and bear a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. ()

02. Federal Tax Exemption Cards. Federal tax exemption cards list all restrictions on tax exemptions on the face of the card, including whether or not the card privileges extend to both official and personal purchases. ()

03. Documentation. A retailer documents exempt sales to a foreign diplomat by: ()

a. Retaining a copy of the front and back of the federal tax exemption card to support the exempt sale; or ()

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. ()

099. OCCASIONAL SALES (RULE 099).
Sections 63-3610, 63-3620, 63-3622K, 63-3622HH, 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 cannot 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. ()

a. If the sale does not qualify as an occasional sale, the seller is a retailer and will collect and remit sales tax in the same manner as any other seller. See Section 63-3610, Idaho Code. ()

b. Proof of occasional sale. An occasional seller of tangible personal property will provide a written statement to the buyer if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108TR to document his occasional sale claim. For occasional sales of other tangible personal property, the buyer obtains a written statement that has the seller's name, address, date, and signature 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 buyer will 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. ()

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. ()

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. ()

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: ()

a. The buyer continues the same type of business operation; and ()

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. ()

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. ()

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. ()

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. ()

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, pays Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. ()

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. ()

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. ()

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. ()

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 pays 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. ()

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 buyer 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 will collect and remit sales tax on the lease payments. The lease payments will 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: ()

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. ()

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 buyer 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 seeks a refund of the sales tax paid on acquisition of the asset and collects and remits sales tax on the lease payments. ()

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 buyer completes 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. ()

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 taxable. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it collects sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. ()

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: ()

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

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. ()

c. All-terrain vehicles, ATVs, 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. ()

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

e. Camping, travel, fifth-wheel travel-type trailers and park model recreational vehicles designed to provide temporary living quarters. ()

f. Motor homes. ()

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. ()

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. ()

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 taxable. 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. ()

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. ()

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. ()

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 buys it from the contractor. The building owner's purchase does not qualify for the occasional sale exemption. ()

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. ()

100. PRESCRIPTIONS (RULE 100).

Sections 63-3612, 63-3613, 63-3622, 63-3622N, Idaho Code

01. In General. Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, eyeglasses, contact lenses, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: ()

a. Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; ()

b. Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter. Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(b), Idaho Code, will not qualify for the exemption. ()

c. Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. ()

d. Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. ()

02. Orthopedic Appliances. The term orthopedic appliance includes those braces and other external supports prescribed by a practitioner for the purpose of correction or relief of defects, diseases, or injuries to bones or joints. ()

03. Documenting Exempt Sales. The seller keeps the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are taxable. The seller needs to be able to

identify sales which are exempt under prescription from sales which are taxable. ()

a. Refills of prescriptions on file with a seller are exempt from tax. ()

b. Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. ()

04. Purchases by Practitioners. A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. ()

05. Purchases by Nursing Homes and For Profit Hospitals. The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit, and as a result, they pay tax on all purchases, unless those items are exempted by Section 63-3622N, Idaho Code. An exemption certificate is completed and provided to the vendor of the exempted items. See Rule 128 of these rules. ()

06. Sale of Eyeglasses, Contact Lenses, and Related Products. The sale of non-prescription eyeglasses, non-prescription contact lenses and related products, such as carrying cases, non-prescription sunglasses, and cleaning solutions is taxable. ()

a. The sale of eyeglasses and their frames, lenses, nose pieces, hinges, and related eyeglass component parts required as part of a finished pair of eyeglasses sold under a prescription is exempt from sales tax on and after July 1, 2015. ()

b. The sale of prescription contact lenses on and after July 1, 2016, is exempt from sales tax. ()

07. Dental and Orthodontic Appliances. The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. ()

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).
Sections 49-123, 63-3612, 63-3613, 63-3622, 63-3622R, Idaho Code

01. In General. An exemption is provided from the sales and use tax for the sale or lease of motor vehicles and trailers to commercial or private carriers to be substantially used in interstate commerce. This exemption is commonly called the IRP Exemption. Commercial or private carriers are in the business of transporting persons or commodities owned by the carrier or another. Farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code, do not meet the requirements of the IRP exemption. ()

02. Motor Vehicles. To qualify for the exemption, a buyer will: ()

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; ()

b. Register the vehicle under the International Registration Plan (IRP); and ()

c. Operate the vehicle in a fleet of one (1) or more vehicles registered under the International Registration Plan (IRP) or a similar proportional registration system with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho. ()

03. Trailers. An exemption is provided from the sales or use tax for trailers when the buyer will: ()

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP); and ()

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho under the International Registration Plan (IRP). ()

04. Title or Base Plate. The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. ()

05. Documentation. Buyers claiming this exemption provide the seller or lessor with a properly completed Exemption Certificate. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the buyer and provides a properly completed exemption certificate to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. See Rule 128 of these rules. ()

06. Repair Parts and Supplies. The exemption does not apply to parts, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan (IRP). ()

07. Failure To Meet Interstate Mileage Requirement. The use of a fleet of trucks and trailers, purchased exempt under the IRP exemption provided by Section 63-3622R, Idaho Code, will become taxable as of June 30 of any year in which the fleet's out-of-state mileage is less than ten percent (10%) of the total fleet mileage during the previous four (4) quarters. ()

102. LOGGING (RULE 102).
Section 63-3605C, 63-3622HH, 63-3622JJ, Idaho Code

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. ()

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. ()

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. ()

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. ()

05. Equipment and Supplies. Equipment and supplies used or consumed primarily and directly in the logging process and which are necessary or essential to perform the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Examples include: ()

a. Chain saws and tree harvesters. ()

b. Skidders, tower-skidders, skidding cables, or chokers. ()

- c. Log loaders and log jammers which are not licensed motor equipment. ()
- d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. ()
- e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. ()

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: ()

- a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. ()
- b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. ()
- c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. ()
- d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ()

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: ()

- a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. ()
- b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. ()
- c. Reforestation equipment and supplies, except when part of the operation of a tree farm. ()
- d. Safety equipment and supplies, including hard hats and earplugs. ()
- e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. ()
- f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. ()
- g. Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. ()
- h. Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. ()
- i. Harvesting timber for firewood. ()

08. Election to Pay Sales Tax. The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. ()

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. ()

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. ()

103. (RESERVED)

104. RAILROAD ROLLING STOCK, PARTS, MATERIALS AND EQUIPMENT (RULE 104).
Sections 63-3622, 63-3622CC, 63-3622DD, Idaho Code

01. In General. Sections 63-3622CC and 63-3622DD, Idaho Code, provide exemptions from sales or use tax for rebuilt or remanufactured railroad rolling stock which was previously used in interstate commerce more than three (3) consecutive months, and for parts, materials, and equipment primarily used to rebuild or remanufacture such railroad rolling stock. ()

02. Definitions. As used in this rule, the following terms have the following meanings. ()

a. Railroad rolling stock. Flanged-wheel locomotives, railroad cars, maintenance of way equipment and other flanged-wheel vehicles designed and manufactured specifically for use on railroad tracks and railroad systems, including component parts thereof. ()

b. Remanufacture/rebuild. To reconstruct, remake, reassemble or reprocess railroad rolling stock to materially extend the life of the equipment. This process requires extended removal of the railroad rolling stock from the transportation stream. ()

c. Equipment. All equipment, other than railroad rolling stock, which is used in the actual remanufacturing/rebuilding process. ()

d. Parts. Tangible personal property which becomes part of the remanufactured/rebuilt railroad rolling stock or which becomes part of the equipment described in Subsection 104.02.c. above. ()

e. Materials. Tangible personal property which is used or consumed in the actual process of remanufacturing/rebuilding railroad rolling stock. ()

f. Used in interstate commerce. Railroad rolling stock is used in interstate commerce when it performs a function which is necessary to the operation of a business which transports goods or people between two (2) or more states. ()

g. Repair. To mend or restore to good usable condition railroad rolling stock which has not been damaged to an extent requiring extended removal from the transportation stream. ()

h. Maintenance. Routine, periodic activities, such as lubrication and filter and oil changes, which are necessary to the continued use and operation of railroad rolling stock. ()

i. Primary or primarily. Used more than fifty percent (50%) of the time to remanufacture/rebuild railroad rolling stock. ()

03. Generally, Included Within the Exemption: ()

a. Equipment necessary to, and primarily used in the process of, remanufacturing/rebuilding railroad rolling stock. ()

b. Tangible personal property which become part of the remanufacture/rebuilt railroad rolling stock or which becomes part of the equipment identified in Subsection 104.03.a., above. ()

c. Tangible personal property which is consumed or primarily used in the remanufacturing/rebuilding process. ()

d. Fuel used in testing remanufactured/rebuilt engines which are railroad rolling stock, and fuel used in equipment which is necessary to, and primarily used in, the remanufacturing/rebuilding process. ()

04. Generally, Excluded from This Exemption: ()

a. Motor vehicles and trailers which are licensed or required to be licensed even though they may have flanged-wheel attachments which enable travel on railroad tracks. ()

b. Tangible personal property which is used in such a way that it becomes a fixture to, or an improvement to, real property. ()

c. Tangible personal property, equipment, parts, materials, used or consumed in an activity which is primarily repair or maintenance of railroad rolling stock. ()

d. Fuel used in activities other than those stated in Subsection 104.03.d. of this rule and which is not exempt under other provisions of the Sales Tax Act. ()

e. Tangible personal property used in related activities which are not primarily remanufacturing/rebuilding activities, including: office equipment and supplies; safety equipment and supplies; equipment, other than railroad rolling stock, which is primarily used to construct, improve, alter or repair real property; and chemicals, solvents, and other cleaning agents used primarily for maintenance of the remanufacturing/rebuilding processing area. ()

105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).

Sections 63-3046, 63-3619, 63-3621, 63-3623, 63-3634, Idaho Code

01. Time and Imposition of Tax. ()

a. Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller reports as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. ()

b. Use Tax. Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Commission. Application forms may be obtained by contacting any Commission office. ()

c. Taxable Sales Create State Revenue. The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. ()

02. Returns. ()

a. Monthly Filing Generally Required. All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. ()

b. Request to File Quarterly or Semiannually. Retailers or persons who owe seven hundred-fifty dollars (\$750) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semiannually instead of monthly. ()

c. Request to File Annually. Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. ()

d. Variable Filing. If the Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. ()

e. Change in Filing Frequency. If the Commission finds it necessary or convenient for the efficient administration of the Sales Tax Act, it may require taxpayers reporting taxable sales of less than twelve thousand dollars (\$12,000) per year to file annually. ()

f. Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, the taxpayer marks cancel on the last return the taxpayer files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer encloses their seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. ()

03. Valid Return. A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules meets the conditions prescribed below. Returns that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. Perfect accuracy is not required of a valid return, although each of the following conditions is required: ()

a. It is submitted on the proper form, as prescribed by the Commission and is complete. ()

b. If required, copies of all pertinent supporting documentation are attached. ()

c. The tax liability is calculated and has sufficient supporting information, if required, to demonstrate how the result was reached; A return that does not provide sufficient information to compute a tax liability does not constitute a valid return. ()

d. All sales and use tax returns or other documents filed by the taxpayer need to include the relevant sales or use tax permit number. ()

e. The submission shows an honest and genuine effort to satisfy the requirements of the law. ()

04. Use of Estimates Extension of Time Returns. ()

a. The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer attaches a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is

good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed. ()

b. If the return for any period is filed on an estimated basis, the estimated return is to be filed timely and reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation is to be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. ()

c. The estimated tax remitted is to be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code. ()

d. Taxpayers wishing to file an Extension of Time estimated return obtain the required forms from the Commission. ()

05. Forms Required. The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment will accompany the return. A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. ()

a. Retailers Report Own Use and Nontaxed Transactions. All retailers report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are taxable. ()

b. Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. ()

06. Payment of Tax. ()

a. Payment to Accompany Return. The return filed in accordance with this rule is to be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Commission. ()

b. Payment of One Hundred Thousand Dollars (\$100,000) or Greater. All taxes due to the state are to be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. ()

c. Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from buyers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the buyer by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer reports the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the buyer from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. ()

07. Filing Dates--General Rule. The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semiannual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal holiday, the return is due on the next following day which is not a Saturday, Sunday or

legal holiday. ()

106. VEHICLE SALES, RENTALS, AND LEASES (RULE 106).

Sections 63-3610, 63-3612, 63-3613, 63-3619, 63-3621, 63-3622K, 63-3622R, Idaho Code

01. In General. The sale, lease, rental, or purchase of a vehicle is subject to sales and use tax. Retailers, lessors, and dealers are required to collect the tax. ()

02. Vehicles Purchased from Idaho Dealers. When a dealer of new or used vehicles sells any motor vehicle for delivery in Idaho, the dealer collects sales or use tax at the rate in effect on the date the vehicle is delivered to the buyer, unless an exemption applies. A title application form which is completed by the dealer and displays Idaho sales tax collected is evidence that the buyer paid sales tax to the dealer. ()

03. Vehicles Purchased from Out-of-State Dealers. Any trade-in allowance is to be shown on the original bill of sale, voucher, or other receipt from the out-of-state dealer. If sales tax was correctly paid to a dealer in another state, a credit is allowed against sales or use tax payable to Idaho. See Rule 107 of these rules. ()

04. Vehicles Purchased from Private Parties. ()

a. Bill of Sale. The buyer presents a bill of sale or receipt as proof of the gross sales price. Canceled checks will not be accepted in lieu of a bill of sale. ()

b. No Bill of Sale. In the absence of a bill of sale or documentation supporting the value of the vehicle, tax is collected on the value established as the "average trade-in price" in the most recent NADA Official Used Car Guide for the same make, model, options, year, mileage, and condition. ()

c. Trade In. A trade-in allowance is not allowed on a private party sale. See Rule 044 of these rules. The county assessor will collect tax on the gross sales price. ()

d. Barter/Exchange. A barter or exchange of vehicles or other property is taxed on the value of the vehicles or other property involved in the exchange. In the absence of documentation supporting the value of the vehicle(s), tax is due on the value established as the "average trade-in price" in the most recent NADA Official Used Car Guide for the same make, model, options, year, mileage, and condition. ()

05. Vehicles Purchased from Retailers. ()

a. A retailer required to have an Idaho seller's permit collects sales tax when selling a vehicle, even though they are not licensed as a vehicle dealer. The retailer gives the buyer the title to the motor vehicle, properly completing title transfer information on the title, including the retailer's seller's permit number as proof that Idaho sales tax was collected. The retailer will also give the buyer a bill of sale stating: the date of sale; the name and address of the seller; the complete vehicle description including the, vehicle identification number (VIN), that agrees with the VIN on the title; the person to whom the vehicle was sold; the amount for which the vehicle was sold; and the amount of sales tax charged. ()

b. A retailer is not relieved of the responsibility for collecting the tax unless he can provide satisfactory evidence to the Commission that the buyer paid tax to the county assessor. If a retailer fails to collect the tax from the buyer, the county assessor will collect the tax. ()

06. Vehicles Rented or Leased. ()

a. A lease-purchase and lease with option to purchase have separate definitions and tax applications. See Rule 024 of these rules. A lease-purchase is taxable on the full purchase price at the time the vehicle is delivered to the lessee. A true lease and a lease with an option to purchase are subject to sales tax on each lease payment and on the buy-out or residual value when a lessee exercises his option to buy. The information in Section 106 deals with rentals, true leases, and leases with an option to buy. ()

b. The lessor of a vehicle is a retailer and will collect sales tax from the lessee on any rental or lease

payment on the date it is required to be made, at the tax rate in effect on that date. The lessor also collects tax on any lessee's exercise of an option to buy based on the full purchase price or residual, at the tax rate in effect on the date title is transferred to the lessee. ()

c. The lessor may not rely on the county assessor to collect sales or use tax if the purchase option is exercised. ()

d. The lessor collects and remits sales tax on each lease payment received from the renter or lessee. The sales tax is applicable whether the vehicle is leased or rented on an hourly, daily, weekly, monthly, mileage, or any other basis. ()

e. If the lessor is responsible for maintaining the vehicle and this is stated in the lease or rental agreement, tax does not apply to his purchase of necessary repair parts. ()

f. Out-of-state lessors are to obtain a seller's permit and comply with this rule. If the county assessor cannot verify that the lessor is properly registered to collect the tax, title and registration will be denied. ()

g. When a vehicle is traded in as part payment for the rental or lease of another vehicle, a deduction is allowed before computing the sales tax. The methods of applying the trade-in value to the lease are found in Rule 044 of these rules. ()

08. Cross-References. ()

a. See Rule 024 of these rules. Rentals or leases of tangible personal property. ()

b. See Rule 044 of these rules. Trade-ins, trade-downs, and barter. ()

c. See Rule 099 of these rules. Occasional sales. ()

d. See Rule 091 of these rules. Sales to American Indians. ()

e. See Rule 101 of these rules. Motor vehicles and trailers used in interstate commerce. ()

f. See Rule 107 of these rules. Vehicles and Vessels - Gifts, Military, Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians. ()

g. See Rule 108 of these rules. Motor vehicles manufacturer's, rental company's and dealer's purchase or use of motor vehicles. ()

h. See Rule 128 of these rules. Certificates For Resale And Other Exemption Claims. ()

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 49-117, 49-121, 49-122, 63-3606B, 63-3621, 63-3622K, 63-3622R, 67-7101, Idaho Code

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

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

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

b. The recipient assumes no indebtedness. ()

c. The relationship of the donor and recipient indicates a basis for a gift. ()

d. The donor and recipient complete and sign a Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit and submit it to the county assessor along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit, the recipient can submit either: ()

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor and attached to the affidavit; or ()

ii. The title may be marked as a gift and signed by the donor. ()

03. Purchases Brought into Idaho by Nonresidents. ()

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 vehicles or vessels 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. ()

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. ()

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 and accredited by the Idaho State Board of Education if the motor vehicle meets the following requirements: ()

i. It is registered under the laws of the student's state of residence; and ()

ii. It is owned by the student or a family member of the student. ()

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 an 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 it was purchased 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, and submit it to the or county assessor when applying for a title transfer or registration certificate. ()

a. If the vehicle, vessel, or aircraft 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. ()

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

05. Military Personnel. ()

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. ()

b. Military personnel receive no special exemption from the Idaho sales and use tax regarding 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. ()

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. ()

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 is to 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. ()

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 the 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 county assessor will collect three hundred dollars (\$300) tax. ()

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. ()

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

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 vehicle from tax. ()

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 is due on the fair market value of the vehicle when it is titled in Idaho. ()

g. Taxes paid to another country cannot be used to offset the taxes owed to Idaho. ()

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. ()

a. Form ST-133, Sales Tax Exemption Certificate -- Family or American Indian Sales. A Form ST-133 is used to document this exemption. The seller and buyer complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the motor 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 and attached to the affidavit. ()

b. This exemption does not apply if the seller did not pay tax when he acquired the motor vehicle.

()

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

08. Sales to American Indians. An enrolled American Indian tribal member may buy a vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian reservation. ()

a. Form ST-133, Sales Tax Exemption Certificate -- Family or American Indian Sales. A Form ST-133 is used to document this exemption. The seller and the buyer complete and sign Form ST-133 and provide the name of the tribe, the Tribal Identification Number, and the name of the reservation upon which the delivery occurred. The affidavit is then given to the county assessor along with the title to the vehicle being transferred. See Rule 091 of these rules. ()

09. Bulk Sale Transfers. A transfer or sale of a 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 will complete and sign Form ST-133CATS, Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit to present to the county assessor when applying for transfer of title. The buyer attaches a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. ()

10. Sales to Nonresidents. ()

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles (SOHVs), 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: ()

i. The motor vehicles, vessels, ATVs, UTVs, SOHVs, 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 ()

ii. The motor vehicles, vessels, ATVs, UTVs, SOHVs, 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 ninety (90) days in any twelve-month period. ()

b. To claim the exemption, each buyer provides the seller with a completed and signed Form ST-104NR, Sales Tax Exemption Certificate -- Nonresident Vehicle/Vessel. The seller keeps a copy for their records and send a copy of the completed form to the Commission. ()

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. ()

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and SOHV have the same meaning given to them in Section 67-7101, Idaho Code. ()

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: ()

i. Sold together with a motor; or ()

ii. Eleven (11) feet in length or more, not including canoes, kayaks, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. ()

f. For the purposes of Subsection 107.10 of this rule a trailer needs to meet the definition of a park

model recreational vehicle, a trailer or utility trailer found in Sections 49-117, 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 or park model recreational vehicles defined in Sections 49-117, and 49-121(6), Idaho Code. ()

g. To qualify for this exemption the buyer needs to 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 vehicles or vessels it is not a nonresident. The purchase or use of a vehicle or vessel in Idaho by such an entity is taxable. ()

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 motor 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 buyer will complete and sign the Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles and provide it to the seller. See Rule 101 of these rules. ()

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

108. VEHICLE MANUFACTURER'S, RENTAL COMPANY'S, AND DEALER'S PURCHASE OR USE OF VEHICLES (RULE 108).
Sections 63-3612, 63-3613, 63-3622, 63-3623, Idaho Code

01. Buying for Resale. Licensed vehicle dealers, vehicle rental companies, and manufacturers of vehicles may purchase vehicles tax exempt when the vehicles are held for resale or rental and are used for no purpose other than retention, demonstration, or display while holding the vehicles for sale or rental in the regular course of business. Purchases of parts that will be installed on vehicles held in a resale inventory are exempt from sales tax. ()

02. Titling a Vehicle. Under the Sales Tax Act, no vehicle may be titled without documentation establishing that any sales or use taxes which may be due have been paid. However, certain vehicles may be titled by dealers and rental companies with no tax applying. ()

a. Rental companies may title and register vehicles held in their rental inventory in their company name with no tax applying. ()

b. Idaho dealers may title vehicles held for resale in their dealer name to ensure clear title to the vehicle. However, the vehicle cannot be registered in the dealer's name. If the dealer applies for registration, tax applies. ()

03. Dealer Plates. Any vehicle upon which a dealer's plate may be lawfully displayed, as provided by Sections 49-1627 and 49-1628, Idaho Code, is, for purposes of the Sales Tax Act, inventory held for sale and not taxable. If any use of a vehicle displaying a dealer plate requires that the dealer provide the user with a compensation form for federal income tax purposes, the amount so reported is subject to use tax. The use tax will be paid by the dealer in the month immediately following the issuance of the compensation form. The unauthorized use or display of a dealer's plate on the vehicle which is otherwise required to be titled or licensed under the laws of the state of Idaho subjects the dealer to a use tax liability. ()

04. Service Vehicles. Vehicles, such as work or service vehicles, which are not held in stock for sale or rental are taxable at the time of their purchase. The use tax will be reported and paid on the sales tax return relating to the period during which the vehicle was purchased. In titling the vehicle, the vehicle dealer may report his seller's permit number to the county assessor or Department of Transportation as evidence that sales or use tax has been paid. ()

05. Inventory Withdrawals by Dealers. Dealers may withdraw vehicles from inventory and put them to a use for which a dealer's plate is not authorized, creating a requirement for the vehicles to be titled and licensed. Vehicles required to be titled and licensed are taxable. The taxpayer may choose one (1) of two (2) methods for reporting the tax: ()

a. At the time the vehicle is withdrawn from resale inventory, the taxpayer may report and pay use tax on his acquisition cost. ()

b. During each month or part of a month during which a vehicle is held for purposes other than resale, the taxpayer may report and pay use tax on a reasonable monthly rental value. A reasonable monthly rental value is an amount equal to rentals charged for vehicles of like or similar make and model when such vehicles are leased or rented by the taxpayer or by other persons in the community in the business of leasing or renting such vehicles. ()

06. Inventory Withdrawals by Rental Companies. Rental companies that withdraw vehicles from their rental inventory and put them to a use subject to use tax may elect either method of reporting tax discussed in Subsection 108.05 of this rule. ()

07. Applicability of Rule 108. The provisions of this rule apply only to vehicle dealers or manufacturers licensed as such by the Department of Transportation, and to companies engaged in the business of renting vehicles without operators. ()

109. AMUSEMENT DEVICES (RULE 109).
Section 63-3623B, Idaho Code

01. Amusement Devices. "Amusement device" means coin, currency, debit card, credit card, prepaid arcade card, or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or other machines or games described in Subsection 109.03 of this rule. ()

02. Requirement to Obtain Permit. The owner or operator of amusement devices obtain a seller's permit if the owner or operator makes retail sales other than the use of amusement devices. If the owner or operator does not make such other retail sales, the owner or operator need not obtain a seller's permit, but will obtain an amusement device permit for each amusement device in service. ()

a. Owners and operators of amusement devices pay a permit fee for every amusement device in operation. Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate. The formula to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For example, at a tax rate of five percent (5%) the amount of the permit fee is seven hundred dollars (\$700) x five percent (5%) = thirty-five dollars (\$35). If the tax rate is six percent (6%), the permit fee will be forty-two dollars (\$42). If any change in the tax rate becomes effective on July 1 of a given year, the charge for the permit fee will change proportionately on that date also. If a change in the tax rate occurs on a day other than July 1, the permit fee will be changed on the next July 1 following the change in the tax rate. ()

b. Upon receiving the appropriate payment, the Commission will issue to the owner or operator of one (1) or more amusement devices, a permit for each amusement device in service. The owner or operator affixes a separate permit on each amusement device in service. The permit will be affixed to the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Commission. Permits may be transferred from an amusement device that is no longer in service to another amusement device owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. ()

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. ()

d. Amusement device permits are renewed annually. Annual permits are valid from July 1 through June 30 and are renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. ()

e. If an amusement device permit is lost, stolen, or destroyed, an amusement device permit for the current year will still need to be affixed to every operating amusement device. This may require the purchase of a new permit. The Commission will not issue free replacement amusement device permits regardless of the reason for the loss of the permit. ()

03. Other Amusement Machines or Games. Charges for the use of machines or games which do not meet the definition in Subsection 109.01 are taxable at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of such amusement machines or games will obtain a seller's permit if the owner or operator charges for the use of such machines. ()

04. Cross-Reference. See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. ()

110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).
Sections 63-3623 and 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 will, 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 will 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. ()

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; each Form ST-108, 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 buyer. ()

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 person, are to possess an Idaho seller's permit and file returns to remit the tax as prescribed in Rule 105, of these rules. If the tax collected is not from a sale made by the financial institution, it can be reported as an adjustment on the return. 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. ()

04. Cross Reference. ()

a. Permits. See Rule 070 of these rules. ()

b. Time and Imposition of Tax. Returns, Payments and Partial Payments. See Rule 105 of these rules. ()

111. RECORDS REQUIRED AND AUDITING OF RECORDS (RULE 111).

01. In General. Every retailer doing business in this state and every buyer storing, using, or otherwise consuming in this state tangible personal property will keep complete and adequate records as may be necessary for the Commission to determine the amount of sales and use tax for which that person is liable under Title 63, Chapter 36, Idaho Code. ()

a. Unless the Commission authorizes an alternative method of record keeping in writing, these records will show gross receipts from sales or rental payments from leases of tangible personal property, including any services that are a part of the sale or lease, made in this state, irrespective of whether the retailer or buyer regards the receipts to be taxable or nontaxable; all deductions allowed by law and claimed in filing the return; and the total purchase price of all tangible personal property purchased for sale or consumption or lease in this state. ()

b. These records include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns. ()

c. For taxpayers that maintain the required records in both a machine-sensible and a hard-copy format, that taxpayer will make the records available to the Commission in machine-sensible record format upon the Commission's request. Machine-sensible records are to be maintained in the original format for the same time periods as required of hard-copy records outlines in Subsection 111.04 of this rule. "Machine-sensible record" is a collection of related information in an electronic format. This does not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche or storage-only imaging systems. ()

02. Alternative Storage Media. Records, including general books of account, such as cash books, journals, voucher registers, ledgers, and like documents may be microfilmed, microfiched, or retained by a storage-only imaging system and the original hard-copy documents may be discarded when all other conditions of this rule are met. A storage-only imaging system involves computer hardware, software, and other reproduction equipment that provides for the storage, retention, and retrieval of records and documents which were originally created on paper. It does not allow for any manipulation or processing of the documents. These records are to be authentic, accessible, readable, and meet the following requirements: ()

a. Appropriate facilities are to be provided for preservation of the storage media for the periods required and open to examination and the taxpayers will provide transcriptions of any information on microfilm, microfiche, or imaged data which may be required for verification of tax liability. ()

b. All microfilmed, microfiched, and imaged data are to be indexed, cross-referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and systematically filed to permit ready access. ()

c. The taxpayer will make available upon request of the Commission facilities and equipment in good working order at the examination site for reading, locating, and reproducing any record concerning sales or use tax liability maintained on microfilm, microfiche, or other storage-only imaging system. ()

d. The taxpayer will set forth in writing the procedures governing the establishment of its microfilm, microfiche, or other storage-only imaging system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partners, or owner, whichever is applicable. ()

e. The microfilm, microfiche, or other storage-only imaging system is to be complete and used consistently in the regularly conducted activity of the business. ()

f. The taxpayer will establish procedures with appropriate documentation so that the original document can be followed through the conversion system. ()

g. The taxpayer is responsible for the effective identification, processing, storage, and preservation of microfilm, microfiche, or other storage-only imaging system making it readily available for as long as the contents may become material in the administration of any state tax law. ()

h. The taxpayer is to keep a record identifying by whom the microfilm, microfiche, or other storage-only image system was produced. ()

i. When displayed or reproduced on paper, the material is to exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers. ()

j. All production of microfilm or microfiche and processing duplication, quality control, storage, identification, and inspection thereof are to meet acceptable industry standards. ()

03. Records Prepared by Automated Data Processing Systems, ADP. An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one taxpayer to another, all such systems are to include a method of producing legible and readable records which will provide the necessary information for verifying such tax liability. The following requirements apply to any taxpayer who maintains any such records on an ADP system: ()

a. Recorded or reconstructible data. ADP records will provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time when they are processed, the systems are to have the ability to reconstruct these transactions. ()

b. General and subsidiary books of account. A general ledger, with source references, is to be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers will also be written out periodically. ()

c. Supporting documents and audit trail. The audit trail is to be designed so that the details underlying the summary accounting data may be identified and made available to the Commission upon request. The system is to be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available. ()

d. Program documentation. A description of the ADP portion of the accounting system are to be made available. The statements and illustrations as to the scope of operations be sufficiently detailed to indicate: The application being performed; the procedures employed in each application, which, for example, might be supported by flowcharts, block diagrams, or other satisfactory descriptions of the input or output procedures; the controls used to insure accurate and reliable processing; and important changes, together with their effective dates, are to be noted in order to preserve an accurate chronological record. ()

e. Data storage media. Adequate record retention facilities are to be available for storing tapes and printouts, as well as all supporting documents as may be required by law or this rule. ()

04. Record Retention. All records pertaining to the transactions involving sales or use tax liability are to be preserved for a period of not less than four (4) years. If an assessment has been made and an appeal to the Commission or any court is pending, the books and records relating to the period under appeal by such proposed assessment must be preserved until final disposition of the appeal. ()

05. Examination of Records. All of the foregoing records are to be made available for examination on request of the Commission or its authorized representatives. ()

06. Failure of the Taxpayer to Maintain or Disclose Complete and Adequate Records. Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Commission will: ()

a. Impose any penalty as may be authorized by law. ()

b. Subpoena attendance of the taxpayer and any other witness when the Commission deems it necessary or expedient for examination and compel the taxpayer and witness to produce any documents within the scope of its inquiry relating in any manner to the sales and use tax. ()

c. Enter such other order as may be necessary to obtain compliance with this rule in the future by any ()

taxpayer found not to be in substantial compliance with the requirements of this rule. ()

112. DIRECT PAY AUTHORITY (RULE 112).

Sections 63-3624, 63-3629, 63-3631, Idaho Code

01. In General. A Direct Pay Authority is granted to certain taxpayers where it is to the mutual convenience of the Commission, the taxpayer, and the taxpayer's vendors to have the sales and use tax liability upon the taxpayer's purchases determined by the taxpayer and reported directly to the state in the form of a use tax. This authorization allows vendors to sell all items of tangible personal property to the taxpayer without charging any sales tax. The only effect of this arrangement is to shift the reporting responsibility to the taxpayer holding the authorization. ()

02. Taxable Purchases. If the particular transaction would have been taxable without the authorization, then the taxpayer holding the authorization pays sales tax to the state even if the use of the item is not subject to use tax. For example, if the taxpayer holding the authorization buys goods from a retailer holding an Idaho seller's permit, then the taxpayer pays sales tax on the transaction even if the goods are intended for use solely outside the state. ()

03. Documentation. To purchase tangible personal property without paying sales tax to the vendor, the taxpayer holding an authorization provides a copy of that authorization to each vendor. ()

04. Holder's Responsibilities. The authorization is granted only to those taxpayers who have demonstrated, to the Commission's satisfaction, the accounting and technical capability to comply with the Sales Tax Act. Direct pay authority holders make all purchases of tangible personal property tax exempt and all taxes due as required by the Idaho Sales Tax Act will be remitted directly to the Commission by the direct pay authority holder. Vendors will be allowed to sell all items of tangible personal property to the direct pay authority holder without charging sales tax provided they obtain and keep on file a copy of the letter granting the direct pay authority. ()

05. Revocation. The Commission may revoke an authorization if it determines that the taxpayer is not complying with this rule or if the taxpayer is allowing contractors or other third parties to make exempt purchases under its authority. Notice of revocation will be given in the manner provided for deficiencies in taxes in Section 63-3629, Idaho Code, and is subject to review as provided in Section 63-3631, Idaho Code. Should the Commission revoke a taxpayer's direct pay authority it will be the taxpayer's responsibility to notify his vendors of the revocation. ()

06. Tax Imposed by Hotel/Motel Room Sales Tax. The authorization can't be used for taxes imposed on lodging accommodations. State sales tax, Travel and Convention tax, and Auditorium or Community Center District tax, when applicable, is charged by and paid to the retailer by the direct pay permittee. ()

07. Valid Only on Purchases of Tangible Personal Property. The authorization is valid only on purchases of tangible personal property. The taxpayer can't use the authorization when engaging contractors involved in improving real property. Special rules apply to contractors. Refer to Rules 012 through 015, and 066 of these rules. ()

08. Expiration. Direct Pay Authority is granted for a period of five (5) years. If the authorization is not renewed at the end of the expiration period, the authorization will expire automatically. ()

113. RECREATIONAL VEHICLE REGISTRATION (RULE 113).

01. Snowmobile, Motorbike, or ATV. A new owner of a new or used snowmobile, motorbike, or ATV will obtain a title for the recreational vehicle according to the Idaho Transportation Department instructions. The buyer will present evidence that sales tax was paid to the seller of the recreational vehicle, or pay any tax due to the county assessor, Idaho Transportation Department, or Commission before a title will be issued. ()

02. Boat. A boat owner registers his boat each year with the Department of Parks and Recreation through authorized agents appointed by that department. ()

a. When registering the boat for the first time or transferring the registration to a new owner, the owner will complete Form ST-109, Recreational Vehicle Registration Sales Tax Affidavit, except as provided in Subsection 113.02.c. of this rule. ()

b. Each month the Department of Parks and Recreation will forward to the Commission the copies of Form ST-109 submitted by its agents. ()

c. When registering a boat with a county assessor acting as an authorized agent of the Department of Parks and Recreation, the requirements of this rule do not apply. The assessor will collect and remit to the Tax Commission any sales or use tax due. See Rule 099 of these rules. ()

114. SALES UNDER THE SNAP AND WIC PROGRAMS, RECORDS REQUIRED FOR PAYMENTS WITH ELECTRONIC BENEFIT TRANSFER CARDS AND WIC TENDER (RULE 114).
Sections 63-3622EE, 63-3622FF, Idaho Code.

01. In General. Sales of food purchased under the Federal Supplemental Nutrition Assistance Program (SNAP) or the Federal Special Supplemental Food Program for Women, Infants, and Children (WIC) are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the buyer uses electronic benefit transfer (EBT) cards, WIC tender, or any other exchange medium authorized for these programs by federal law. ()

02. Records Required. Retailers who accept EBT cards or WIC tender as payment are to maintain accurate records of those sales. Adequate records include sales reports or tender-type reports with collections from each type. ()

115. RECORDS REQUIRED, NONTAXED SALES BY RETAIL FOOD STORES (RULE 115).
Section 63-3624(s), Idaho Code

01. Petition for Reduced Record Keeping. Retail food stores may petition the Commission to be relieved from the responsibility of retaining copies of detailed invoices for nontaxed sales. ()

02. Form Required. A retail food store may apply for reduced record keeping requirements by submitting a completed Form ST-110, Petition for Sales Tax Records Reduction by a Retail Food Store, to the Commission. ()

03. Authority. If authority for reduced record keeping is granted by the Commission, a retailer is not required to keep detailed sales invoices if he obtains a properly completed resale or exemption certificate from the customer and thereafter a properly completed Form ST-111, Sales Tax Exemption Claim Form-Grocer for each exempt sale. The completed Form ST-111 includes the following information: The name of the customer; the total purchase price of the exempt items; the date of the sale; whether the nontaxed merchandise sold consisted of food, nonfood items or both; and the signature of the person making the exempt purchase. ()

04. Standard Industry Code. For the purposes of this rule, retail food stores means those retail stores described in major group fifty-four (54) of the Standard Industrial Classification Manual, SIC, of 1987 and whose sales of food for home preparation and consumption account for more than fifty percent (50%) of the store's total sales. Stores in major group fifty-four (54) consist of grocery stores; meat and fish markets; fruit and vegetable markets; candy, nut, and confectionery stores; dairy product stores; retail bakeries; and egg and poultry dealers. ()

05. Review of Petitions. The Commission will review all petitions for reduced record keeping requirements. The Commission may examine the books and records of the petitioner to ensure that the petitioner is primarily engaged in the business of selling food for home preparation and consumption. The Commission will give written notice of its determination to the petitioner within sixty (60) days after receiving the petition. ()

116. BONDING (RULE 116).
Section 63-3625, Idaho Code

01. Posting Security. The Commission may require a retailer to post security to insure collection and remittance of sales and use taxes for cause including: ()

- a.** A retailer failing to file sales tax returns. ()
- b.** A retailer failing to remit in full taxes due upon any sales tax return. ()
- c.** A retailer with a consistent history of delinquency either in the filing of returns or payment of tax. ()
- d.** The submission of a check for the payment of taxes which is subsequently dishonored. ()
- e.** The filing of a fraudulent return or any return which fails to report all taxable transactions for the period for which the return relates. ()
- f.** A retailer evidencing serious financial instability which, in the opinion of the Commission, creates reasonable doubt as to the ability of the retailer to pay over sales and use taxes collected by it. ()

02. Amount of Security. The amount of security will be fixed by the Commission but will not exceed an amount equal to three (3) times the anticipated monthly sales tax liability or ten thousand dollars (\$10,000), whichever is less, except in the case of retailers who are habitually delinquent in their submission of returns and/or taxes in which case the amount of security will not be greater than five (5) times the estimated average monthly liability or ten thousand dollars (\$10,000), whichever is less. ()

03. Written Demand. Written demand for security will be sent to the retailer by the Commission by certified mail or by personal service upon the retailer. Failure of the retailer to post the demanded security can be grounds for revocation of the retailer's seller's permit following proper notice and hearing. ()

04. Forms of Security. The Commission will accept as security the following: ()

- a.** Surety bond. A surety bond issued by a bonding company with the power of an attorney affixed thereto which grants the issuing agent the power to obligate the company for this type of liability. ()
- b.** Cash bond. Preferably in the form of cashier's check. ()
- c.** Pledged savings accounts. This type of security may be furnished, providing the savings account is opened with a bank or savings and loan association and an assignment of the account is executed by the taxpayer or authorized individual and accepted by the bank or savings and loan association. The savings account may be in the business name or individual's name, if a sole proprietorship; jointly in the names of the partners of a partnership; or in the name of a corporation with the assignment properly executed by the officer or officers with the delegated authority to sign documents for the corporation. ()

05. Release of Security. Security which has been previously posted may be released by the Commission upon receipt of written request from the retailer if, after careful review of the circumstances, the Commission determines that security is no longer required. A request may be made one (1) year after posting the security. Security will also be released upon the retailer's termination of its retail activities. In either case, if the Commission deems necessary, an audit may be conducted prior to the release of any security. ()

117. REFUND CLAIMS (RULE 117).

Sections 63-3612, 63-3613, 63-3619, 63-3626, 63-3629(c), 63-3631, 63-3045, 63-3045B, 63-3049, 63-4408, Idaho Code

01. In General. Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, is to be in accordance with the provisions of this rule. ()

02. Payment of Sales Tax by a Buyer to a Vendor. When a buyer has paid sales tax to a vendor, and

later determines that the sales tax was paid in error, the buyer needs to request the refund from the vendor to whom the excess tax was paid. If the buyer can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Commission. ()

03. Payment of Sales or Use Tax Directly to the State. When a person holding a seller's permit or use tax account number has paid tax to the state, and later determines that the sales or use tax was paid in error, he may file a claim for refund directly with the Commission. ()

04. Bad Debts. Claims for refunds arising from bad debts are to be filed with the Tax Commission in the manner prescribed by this Rule 117 and Rule 063 of these rules. ()

05. Mathematical Errors. When the filer of sales or use tax returns determines that a mathematical error has been made on a previously filed return resulting in overpayment of the proper amount of sales or use taxes, he may file a claim for refund directly with the Tax Commission. ()

06. Refund Claims. A refund claim, however, is to be in writing and include the following information: ()

- a.** Full name, address, and phone number of the claimant; ()
- b.** Claimant's seller's permit number or use tax account number if claimant has such a number; ()
- c.** The amount of the refund claimed; ()
- d.** A detailed statement of the reason the claimant believes refund is due; ()
- e.** An itemized description of the specific goods or services to which the tax relates; ()
- f.** The date on which the claimed excess taxes were paid; ()
- g.** If the claimant is the retailer, a statement under oath that the amount of tax plus interest has been or will be refunded to the buyer; and ()
- h.** If the claim is for bad debt, detailed individual account information for each customer and each item purchased for which a refund is claimed. ()
- i.** A refund claim must be filed within three (3) years from the time the payment was made to the Commission. If a refund claim does not include the required information listed in Subsections 117.06.a. through h., as applicable, then the claim does not satisfy the requirement to file a written claim to stop the period of limitations provided in Section 63-3626(b)(1), Idaho Code, from running. A refund claim that does not include the required information will be denied and processed as set out in Subsection 117.11 of this rule. ()

07. Outstanding Liabilities. No claim for refund will be approved or issued unless the claimant first satisfies outstanding liabilities for taxes administered by the Commission. ()

08. Payment Under Protest. It is not necessary for a taxpayer to pay taxes under protest in order to subsequently be able to claim a refund of such taxes. ()

09. Statute of Limitations. A claim for refund will not be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the Commission. ()

10. Taxes Paid in Response to a Notice of Deficiency Determination. A claim for refund may not be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the Commission in conformance with a notice of deficiency determination can seek a refund by using the appeal procedures outlined in IDAPA 35.02.01.320 through

328, "Tax Administration and Enforcement Administrative Rules." ()

11. Denial of a Refund Claim. All claims for refund or credit will be reviewed by the Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim will be given to the claimant by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice will include a statement of the reasons for the denial. The notice of denial will be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, they can file a petition for redetermination in the manner prescribed in IDAPA 35.02.01.320 - 328, "Tax Administration and Enforcement Administrative Rules." A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. ()

12. Interest on Refunds. See Rule 122 of these rules. ()

13. Cross Reference. See Rule 003 of these rules, Administrative Appeals. ()

118. RESPONSIBILITY FOR PAYMENT OF SALES TAXES DUE FROM CORPORATIONS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS (RULE 118).

Sections 63-3045, 63-3049, 63-3065, 63-3074, 63-3634, Idaho Code

01. Corporate Officers Duty to Pay Sales Tax. Individuals including corporate officers and employees with the duty to cause a corporation or a limited liability company to file a sales tax return or to pay sales tax when due, or any partnership member or employee with such duty, will become liable for payment of the tax, penalty and interest due from the corporation or partnership if they fail to carry out their duty. Any such responsible individual has the defenses, remedies and recourse provided in Sections 63-3045, 63-3049, 63-3065 and 63-3074, Idaho Code, and will be afforded notice and opportunity to be heard on the question of such liability. ()

02. Penalty for Failure to Collect. Any individual required to collect, account for and pay over any tax who willfully fails to carry out or execute his duty will be required to pay, in addition to the tax, penalty and interest, an additional amount equal to the total amount of tax involved. This penalty is in addition to all other penalties provided in Section 63-3634, Idaho Code. ()

119. SUCCESSOR'S LIABILITY (RULE 119).

Section 63-3628, Idaho Code

01. Making Inquiries. Section 63-3628, Idaho Code, provides that when a vendor sells out his business or stock of goods, the buyer is to make inquiry of the Commission and withhold from the purchase price any amount of tax that may be due until such time as the vendor, seller, produces a receipt stating that no tax is due. If the buyer fails to withhold from the purchase price the tax due, he becomes personally liable for the tax. ()

02. Written Inquiry Required. The buyer is to make written inquiry to the Boise Office of the State Tax Commission setting forth the following: ()

a. The name, location, and seller's permit number of the business they are purchasing. ()

b. A statement that they are purchasing the business or stock of goods. ()

c. An inquiry as to any sales or use tax liability of the business they are purchasing. ()

03. Copy of Earnest Money. The buyer is to attach to the written inquiry a copy of any earnest money or similar agreement already entered into with the prospective seller. If no earnest money agreement has been entered into, then the seller must provide written authorization to the State Tax Commission to release the information to the prospective buyer. ()

04. Written Statement from State Tax Commission. The Commission, after receiving the written inquiry from the buyer as to the amount due, will issue a written statement to the buyer setting forth the amount of tax due by the seller, if any. The Commission will advise the prospective buyer only of any amount of sales or use tax that

may be due to the Commission under the Sales Tax Act. The release of any other information is not authorized. In the case that the prospective buyer requests to see the prospective seller's sales or use tax filing record in order to determine if the business is profitable, the prospective seller is to provide a Power of Attorney appointing the prospective buyer as attorney in fact to receive confidential information regarding sales or use tax filings on behalf of the prospective seller. ()

05. Application for Seller's Permit Number. Upon final sale, the buyer files an application Form IBR-1 for a new seller's permit number with the Commission. The seller must forward his seller's permit to the Commission for cancellation. ()

120. JEOPARDY DETERMINATION (RULE 120).
Section 63-3630, Idaho Code

If collection of any part of a tax required to be paid to the state or if any determination or redetermination will be jeopardized by delay, the Commission will make a determination of the tax or amount required to be collected noting the need for expeditious procedure and the amount of required security upon the assessment. The amount determined to be due the state is immediately payable and, if not paid immediately after service of notice of the deficiency, may be entered as a final assessment and collected by judgment processes or through use of any collection procedure available to the Commission's office. If, within thirty (30) days, the taxpayer files for redetermination and deposits with his petition for redetermination such security as the Commission may, in this specific case, deem necessary to ensure compliance with this act, collection of the deficiency assessment will be delayed pending redetermination. Hearings and other procedure will then proceed in accordance with the rules pertaining thereto. ()

121. (RESERVED)

122. INTEREST ON DEFICIENCIES, REFUNDS AND ESTIMATED RETURNS (RULE 122).
Sections 28-22-104, 63-3045, 63-3630, Idaho Code

01. Interest Rate. The rate of interest on deficiencies or refunds of tax is determined annually as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 310. All interest on sales or use tax deficiencies is simple interest. Interest applies only to tax and not to penalties. ()

02. Interest Accruing During a Period Subject to Audit. Interest on deficiencies accrues from the due date of the return to which the deficiency relates. On refunds, the interest accrues from the due date of the return or date of payment, whichever is later. However, when a refund is claimed or a deficiency is asserted for a period of time which includes several reporting periods, in lieu of calculating interest for each reporting period, interest may be averaged over the interest rate period if no substantial distortion results from the averaging technique. When averaging interest, sales or purchases of extraordinary amounts outside the usual course of business which would substantially distort the result should be excluded from the averaging calculation and interest calculated separately on such transactions. Average interest, accruing during an interest rate period, may be calculated according to the following formula:

Formula:
$$\frac{(NxR) - R}{2}$$

N = Number of reporting periods in interest rate period.

R = Interest rate per reporting period, e.g., one percent (1%) for monthly filers, three percent (3%) for quarterly filers, at a 12% annual interest rate, etc. ()

03. Alternate Formulas. Alternatively, interest may be calculated according to such other formula as the taxpayer and the Commission's sales tax audit staff may agree to apply. ()

04. Estimated Returns. Interest on estimated returns accrues at an annual rate as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 310. ()

05. Failure to Register. Taxpayers who failed to have a tax number in a period where a deficiency

exists will be, for interest computation purposes, considered to be monthly filers. ()

06. Judgments. Nothing in this rule is intended to effect interest rates on judgments pursuant to Section 28-22-104(2), Idaho Code. ()

123. ADDITIONS AND PENALTIES (RULE 123).

Sections 63-3046, 63-3075, 63-3076, 63-3077, Idaho Code

All additions and penalties provided by Sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, are incorporated in the Sales Tax Act. ()

01. Substantial Underpayment. For purposes of enforcing the substantial underpayment penalty provided by Section 63-3046(d), Idaho Code, the term taxable year, is for purposes of the Sales Tax Act, the twelve (12) month calendar period for which an annual reconciliation is required. The return, for purposes of such taxable year, are the returns required to be filed under Rule 105 of these rules. The taxpayer's entire calendar year or fiscal tax year is any fraction of a twelve (12) month period occurring prior to filing a final report. ()

02. Repeated or Intentional Invalid Exemption Claims. A buyer who repeatedly or intentionally claims exemption from tax on purchases that are not exempt and has not reported and paid use tax on the purchases, owes the tax plus the interest prescribed in Rule 122 of these rules and may also be assessed a penalty of five percent (5%) of the purchase price of the goods or services, or two hundred dollars (\$200), whichever is greater. ()

124. COLLECTION AND ENFORCEMENT (RULE 124).

Sections 63-3633, 63-3635, Idaho Code

Incorporation of Rules. The rules promulgated by the Commission entitled "Idaho Tax Commission Administration and Enforcement Rules" apply to the administration and enforcement of the Idaho Sales Tax Act. ()

125. DISTRIBUTION OF SALES TAX REVENUES (RULE 125).

Section 63-3638, Idaho Code

Refer to IDAPA 35.01.03, "Property Tax Administrative Rules," Rule 995 for information on distribution of sales tax revenues to cities, counties and other special purpose taxing districts. ()

126. SALES TAX COLLECTED BY THE STATE LIQUOR DISPENSARY (RULE 126).

Sections 23-105, 23-1303, 23-1001, 63-3638A, Idaho Code

01. Liquor Subject to Sales Tax. All sales of liquor which includes alcohol, spirits, beer, and wine as defined in Sections 23-105(g), 23-1303(a), and 23-1001(a), Idaho Code, unless specifically exempt, are taxable. ()

02. Sales for Resale. In the case of sales to persons licensed under the provisions of Title 23, Chapter 9, Idaho Code, only those purchases for resale by an establishment licensed to sell liquor will be exempt from the tax. If the licensee buys liquor for any purpose other than for resale, the licensee is subject to the use tax. ()

03. Reporting. The superintendent of the State Liquor Dispensary will forward monthly to the Commission a report of all sales tax collected for the preceding month. All sales tax collected by the superintendent of the State Liquor Dispensary and by contract private liquor stores, when the product is supplied by the State Liquor Dispensary, will be credited directly to the liquor account, and not become a part of the sales tax account. ()

127. FREE DISTRIBUTION NEWSPAPERS (RULE 127).

Sections 63-3622, 63-3622T, Idaho Code

01. Newspaper Format. The term "newspaper format" means a publication bearing a title, issued regularly at stated intervals of at least twelve (12) times a year, and formed of printed paper sheets without binding. Catalogs, advertising fliers, travel brochures, employee newsletters, theater programs, telephone directories, restaurant guides, posters, and similar publications are not publications in newspaper format. ()

02. Purchase or Use of Tangible Personal Property. The purchase or use of tangible personal property used to produce newspapers distributed to the public free of charge is exempt from sales or use taxes if the requirements of Section 63-3622T, Idaho Code are met. ()

03. Qualifying for Exemption. To qualify for the exemption at least ten percent (10%) of the total newspaper, computed on an average annual column inch basis, need to be devoted to the publication of non-income producing informative material. Advertisements promoting the free distribution newspaper itself do not qualify as non-income producing informative material. Neither do logos, column headings, mastheads, borders, etc. ()

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).
Sections 63-3612, 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. ()

02. Burden of Proof. All sales made within Idaho are presumed to be taxable unless the seller obtains from the buyer 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 taxable. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the buyer, 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 buyer as a matter of law in the particular instance claimed on the certificate. ()

03. Description and Proper Execution of Approved Forms. In order to be valid, all forms are to be legible and include a date, the buyer's name, signature, and address. If the buyer has a federally issued Employer Identification Number (EIN), the buyer will include that EIN on the form. If the buyer does not have an EIN, the buyer will provide the buyer's driver's license number and the state of issue. The seller's name and address are to be completed on the form when requested. The buyer will comply with any additional requirements provided in these rules. ()

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

a. Information on the resale certificate. The resale certificate bears the name and address of the buyer, the name and address of the seller, is signed and dated by the buyer or his agent, indicates the Idaho seller's permit number issued to the buyer, or that the buyer is an out-of-state retailer, and indicates the general character of the tangible personal property sold by the buyer in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property is being purchased for resale. ()

b. Qualified Buyers. The resale exemption may be claimed by the following buyers when buying goods for resale: ()

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

ii. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. ()

iii. 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. ()

c. Seller's Responsibility. 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 buyer and the buyer 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. ()

d. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its Idaho seller's permit 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. ()

e. 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. ()

f. 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. ()

g. Example: A restaurant operator completes a Form ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator buys 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. ()

h. Example: The same restaurant operator later buys dish towels and dish washing soap. The supplier collects 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. ()

i. 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. ()

05. Form ST-101, Sales Tax Resale and Exemption Certificate -- Claiming Exemptions. A Form ST-101 is completed to claim the sales tax exemptions for the following categories. The buyer identifies the exempt category and specific area within the category for the exemption being claimed. If claiming to be production exempt, the taxpayer identifies the type of business and list the product produced. When claiming a contractor exemption, the invoice, purchase order or job number will be identified along with the city and state of the job location, project owner name, and the reason the project is exempt. ()

a. Form ST-101 Exemption Categories; ()

i. Production Exemptions; ()

ii. Exempt Buyers; ()

iii. Contractor Exemptions; and ()

iv. Other Exempt Goods and Buyers ()

b. Information on the exemption certificate. An exemption certificate shows the buyer's name and

address, business name and address, and be signed and dated by the buyer. The buyer also provides on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the buyer produces. If the buyer is claiming the contractor exemption, the buyer identifies 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 buyer is claiming an exemption as an American Indian, then the buyer provides a valid Tribal I.D. number. By signing the exemption certificate, the buyer is certifying that the purchase qualifies for an exemption from tax. ()

c. Seller's Responsibility. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Form ST-101, has been received if the nature of the exemption claimed is available to the buyer as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. ()

i. A retailer collects tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a buyer 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: maintenance and janitorial equipment and supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in transportation activities, equipment or other property used to make repairs, tangible personal property that becomes a fixture, improvement, or component of real property, licensed motor vehicles, aircraft; and recreation-related vehicles as described in Section 63-3622HH, Idaho Code. ()

ii. A retailer cannot rely on an exemption certificate obtained from a buyer when the law does not provide an exemption from the tax for the buyer, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. ()

iii. 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 collects tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. ()

d. Buyer's Responsibility. A buyer has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the buyer properly provides a certificate and normally makes exempt purchases, he nevertheless ensures that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the buyer either notifies the seller to correct the billing and then pays the sales tax to the seller, or accrues and remits use tax on the transaction. If the buyer intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the buyer 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 buyer 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 buyer 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 buyer gives a resale or exemption certificate with the intention of evading payment of the tax, the buyer 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. ()

e. 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 tax, could be criminally charged with a misdemeanor. ()

f. 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 against the restaurant.

()

g. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer collects the sales tax on the sale of the 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 toothpaste because, as a matter of law, the sale of 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).

()

06. Tax Exemption Statements. In lieu of Form ST-101, retailers, when selling property that the buyer claims is entitled to the exemptions listed below, may stamp or imprint on the face of their sales invoices, or buyers may stamp or imprint on the face of their purchase orders a statement containing the language prescribed in this rule.

()

a. A tax exemption statement is to be signed by the buyer and the name, address, and nature of business of the buyer is shown on the invoice. The signature on the statement is 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 is to be documented as described in this subsection. Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

()

b. Production or Logging Exemption. A tax exemption statement can be used when selling property that the buyer claims is entitled to the production exemption or the logging exemption. The statement can be made by either:

()

i. Having the seller stamp or imprint the following statement on the face of their sales invoices; or

()

ii. Having the seller stamp or imprint the following statement on the face of their purchase orders, a certificate containing the following language:

()

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, logging, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

NATURE OF BUSINESS

BUYER'S SIGNATURE

()

c. Matter Used to Produce Heat by Burning. A tax exemption statement can be used when selling materials that the buyer claims will be used to produce heat by burning as defined in Rule 088 of these rules and for which no bulk delivery will be made. The statement can be made by either:

()

i. Having the seller stamp or imprint the following statement on the face of their sales invoices; or

()

ii. Having the buyer stamp or imprint on the face of their purchase order, a statement that contains the following language:

()

I certify that the matter I have purchased will be used in a furnace or similar device for the purpose of water heating, cooking, or raising or maintaining the temperature in an enclosed space, dwelling, or building.

BUYER'S SIGNATURE

()

07. Form ST-102, Use Tax Exemption Certificate -- New Resident. To claim exemption for vehicles, vessels, and aircraft that were personally owned and acquired while residing in another state and used primarily outside Idaho, new residents and nonresident military individuals need to complete Form ST-102. ()

08. Form ST-104G, Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies. Form ST-104G may be completed only by federal or, Idaho state, and local government agencies making cash purchases and is to 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/buyer. Blank forms will be furnished to government agencies by the 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. ()

09. Form ST-104HM, Sales Tax Exemption Certificate -- Lodging Accommodations. Form ST-104HM is used to claim exemption for lodging accommodations paid for using a credit card company who will directly bill to and be paid by federal or, Idaho state, and local government agencies or other qualifying organizations granted exemption under Section 63-3622O, Idaho Code. This form should not be used for credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/buyer. ()

10. Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles. Form ST-104IC is to be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, trailer, or glider kit. ()

11. Form ST-104NR, Sales Tax Exemption Certificate -- Vehicle/Vessel. Form ST-104NR is completed by each buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when a nonresident buyer is purchasing a qualifying vehicle, vessel, or trailer. ()

12. Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer. Form ST-108TR is completed by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller completes the seller's statement section in order for the buyer to claim the occasional sale exemption. ()

13. Form ST-111, Sales Tax Exemption Claim Form -- Grocer. Retailers of food products who have been granted record reduction authority by the Commission may accept the Form ST-111 from a buyer if the retailer has a properly executed Form ST-101 on file from the buyer. Form ST-111 includes the buyer's Idaho 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. ()

14. Form ST-133, Sales Tax Exemption Certificate -- Family or American Indian Sales. ()

a. Family Sale. Form ST-133 is 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. ()

b. American Indian Sales. Form ST-133 is completed when claiming an exemption from tax when selling a vehicle, vessel, or RV to a member of an American Indian tribe within the boundaries of an American Indian reservation. ()

15. Form ST-133CATS, 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 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. ()

16. Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit. Form ST-133GT is completed to claim an exemption from tax when a vehicle, vessel, camper, trailer, or recreational vehicle is being

transferred or received as a gift. ()

17. The Diplomatic Tax Exemption Program. This United States government program 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. ()

18. Timely Acceptance of Certificates. A seller may accept a certificate from a buyer 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-104HM and ST-104G which is to be provided at the time of sale. The sale is presumed to be taxable if no approved certificate is obtained from the buyer in the manner provided or permitted by this rule. ()

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 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. ()

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 Idaho seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the Idaho 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. ()

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 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. ()

d. When a Notice of Deficiency Determination has been issued to a seller by the Commission and the seller petitions for redetermination as provided by IDAPA 35.02.01.320 - 328, "Tax Administration and Enforcement Administrative Rules," he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the Commission within ninety (90) days of the date of the Notice of Deficiency Determination. ()

129. USE OF A RECREATIONAL FACILITY, INSTRUCTIONAL FEES, AND PARI-MUTUEL BETTING (RULE 129).

01. Use of a Recreational Facility. Charges or fees to procure the use of a facility, facilities, or building for the purpose of recreation or physical conditioning are taxable. ()

02. Dues. Dues paid to fraternal organizations such as the Elks, Eagles, Masonic Order, or similar organizations are not normally paid primarily for the use of facilities for recreation; in such cases, recreational use of facilities will be incidental. However, any separate, identifiable fees charged by such fraternal organizations, in excess of ordinary membership dues and fees, specifically for the use of recreational or physical conditioning facilities will be taxable including, but not limited to, bowling fees, green fees, swimming fees, court fees, or equipment usage fees. ()

03. Instructional Fees. Separately stated instruction fees, such as for jazzercise, aerobics, dance, and swimming are not taxable. ()

04. Pari-Mutuel Betting. Pari-mutuel betting is not taxable. ()

05. Use of Tangible Personal Property. Charges imposed on persons using swimming pools, skating rinks, golf courses and bowling alleys, etc., often combine the privilege of entering the place with the right to use

tangible personal property. When a uniform price is imposed upon all persons without regard to the intention of the individual to use tangible personal property or the other facilities included, the total charge will be presumed a charge for the use of a recreational facility and taxable. ()

130. PROMOTER SPONSORED EVENTS (RULE 130).

Sections 63-3620, 63-3620C, Idaho Code

01. Promoter's Responsibility. Promoters of promoter sponsored events, as defined in Section 63-3620C, Idaho Code, are to obtain a completed copy of the sales tax declaration section of Form ST-124, Idaho Sales Tax Declaration, from each participant at an event. The promoter obtains pre-numbered Forms ST-124 from the Commission. The promoter is to forward a copy of the completed Form ST-124 to the Commission within ten (10) days following the beginning of the event. The promoter may also maintain a copy in its file. The Commission may request from the promoter a master list of participants to be submitted in addition to the completed Forms ST-124. ()

02. Use of the Form ST-124. The promoter will provide each participant with the Form ST-124. Upon completing the sales tax declaration section of the form, the participant returns it to the promoter. In this section, the participant states that the participant either has a valid seller's permit, will use Form ST-124 as a temporary seller's permit for the event, or will not make any taxable sales at that event. If a participant uses Form ST-124 as a temporary seller's permit, the promoter will be considered the issuer of that permit as an agent of the Commission. The Form ST-124's sales tax declaration includes the following: ()

a. The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. ()

b. The name, address, and phone number of participant in the event. ()

c. Either: ()

i. The participant's valid seller's permit number; or ()

ii. A statement from the participant that the Form ST-124 will be used as a temporary seller's permit for the event; or ()

iii. A statement from the participant that no taxable retail sales will be made at this event. ()

d. Other information the Commission may deem necessary. ()

03. Participant's Failure to Provide a Form ST-124 to the Promoter. For every participant that does not provide the completed sales tax declaration portion of Form ST-124 to the promoter, the promoter is to provide to the Commission a list of those participants within ten (10) days following the beginning of the event. For each participant listed, the promoter will include the following: the business name, address, phone number, and names of all individuals who own and operate the business. ()

04. Temporary Seller's Permit Issued by Promoter. Before a promoter may claim the income tax credit provided for by Section 63-3620C, Idaho Code, the promoter will forward a completed Form ST-124 to the Commission for each Form ST-124 used as a temporary seller's permit. ()

05. Promoter's Sales Tax Liability. The promoter will not be held responsible for collecting sales tax on sales made by participants other than sales made by the promoter himself. ()

131. -- 132. (RESERVED)

133. RADIO AND TELEVISION BROADCAST EQUIPMENT (RULE 133).

Sections 25-1722, 63-3612, 63-3613, 63-3622, Idaho Code

Sales and purchases of equipment primarily and directly used in the production and broadcasting of radio and television programs are exempt pursuant to Section 63-3622S, Idaho Code. To qualify for the exemption, a business

is required to be primarily devoted to both producing and broadcasting either radio or television programs. Businesses that provide television or radio programs only to paid subscribers are not broadcasters and cannot claim this exemption. ()

134. SALES OF LIVESTOCK (RULE 134).

01. Exempt Sales of Livestock. Certain sales and purchases of livestock are exempt from sales and use tax. To qualify for the exemption, the livestock are to be sold at a livestock market chartered by the Idaho Department of Agriculture, or an organization expressly exempted from chartering requirements by Section 25-1722, Idaho Code. Those groups expressly exempted from chartering requirements are: ()

a. Any place or operation where future farmers or 4-H groups, or private fairs conduct sales of livestock. ()

b. Any place or operation conducted for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing said business and no other livestock is sold or offered for sale. ()

c. Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock when such breeders assume all responsibility of such sale and the title of livestock sold. This applies to all purebred livestock association sales. ()

d. All sales of livestock by any generally recognized statewide association or associations composed of persons engaged in the production in Idaho of cattle, calves, sheep, mules, horses, swine, or goats. ()

e. Sales of livestock by any nonprofit cooperative association, corporation sole or religious, fraternal or benevolent corporation, provided such association or corporation complies with regulations of the director in connection with such sale and such sales are not held in the regular course of business of such corporation or association. ()

f. Any Idaho auction market operated by an Idaho licensed auctioneer selling not more than twenty (20) animals a week or more than eighty (80) animals a month, provided such an auction market is bonded under the provisions of the Federal Packers and Stockyards Act, of 1921, as amended. ()

02. Sales of Other Animals Excluded. This exemption is limited to sales of cattle, calves, sheep, mules, horses, swine, or goats. Sales of other animals do not qualify for the exemption regardless of who the seller is and where the sale takes place. ()

135. SNOWGROOMING AND SNOWMAKING EQUIPMENT (RULE 135).

Sections 63-3612, 63-3613, 63-3622, 63-3622Y, 63-3641, Idaho Code

01. Exemption for Snow Equipment. Section 63-3622Y, Idaho Code, exempts the sale, storage, use or other consumption of tangible personal property that will become a component of an aerial passenger tramway and snowgrooming and snowmaking equipment purchased and used by the owner or operator of a downhill ski area. This exemption also extends to sales and purchases of component parts used to build or repair snowgrooming and snowmaking equipment. ()

02. Consumable Supplies Not Exempt. This exemption only applies to sales and purchases of equipment that will become a component part of snowmaking or snowgrooming equipment. It does not apply to sales and purchases of fuel, fluids, or other consumable supplies. ()

136. REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS (RULE 136).

01. Rebate of Sales Tax. Section 63-3641, Idaho Code, provides for a rebate of sales taxes to be paid to real estate developers who build a qualifying retail complex at a cost of four million dollars (\$4,000,000) or more and who expend more than six million dollars (\$6,000,000) for the installation of a highway interchange or for improvements on a highway. For the purposes of this rule, the term "qualifying shopping center" is a qualifying retail

complex as specified by Section 63-3641, Idaho Code. ()

02. Qualifying Shopping Center Location. Qualified retailers located in a qualifying shopping center apply for a separate sellers' permit and report sales separately for that location. For instance, if a retailer has multiple stores in Idaho it files a separate return for any store located in a qualifying shopping center. A retailer who ceases operation in a qualifying shopping center notifies the Commission and cancels the sellers' permit for that location. ()

03. Confidential Information. Information about an individual store's sales or aggregate sales for stores located in a qualifying shopping center is confidential and may not be released to the public. ()

04. Developer Responsibilities. The developer of a qualifying shopping center provides the names and taxpayer identification numbers of the stores located in the shopping center to the Commission. The developer also notifies the Commission whenever a new retailer begins operation or when a retailer ceases operations in a qualifying shopping center. ()

05. Certifying Expenditures Prior to Rebate Payment. No rebate will be paid unless the Idaho Department of Transportation or an appropriate political subdivision of the state of Idaho has certified as to the amounts expended and that the expenditures were made for the purpose of constructing approved transportation improvements. ()

06. Disposition of Revenue from a Qualifying Shopping Center. The Commission will deposit sixty percent (60%) of the sales and use tax reported by qualifying retailers in the demonstration pilot project fund after a developer has: ()

- a. Identified the location and boundaries of the retail complex; ()
- b. Identified the qualified retailers making retail sales within the complex; and ()
- c. Verified that it has met the expenditure requirements of Subsection 136.01 of this rule. ()

137. IMPOSITION OF THE PREPAID WIRELESS E911 FEE (RULE 137).

Sections 31-4801 - 31-4821, Idaho Code

A prepaid wireless E911 fee is imposed on the sale of prepaid wireless telecommunications service at two and one-half percent (2.5%) of the sales price. The prepaid wireless E911 fee is not imposed on a sale of any device, such as a cell phone, that utilizes the prepaid wireless telecommunications service. However, the sale of the device will be subject to the fee if all the following apply: ()

01. Separately State the Cost. The seller does not separately state the cost of the prepaid wireless telecommunications service from the rest of the transaction, ()

02. Service Sold Exceeds. The amount of the prepaid wireless telecommunications service sold exceeds ten (10) minutes or five dollars (\$5.00), and ()

03. Portion of the Sale. The seller cannot show from its records the portion of the sale that should properly be applied to the sale of the prepaid wireless telecommunications service. ()

138. -- 999. (RESERVED)

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Section 63-105 and 63-105A, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Statutes relating to the property tax laws and related statutes, Chapters 1 through 17 and Chapters 28, 30, 35, 36, and 45, Title 63, Idaho Code. Rules relating to the market value of recreational vehicles are authorized by Section 49-446, Idaho Code. Rules relating to taxation of newly constructed improvements are authorized by Section 63-105A, Idaho Code. ()

001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 35.01.03, “Property Tax Administrative Rules.” ()

002. ADMINISTRATIVE APPEALS (RULE 002).

This chapter does allow administrative relief of certain provisions outlined herein. These rules relate to proceedings pursuant to Sections 63-407 and 63-707, Idaho Code. ()

003. INCORPORATION BY REFERENCE (RULE 003).

Unless provided otherwise, any reference in these rules to any document identified in Rule 003 of these rules will 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. ()

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules can be electronically accessed as noted in Subsection 003.02 of this rule. ()

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: ()

a. “Standard on Ratio Studies” published in 2013, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2015, “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/wcm/Resources/Publications_access/Technical_Standards/wcm/Resources_Content/Pubs/Technical_Standards.aspx?hkey=9c330567-135b-4adc-a772-00008232ab90 which was last accessed and verified on July 18, 2019. ()

b. “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. ()

c. “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. ()

d. “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. ()

e. “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. ()

f. “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. ()

004. -- 019. (RESERVED)

020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).

Section 49-446, Idaho Code

01. Value of Recreational Vehicle For Registration Fees. For the types of recreational vehicles shown in the “Depreciation Schedule for RVs,” beginning with registration fees for calendar year 2004, the County assessors will administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule. For all other types of recreational vehicles, the assessor will use

any available standard industry indices of retail value to determine the market value. If no such indices are available, the assessor will determine market value from sale price or by using appraisal procedures as defined in Rule 217 of these rules.

DEPRECIATION SCHEDULE FOR RVS				
	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price or the market value of the RV adjusted by the percentage, if applicable from Subsection 020.02 or 020.03 below, by the appropriate "Percent Good" based on the "Age" and type of RV. Decide the "Age" based on the year of purchase as follows: purchased in the current year equals "Age" zero (0), purchased in the previous year equals "Age" one (1), etc. For example, in year 2004, the "Age" for an RV purchased in 2004 is zero (0), the "Age" for an RV purchased in 2003 is one (1), the "Age" for an RV purchased in 2002 is two (2), the "Age" for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. ()

02. Value of Motor Home or Van Conversion For Registration Fees. The value of any motor home or van conversion used to calculate the registration fee will exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor will use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%

Motor Home/Van Type	Valuation Factor
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion's total value by the appropriate factor to calculate the value excluding the chassis value. ()

03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees. For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is fifty percent (50%) of the sales price. ()

04. Assessment Notice Mailed or Assessment Canceled. If after August 31, the required annual registration fee has not been paid, a taxpayer's valuation assessment notice will be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor will cancel the assessment. ()

021. -- 113. (RESERVED)

114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114). Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, each county assessor will, to the extent practicable, report to the Tax Commission in the same manner and at the same time as the abstract under Section 63-509, Idaho Code, the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner's exemption under Section 63-602G, Idaho Code, for the current year's assessment roll. Additionally, each county assessor will, to the extent practicable, report to the Tax Commission the number of properties and the aggregate total market value of the properties granted the homeowner's exemption in each group starting with the group of properties valued at less than or equal to twenty-five thousand dollars (\$25,000) and including each subsequent group with value increases of twenty-five thousand dollars (\$25,000) and ending with the group of properties exceeding the value of more than four hundred fifty thousand dollars (\$450,000). ()

115. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 115). Sections 63-105A and 63-509, Idaho Code

01. Requirement to Submit Abstracts. The county auditor must submit to the Tax Commission abstracts for the county, the cities or the portion of each city located in the county, the Boise School District, and any taxing district or unit of government with a restriction providing that such district does not levy property taxes on all otherwise taxable property as described in Rule 808 of these rules. ()

02. Values by Secondary Category. For each of the abstracts required in Subsection 115.01 of this rule, to provide needed value information under Subsection 63-105A(2), Idaho Code, each assessor will report to the county auditor the market value and exempted value of all property by secondary categories, described in Rules 510, 511, and 512 of these rules, in the same manner as the abstracts required for each county under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

03. Additional Abstracts to Accompany County Abstracts. Each county auditor will include city and any required additional abstracts described in Subsection 115.01 of this rule, when submitting to the Tax Commission the abstracts required under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

04. Cross Reference. For the descriptions of secondary categories and clarification of responsibilities relating to listing and reporting values by secondary categories, see Rules 509, 510, 511, and 512 of these rules. For a description of levy criteria requiring submittal of additional abstracts, see Rule 808 of these rules. ()

116. -- 119. (RESERVED)

120. INVESTIGATION OF WRITTEN COMPLAINTS (RULE 120).

Section 63-105A, Idaho Code

01. Definitions. ()

a. Complaint. Complaint means a signed, written statement submitted to the Tax Commission requesting that this agency investigate any actions by county officials relating to property tax assessment or administration, provided such actions are not related to personnel matter or matters relating to the expenditure of funds. ()

b. Complainant. Complainant means any individual making a complaint. ()

c. Investigation. Investigation means observation and close examination of a county official's application of property tax assessment or administration law and Tax Commission rules. The investigation may require field inspections of property, analysis of public records or the interviewing of witnesses. The investigation will be limited to specific issues identified in the complaint. ()

d. County official. The term county official means the elected or appointed official whose actions are the subject of the complaint. ()

02. Investigation Procedure. The following procedures apply to an investigation of a complaint. ()

a. Examination of complaint. The complaint will be examined by the Tax Commission to decide if a formal investigation will be conducted. ()

b. Notification. Within thirty (30) days of receipt of complaint, the Tax Commission will notify the complainant of the decision regarding initiation of an investigation. If an investigation is initiated, the affected county official(s) will also be notified within this time frame. ()

c. Delivery of investigation order. Within thirty (30) days of a decision to conduct an investigation, the Tax Commission will deliver to the affected county official(s) a copy of the investigation order naming the investigators and outlining what is to be investigated. ()

d. Preliminary report. A preliminary report will be prepared by the investigator and legal counsel. The report will include findings and recommendations, and may include information from the official(s). ()

e. Presentation of preliminary report. The preliminary report will be presented to the complainant and the official(s). The Tax Commission investigators will be present when the report is discussed with the affected county official(s) and the complainant. ()

f. Comment period. The complainant and the county official(s) will be given a specified time to review and comment on the preliminary report, particularly to correct any errors of fact. ()

g. Final report. At the end of the review by the complainant and the public official a final report will be prepared by the investigator and legal counsel and submitted to any affected county official(s) with any changes from the preliminary report highlighted. ()

03. County Officials' Response to Final Report. After the final report is completed, the county official(s) will outline how the investigator's recommendations will be implemented and provide a written explanation of why any recommendation has been rejected. ()

04. Conclusion of Investigation. The investigator's final report and the county officials' written response to the report will conclude the investigation. The conclusion of the investigation does not preclude the Tax Commission from enforcing additional powers and duties as prescribed by law or the complainant and county official(s) from exercising his or her right to appeal property valuations before a County Board of Equalization, the

State Board of Tax Appeals or in District Court. ()

05. Special Rules for Investigation of Complaints About Property Tax Budgets or Levies. When complaints are made about property tax budgets or levies of taxing districts, the results of any investigation will also be reported to the appropriate taxing district, the county prosecuting attorney, and affected county officials. The Tax Commission's investigatory authority is limited to determining whether a levy rate or property tax budget increase exceeds any statutory maximum, or whether a levy is unauthorized. Any such investigation must be conducted in accordance with the time constraints found in Section 63-809, Idaho Code. ()

121. -- 124. (RESERVED)

125. PROGRAM OF EDUCATION (RULE 125).

Section 63-105A(17), Idaho Code

01. Administration. The program of education is the responsibility of the Tax Commission (Commission). The program of education will be administered by the Tax Commission's education director (education director). ()

02. Appraisal School and Other Courses. An appraisal school will be held at least once each year. The school will offer courses for training the Tax Commission's employees, county commissioners, and assessment personnel. The Idaho Association of County Assessors Education Committee and the education director will approve the curriculum for the annual appraisal school. Other courses may be developed and offered as approved by the education director. ()

03. Record Keeping and Reporting of Attendance, Grades, and Credit Hours. The education director will maintain student attendance records, records of education hours earned, status of certification, and grades. ()

a. The education director and course instructors will monitor attendance and hours of education to be awarded to each student attending the Tax Commission administered classes. A certificate of completion showing the number of education hours to be awarded will be issued by the education director for the Tax Commission administered classes. In order to receive credit for classes not administered by the Tax Commission, the student will provide a certificate of completion showing the number of education hours completed, a course description, and the dates attended. ()

b. The education director will maintain records to show the number of education hours completed during the current year and the previous two (2) years. By June and November of each year, the education director will send a certification status report to each county assessor or applicable supervisor. This report will list each certified property tax appraiser who is known to be employed by or under contract with said assessor and show the number of hours of education completed during the previous year and current calendar year. ()

c. If a test is given for Tax Commission developed courses, the education director will notify the appropriate county assessor or applicable supervisor of the grade achieved on the test. ()

04. Examination Committee -- Establishment and Procedures. The examination committee will be composed of three (3) assessors, one (1) member of the Idaho Association of Assessment Personnel, and the education director. The education director will appoint the members of the committee. The committee will operate by majority rule. ()

a. Terms. The term of the education director will be continuous. The other members will serve four (4) year terms. The education director will maintain records of dates of appointments. ()

b. If any member fails to serve the full-appointed term, the education director will appoint another member for the remainder of the term. The appointee will be from the same group as the member not completing the term. ()

c. The education director will chair the committee. ()

d. An applicant may appeal any rulings, matters involving examination structure, grading, or grievances with the committee to a review board. No board member may be an assessor of the applicant's county or a member of the examination committee. The review board will consist of the following four (4) persons: ()

i. The president of the Idaho Association of County Assessors; ()

ii. A person appointed by the president of the Idaho Association of County Assessors; ()

iii. A person appointed by the examination committee; and ()

iv. A person appointed by the education director. ()

e. The committee will decide which courses meet the requirements for obtaining and maintaining certification and the hours of appraisal education awarded for each course. ()

05. Cross Reference. See Rule 126 of these rules for the description of the certified property tax appraiser program and Rule 128 of these rules for the cadastral certification program. ()

126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).
Section 63-105A, Idaho Code

01. Application for Certification. The Commission (Commission) will prescribe and make available the application for state certification form to each county assessor. ()

a. After the applicant has completed the requirements of Subsection 126.02 of this rule, the applicant's supervisor will submit the completed application form to the education director. The application will list the following: ()

i. The name and address of the applicant, ()

ii. The applicant's employer, and ()

iii. The courses completed. ()

b. The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. ()

c. The education director will make available information regarding the certification process and the application form to students attending the courses referenced in Subsection 126.02 of this rule. ()

02. Certification Requirements. An applicant for certification must pass at least two (2) appraisal courses: Tax Commission Course No. 1 or the International Association of Assessing Officers' (IAAO) Course 101; and IAAO Course No. 102 or IAAO Course 201 or IAAO Course 300 or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. ()

a. Upon request to the education director, an applicant may take one (1) required course and challenge the second required course by passing a test. The education director will set the time and place for the test. ()

b. Equivalent courses may be approved by the education director and the examination committee. ()

c. With the exceptions of the county assessor, the members of the county board of equalization, and the Commissioners, all persons making decisions regarding final values for assessment purposes will be certified

property tax appraisers. ()

03. Maintaining Property Tax Appraisal Certification. ()

a. To maintain certification each appraiser must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each appraiser will have completed thirty-two (32) hours of continuing education during the previous two (2) years. ()

b. When any certified property tax appraiser fails to meet the continuing education requirements, the examination committee will place this person on six (6) month probation. When any certified property tax appraiser fails to meet the continuing education requirements within this probationary period, the person will forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ()

c. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The committee will decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee will not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification and a new certification number will be issued. ()

04. Cross Reference. See Section 63-201. (1)(a), Idaho Code for the requirement that only assessors or certified property tax appraisers place value on any assessment roll. See Rule 125 of these rules for the description of the examination committee. ()

127. (RESERVED)

128. CADASTRAL CERTIFICATION PROGRAM (RULE 128).
Section 63-105A, Idaho Code

01. Application for Certification. The Tax Commission (Commission) will prescribe and make available the application for state certification form to each county assessor. ()

a. After any applicant has completed the requirements provided in Subsection 128.02 of this rule, the applicant's supervisor will submit the completed application form to the education director. The application will list the following: ()

i. The name and address of the applicant, ()

ii. The applicant's employer, and ()

iii. The courses completed. ()

b. The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. ()

c. The education director will make available information regarding the certification process and the application form to students attending the courses mentioned in Subsection 128.02. ()

02. Certification Requirements. An applicant for certification must have passed the Tax Commission's Basic Mapping Course and the International Association of Assessing Officers' (IAAO) Course 600 or IAAO Course 601 or both IAAO Courses 650 and 651, or equivalent courses, and must have a minimum of twelve (12) months experience working as a cadastral specialist in Idaho or equivalent cadastral experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. ()

a. Upon request to the education director, an applicant may take one (1) required course and challenge the second required course by passing a test. The education director will set the time and place for the test. ()

b. Equivalent courses may be approved by the education director and by the examination committee. ()

03. Maintaining Cadastral Specialist Certification. ()

a. To maintain certification, each cadastral specialist must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each cadastral specialist will have completed thirty-two (32) hours of continuing education during the previous two (2) years. ()

b. When any certified cadastral specialist fails to meet the continuing education requirements, the education committee will place this person on six (6) month probation. When any certified cadastral specialist fails to meet the continuing education requirements within this probationary period, the person will forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ()

c. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant, for recertification, must satisfactorily complete a written examination approved by the committee. The committee will decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee will not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification and a new certification number will be issued. ()

04. Cross Reference. See Rule 125 of these rules for the description of the examination committee. ()

129. (RESERVED)

130. DESCRIPTION OF PRIMARY CATEGORIES USED TO TEST FOR EQUALIZATION (RULE 130).

Sections 63-109 and 63-315, Idaho Code. The State Tax Commission establishes the primary categories listed herein for the purpose of testing values in each county and each school district for equalization by the Tax Commission under Section 63-109, Idaho Code. ()

01. Definitions. The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. ()

a. **Primary Category.** Primary category means the six (6) categories established and described in Subsections 130.02 through 130.07 of this rule, except for the use of secondary categories described in Subsection 130.07 of this rule and Paragraphs 131.02.b. and 131.05.b. of Rule 131, and used by the Tax Commission to test for equalization under Section 63-109, Idaho Code. ()

b. **Secondary Category.** Secondary category means the categories established and described in Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

02. Vacant Residential Land Category. Vacant residential land is all vacant land used for residential purposes. The assessor listed this land in secondary categories 12, 15, 18, or 20, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

03. Improved Residential Property Category. Improved residential property is all improvements used for residential purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 10 and 31, 46, or 48, 12 and 34, 46, or 48, 15 and 37, 46, or 48, 18 and 40, 20 and 41, 46, or 48, 26, 46, 48, or 50 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rules 510 and 511 of these rules, for the purposes of listing property on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

04. Vacant Commercial or Industrial Land Category. Vacant commercial or industrial land is all vacant land used for commercial or industrial purposes. The assessor listed this property in secondary categories 11, 13, 14, 16, 17, 21, or 22, as described in Rule 510 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

05. Improved Commercial or Industrial Property Category. Improved commercial or industrial property is all improvements used for commercial or industrial purposes and the land upon which these improvements are located. The assessor listed this property in secondary categories 11 and 33, 13 and 35, 14 and 36, 16 and 38, 17 and 39, 21 and 42, 22 and 43, 27, or 51, as described in Rules 510 and 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

06. Manufactured Homes on Leased Land Category. Manufactured homes on leased land are all manufactured homes on leased land that the assessor listed in secondary categories 49 or 65 together with secondary category 47 as appropriate for inclusion when valuing this property, as described in Rule 511 of these rules, for the purposes of listing property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and reporting values to the Tax Commission under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

07. Agricultural Land Category. Agricultural land is all land that the assessor listed in secondary categories 1 through 5 as described in Rule 510 of these rules. For agricultural land, secondary, rather than primary, category values are to be tested if significant in any county as defined in Rule 131 of these rules. ()

08. Conversion Table: Secondary Categories to Primary Categories.

Conversion Table: Secondary Categories to Primary Categories	
Secondary Categories	Primary Categories
12, 15, 18, or 20	Vacant Residential Land
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property
47, 49, or 65	Manufactured Housing on Leased Land
1-5	Agricultural Land

()

09. Cross Reference. For clarification of responsibilities relating to listing values on the valuation assessment notices or reporting values on the abstracts, see Rules 114, 115, 509, 510, 511, and 512 of these rules. For descriptions of secondary categories used to list land values on the valuation assessment notices and report land

values on the abstracts, see Rule 510 of these rules, used to list improvement values on the valuation assessment notices and report improvement values on the abstracts, see Rule 511 of these rules, and used to list values for all property other than land or improvements on the valuation assessment notices and report these values on the abstracts, see Rule 512 of these rules. ()

131. USE OF RATIO STUDY OR OTHER METHOD TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131).

Section 63-109, Idaho Code

01. Equalization Ratio Study - Primary Categories Other than Agricultural Land. Each year the State Tax Commission will conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories, other than agricultural land, established in Rule 130 of these rules. The ratio study will be conducted in accordance with the "Standard on Ratio Studies" and the "Standard on Verification and Adjustment of Sales" both referenced in Rule 006 of these rules. The annual ratio study will test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. Equalization ratio studies must consist of at least five (5) sales and/or appraisals. The Tax Commission may delete sales when necessary to improve representativeness. Sales should be considered as potentially valid if a financial institution is the seller, provided that: ()

- a.** Such sales comprise more than twenty percent (20%) of the sales in any primary category or other category tested for equalization; ()
- b.** Such sales are validated to account for changes in property characteristics; and ()
- c.** Any properties that have been vandalized are excluded. ()
- d.** The study will be completed in February following the end of the period studied. Timing and notification of county officials is described in the "Timing and Notification Table" as provided in Subsection 131.03 of this rule. For non-agricultural categories, the appropriate ratio study statistical measure of level is the median. For agricultural land categories, level of assessment is to be determined as described in Paragraph 131.02.b. of this rule. ()

02. Equalization Study – Agricultural Land. Each year the Tax Commission will conduct a study to assist in the equalization of assessments of agricultural land. Any such study will analyze agricultural land values throughout each significant secondary agricultural land category using valuation methods found in Section 63-602K, Idaho Code and Rule 617 of these rules. ()

- a.** Notice of results and compliance will be provided to county officials according to the timing shown in Subsection 131.03 of this rule. ()

b. Agricultural land secondary categories considered significant, as defined in Paragraph 131.02.c. of this rule, in any county will be subject to preliminary and follow-up studies of assessment level. Both studies will be based on valuation methodology described in Rule 617 of these rules, the results of which are considered the taxable value for the agricultural land. The preliminary study will be in comparison to prior year's assessed values. The follow-up studies will test current year's assessed values and will only be required when preliminary studies indicate level of assessment less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Assessed values for any agricultural land secondary category with an indicated level determined to be within this range and those categories not considered significant in a county will be considered in compliance. Note: For the purpose of this analysis, "level" means the ratio of the median per acre assessed value and the median per acre value for the secondary category determined by the Tax Commission using the valuation methodology found in Rule 617 of these rules. ()

- c.** A secondary agricultural land category will be considered significant provided the category

includes at least 10% of the acreage and at least 5% of the value of the primary agricultural land category. ()

d. Agricultural land categories may also be subject to follow-up studies if the Tax Commission has received information indicating that county boards of equalization have changed values in such a way as to produce likely non-compliance. Notice for such follow-up studies will comport, to the extent possible, with the procedures found in Subsection 131.06 of this rule. The time table for completing preliminary and follow-up studies and providing notice is shown in the “Timing and Notification Table” found in Subsection 131.03 of this rule. ()

03. Timing and Notification Table.

Date	Activity
April – 1st Monday	The Tax Commission will notify assessors of preliminary ratio and agricultural land study results.
April – 3rd Monday	The Tax Commission will notify the board of county commissioners (BOCC) of non-compliant primary ratio study categories and agricultural land secondary categories.
May – 1st Monday	On request by the county assessor, the Tax Commission will conduct additional studies for non-compliant categories using current year assessments.
May – 2nd Monday	The Tax Commission will notify county assessors and commissioners of results of additional studies.
July – 3rd Monday	The Tax Commission will conduct final follow-up studies for originally non-complying categories using county equalized values. Additional studies may be conducted if there is indication that county boards of equalization have taken actions that may have resulted in non-compliance for previously complying primary or secondary categories. Assessors and county commissioners will be notified of results and compliance status by the 4th Monday in July, except that this deadline and the 3rd Monday in July deadline are to be extended if an extension has been granted to the county board of equalization. In that case, the final or additional studies will be finalized and notice provided within one week of the conclusion of the county board of equalization.

()

04. Tested for Equalization. Except as provided in Subsection 131.05 of this rule, categories, other than agricultural land to be tested for equalization purposes are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided adequate samples can be obtained. Agricultural land is to be tested as provided in Subsection 131.02 of this rule. ()

05. Follow-Up Ratio Study. When indicated, based on criteria in Paragraph 131.05.a. and 131.05.b. of this rule, a follow-up ratio study will be conducted to test the assessments for January 1 of the year following the year tested by the preliminary agricultural study or annual ratio study and if a ratio study is to be done, it will be based on property sales occurring during the calendar year immediately preceding that date. A follow-up ratio study will be indicated whenever: ()

a. The annual ratio study, provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any primary category as described in Subsections 130.02 through 130.06 of these rules are out of compliance with the equalization standards of this rule; or ()

b. The Tax Commission is informed after the county board of equalization adjourns and before the state board of equalization adjourns of the implementation of assessment changes likely to result in a finding that a category found in compliance with equalization standards following the agricultural land study or annual ratio study

would be found out of compliance with these standards for the current year's assessments. The follow-up agricultural land study or ratio study authorized under this option will be conducted for the primary category likely to be out of compliance with equalization standards and for any secondary categories comprising the primary category, provided adequate samples can be obtained. ()

06. Notice of Follow-Up Ratio Study. The Tax Commission will notify the county assessor of the reason for and results of the follow-up ratio study. If the follow-up ratio study is conducted as provided in Paragraph 131.05.b. or 131.02.d. of this rule, the notice will be sent to the county commissioners or board of equalization and county assessor and will describe the assessment changes that resulted in the need for the follow-up ratio study. The notice will indicate whether any adjustments will be considered by the Tax Commission at its next equalization meeting in August based on either the annual, or any follow-up ratio study, and the reason for the proposed adjustments. ()

07. Use of Ratio Study Results. The results of the annual ratio study or any follow-up ratio study will be one (1) source of information upon which the Tax Commission may rely when testing assessments for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any primary, or, if applicable under the provisions of Subsection 131.02 or Paragraph 131.05.b. of this rule, secondary category, described in Subsections 130.02 through 130.09 of these rules, show, with reasonable statistical certainty as defined in Subsection 131.11 of this rule, that the appropriate measure of level of the category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in the category or any portion of the category included in the analysis conducted in an amount the Tax Commission finds necessary to accomplish equalization of assessments of property. Within any primary category, except as provided in Subsections 131.02 or 131.08 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for that primary category. ()

08. Exception from Requirement for at Least One (1) 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 will be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment will 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. ()

09. Use of Alternate Ratio Study. When the follow-up ratio study required by Subsection 131.05 of this rule does not measure the true assessment level, the Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any primary category, the Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). ()

10. Submission of Additional Information. Any party may petition the Tax Commission to consider any information or studies relevant to equalization. The petition will include a description of the information to be presented and the petitioner's conclusions drawn from the information. ()

11. Reasonable Statistical Certainty. For the purposes of Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized will mean that the appropriate measure of level determined by the ratio study for any category tested for equalization must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination will occur if: ()

a. The appropriate measure of level for the category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the

appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or ()

b. The appropriate measure of level for the category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study completed prior to August 31, 2007 will be considered as one of the most recent previous two (2) ratio studies. ()

12. Cross References. The primary categories are described in Subsections 130.02 through 130.07 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. ()

132. -- 204. (RESERVED)

205. PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).
Sections 39-4105, 39-4301, 63-201, 63-302, 63-309, 63-602KK, 63-1703, 63-2801, Idaho Code

01. Real Property. Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. ()

a. Land. Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. ()

b. Law and Courts. Real property also consists of all other property which the law defines, or the courts may interpret, declare, and hold to be real property under the letter, spirit, intent, and meaning of the law. ()

c. Improvements. Improvements are buildings, structures, fences, and similar properties that are built upon land. Improvements are real property regardless of whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed, or attached. ()

02. Personal Property. Personal property is defined in Section 63-201, Idaho Code, as everything that is the subject of ownership that is not real property. ()

03. Fixtures. Fixtures are defined in Section 63-201, Idaho Code, as articles that were once moveable personal property items but have become real property as determined by the application of the three factor test. ()

a. The three factor test consists of annexation, adaptation and intent as explained below. ()

i. Annexation. Although once moveable chattels, articles become accessory to and a part of improvements to real property by having been physically or constructively incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property; and ()

ii. Adaptation. The use or purpose of an item is integral to the use of the real property to which it is affixed; and ()

iii. Intent. Items should be considered personal property unless a person would reasonably be considered to intend to make the articles, during their useful life, permanent additions to the real property. The intent depends on an objective standard and what a reasonable person would consider permanent and not the subjective intention of the owner of the property. ()

b. If an item of property satisfies all three factors of the three factor test, the item becomes a fixture and therefore real property. ()

04. Operating Property. Operating Property is defined in Section 63-201, Idaho Code. For any purpose for which the distinction between personal property and real property is relevant or necessary for operating

property, operating property will be characterized as personal or real based upon the criteria stated in this guideline and the rules of the Tax Commission. ()

206. -- 216. (RESERVED)

217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).
Section 63-208 Idaho Code

01. Market Value Definition. Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. ()

a. The assessor will value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions will be subtracted. ()

b. Personal property will be valued at retail level. ()

02. Appraisal Approaches. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: ()

a. The sales comparison approach; ()

b. The cost approach; and ()

c. The income approach. ()

03. Appraisal Procedures. Market value for assessment purposes will 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 Tax Commission. The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties must use market rent, not contract rent. ()

218. ASSESSOR'S PLAT BOOK (RULE 218).
Sections 50-1304, 63-209, 63-210, 63-212, 63-219, 63-307, Idaho Code

01. Plat Maps. The assessor will prepare plat maps for all land. ()

a. Plat map format. Plat maps may be drafted and maintained either in ink, on drafting film, or in a digital format. When such maps are on drafting film, thirty (30) inch by thirty-six (36) inch, 0.003 inch drafting film (minimum thickness) should be used. Smaller plat map sizes are permitted as long as they clearly depict parcel boundaries and dimensions. ()

b. Maintenance of plat maps. Plat maps of townships, sections, aliquot parts, subdivisions, and parcel boundaries completed after July 1, 2013 will be updated and maintained in accordance with the "Manual of Surveying Instructions" referenced in Rule 003 of these rules. ()

c. Maintenance of parcel numbers and all other desired information. Parcel numbers, and all other desired information, will be maintained in a digital format or drafted with ink. Annotative information will be added as necessary and, if plotted by computer be of appropriate font style and size to be easily readable. The minimum letter height will be one point two five (1.25) millimeters. ()

02. Section Outlines. Section outlines will be mapped according to: ()

a. Technical descriptions of Bureau of Land Management, formerly the General Land Office (GLO), surveys, (Section 31-2709, Idaho Code); ()

- b.** Descriptions on recorded surveys (Sections 55-1901 through 55-1911, Idaho Code); ()
 - c.** Recorded corner perpetuation records (Sections 55-1603 through 55-1612, Idaho Code); ()
 - d.** Recorded subdivision plats and assessor's plats (Sections 50-1301 through 50-1330, 63-209, and 63-210(2) Idaho Code); ()
 - e.** Deeds or contracts with metes and bounds descriptions (Section 31-2709, Idaho Code); ()
 - f.** Highway, railroad, and other engineering quality route surveys; ()
 - g.** Relevant court decisions; and ()
 - h.** Unrecorded data from registered land surveyors (Section 31-2709, Idaho Code). ()
- 03. Subdivision of Sections.** Subdivision of sections will be mapped in accordance with Sections 31-2709 and 63-209, Idaho Code. ()
- 04. Map Scales.** Non-Computer and computer generated maps will be scaled. ()
 - a.** Non-computer generated maps. Non-computer generated maps will be: ()
 - i.** One (1) township at one (1) inch = fourteen thousand four hundred (14,400) inches (1,200 feet), 1:14,400; ()
 - ii.** Four (4) sections at one (1) inch = four thousand eight hundred (4,800) inches (400 feet), 1:4,800; one (1) section at one (1) inch = twenty four hundred (2400) inches (200 feet), 1:2,400; ()
 - iii.** One (1) quarter section at one (1) inch = twelve hundred (1,200) inches (100 feet), 1:1,200. ()
 - b.** Mapping done from aerial photographs. Mapping done from aerial photographs will have the scale recalculated and shown on the map. ()
 - c.** Plat maps of subdivision, townsite, and metes and bounds parcels. Subdivision, townsite, and metes and bounds parcels will be mapped to include the basis of bearing with monuments and their coordinates relative to the "Idaho Coordinate System" as described by Sections 31-2709, 50-1301, 50-1303, and 50-1304, Idaho Code. ()
 - d.** Drafting of plat titles, subdivision names, and parcel dimensions. Plat titles, subdivision names, and parcel dimensions will be drafted with ink, or generated by computer at an appropriate scale. The minimum letter height will be one point two five (1.25) millimeters. ()
- 05. Property Ownership Records.** Ownership will be shown on the property ownership records. ()
 - a.** Ownership notations. Ownership notations include the reputed owner of the property or note that the owner is unknown, or list other persons with interests of record. Ownership may be ascertained from numerous recorded sources as described in Sections 63-212 and 63-307, Idaho Code. ()
 - b.** Insertion of additional names. Purchasers, agents, guardians, executors, administrators, heirs, and claimants may have their names inserted with the recorded owner's name as explained in Sections 63-212 and 63-307, Idaho Code. ()

219. UNIFORM PARCEL NUMBERING SYSTEM (RULE 219).
Sections 63-209, 63-210, 63-219, Idaho Code

- 01. Definitions.** The following definitions apply to this rule. ()
- a.** Parent parcel. A parcel of land in its original state prior to being segregated. The parcel may be described by a metes and bounds description, lot and block, aliquot part, or government lot. ()
- b.** Child parcel. A parcel of land which has been segregated from the parent parcel. At the time a parent parcel is segregated into one or more parts, the parcels being segregated from the parent parcel will be known as child parcels. The child parcel may be described by a metes and bounds description, a portion of a lot and block, a portion of an aliquot part, or a portion of a government lot. ()
- 02. Parcel Number Functions.** The uniform parcel numbering system will be used for mapping and record keeping. Each parcel will be assigned a parcel number that will appear on the plat map and on a companion sheet. This assigned parcel number may also be the tax number. ()
- 03. Parcel Number Cancellation or Retention Upon Property Transfers.** As long as the property boundary does not change, the new owner's name will be assigned to the same parcel number on the companion sheet. A parcel number that exists at the time a property is divided or added to may be canceled and a new number(s) assigned. If the parent parcel number is not canceled, it will be assigned to the child parcel complying with the directions in this rule relating to assigning parcel numbers based on geographic location. ()
- 04. Property Split by County Line, Section Line, or Tax Code Area Boundary.** Properties contiguous under common ownership but split by county line or tax code area boundary will require separate parcel numbers. Properties contiguous under common ownership but split by section line(s) and entirely located within the same county and tax code area will not require separate parcel numbers and the lowest section number will be included in the parcel number as explained in Paragraph 219.05.c. of this rule. ()
- 05. Rural Land Not Subdivided.** Assign parcel numbers to rural land that is not subdivided as follows: ()
- a.** Positions 1, 2, and 3 will be the township descriptor minus the "T." ()
- b.** Positions 4, 5, and 6 will be the range descriptor minus the "R." ()
- c.** Positions 7 and 8 will be the section number. For properties contiguous under common ownership and split by section line(s) so that the parcel is located in multiple sections, the lowest section number will be used. If the section number is less than ten (10), the section number is in position 8, preceded by a zero ("0") in position 7. ()
- d.** Positions 9, 10, 11, and 12 will be the quarter section numbers. To assign the quarter section number, begin numbering in the northeast quarter (NE1/4) of the northeast quarter (NE1/4) and proceed counterclockwise. Starting in the NE1/4 of the section the numbers used range from zero to two thousand three hundred ninety nine (0000 to 2399). Continuing counterclockwise, beginning in the NE1/4 of the northwest quarter (NW1/4), the numbers continue from two thousand four hundred to four thousand seven hundred ninety nine (2400 to 4799), thence, starting in the NE1/4 of the southwest quarter (SW1/4), assign numbers from four thousand eight hundred to seven thousand one hundred ninety nine (4800 to 7199), and beginning in the NE1/4 of the southeast quarter (SE1/4), assign quarter section numbers from seven thousand two hundred to nine thousand nine hundred ninety nine (7200 to 9999). The following quarter section breakdown key shows the sequence for assigning quarter section numbers for land not subdivided. ()
- 06. Urban Land not Subdivided.** Assign parcel numbers to urban land that is not subdivided as follows: ()
- a.** Position 1 will be the city letter. Each city will have a unique letter. ()
- b.** Positions 2, 3, 4, 5, and 6 will each be the number zero ("0"). ()
- c.** Positions 7 and 8 will be the section number. Number these positions as directed in Paragraph

219.05.c. of this rule. ()

d. Positions 9, 10, 11, and 12 will be the quarter section number. Number these positions as directed in Paragraph 219.05.d. of this rule. ()

e. When a metes and bounds parcel inside city limits is being numbered, positions 9, 10, 11, and 12 locate the parcel to the nearest quarter section. ()

f. If a government lot is within a section, or an extended government lot is an extension of a section, the quarter section numbering will be assigned as rural land not subdivided. For a government lot within a quarter section, the assigned number will be a number within the sequence of numbers for the quarter section. For an extended section, the assigned number will be within the sequence from the extended quarter section. ()

g. The following parcel number example denotes a parcel in the NE1/4 of section 29 in the city identified by the letter "A": A00000292163. ()

07. Subdivided Rural Land. Assign parcel numbers to subdivided rural land as follows: ()

a. Position 1 will be the number zero ("0"). ()

b. Positions 2, 3, 4, and 5 will be the subdivision number. The subdivision number will not contain alphabetic characters. Each subdivision, whether the original townsite or new subdivision, will be assigned a four (4) digit number. ()

c. Positions 6, 7, and 8 will be the block number. ()

d. Positions 9, 10, and 11 will be the lot number designated on the subdivision plat or an assigned number if characters on the subdivision plat are not acceptable as a parcel number. ()

e. Position 12 will be the number zero ("0") if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations will be listed on the companion sheet. ()

f. The following parcel number example denotes a subdivided parcel not in any city, identified by the number zero ("0"), subdivision number 62, block number 200, and lot number 29: 000622000290. ()

08. Subdivided Urban Land. Assign parcel numbers to subdivided urban land as follows: ()

a. Position 1 will be the city letter. Each city will have a unique letter. ()

b. Positions 2, 3, 4, and 5 will be the subdivision number. The subdivision number will not contain alphabetic characters. Each subdivision, whether the original townsite or a new subdivision, will be assigned a four (4) digit number. ()

c. Positions 6, 7, and 8 will be the block number. ()

d. Positions 9, 10, and 11 will be the lot number designated on the subdivision plat. An assigned subdivision plat number may be used if numbers comply with the parcel numbering system. ()

e. Position 12 will be the number zero ("0") if the lot is as originally platted. If a lot has been split once or combined once, then this becomes the letter "A." If split a second time, the letter becomes a "B," etceteras. These splits or combinations will be listed on the companion sheet. ()

f. When one (1) whole lot and part of another adjoining lot are under common ownership, one (1) parcel number may be assigned. That parcel number will be written using the whole lot's number and position 12 will be a letter. ()

g. Example: A parcel in a city identified by the letter “A”, in a subdivision with number 0062, in a block with number 200, a lot with number 029, and modified once will have the parcel number A0062200029A. ()

09. Patented Mines and Patented Mining Claims. Assign parcel numbers to patented mines and mining claims as follows: ()

a. The number nine (“9”) will be in positions 1 and 2. ()

b. Positions 3 through 8 will denote the township and range, as in the land not subdivided format. ()

c. Positions 9 through 12 will be a county assigned sequential account number for individual mines. ()

d. The following parcel number example denotes a parcel that is a patented mine in township 10 North, Range 36 East, with county assigned number 58: 9910N36E0058. ()

10. Condominiums. Assign parcel numbers to condominiums as follows: ()

a. Condominiums in a city will have a letter in position 1 of the parcel number. The letter will be unique for each city. For condominiums not in any city, position 1 is the number zero (“0”). ()

b. Positions 2, 3, 4, and 5 will be the condominium number and will be four numbers. To differentiate between condominiums and subdivisions, numbers 0001 through 8999 are to be used for subdivisions, and numbers 9000 through 9999 for condominiums. Fill positions preceding the number with zeros to occupy all four (4) positions (“0000”). ()

c. Positions 6, 7, and 8 will be the block or building number. Position 6 may be a “C” to differentiate between a typical block or building number and a condominium common area. ()

d. Positions 9, 10, and 11 will be the lot or unit number designated on the condominium plat or an assigned number. An assigned condominium plat number may be used if numbers comply with the parcel numbering system. ()

e. Position 12 will be the number zero (“0”) if the parcel has not been modified since originally platted. If it has been split once or combined once, then this character becomes an “A.” If split a second time, the character becomes a “B,” etceteras. These splits or combinations will be listed on the companion sheet. ()

f. The following parcel number example denotes a parcel that is in the city identified by the letter “A,” with condominium number 9062, block or building number 007, lot or unit number 029, and has not been modified since originally platted: A90620070290. ()

220. RULES PERTAINING TO ASSESSMENT OF INTERNAL REVENUE CODE (IRC) SECTION 42 LOW-INCOME PROPERTIES (RULE 220).

Section 63- 205A, Idaho Code

01. Definitions. The following definitions apply to the appraisal of IRC section 42 low-income properties as used in Section 63-205A, Idaho Code, and in this rule. ()

a. Amount of Housing Tax Credits. The “Amount of Housing Tax Credits” is the Housing Tax Credits divided by the number of years of the term of the Tax Credit Regulatory Agreement. ()

b. Asset Management Fee. “Asset Management Fee” is an annual fee paid to the limited partner for property management oversight, tax credit compliance monitoring, and related services. ()

c. Audit Fee. “Audit Fee” is the fees and costs that may be charged by accountants for preparation and

review of financial statements on behalf of the owner or investor. ()

d. Compliance Fee. “Compliance Fee” is the fees and costs, if any, that may be charged by the Idaho Housing Financing Association (IHFA), or its agent, for review and inspection of the owner’s records, or the physical inspection of the project, as are required by the Regulatory Agreement or federal law. ()

e. Existing Section 42 Project. An “Existing Section 42 Project” is a Section 42 low-income project for which Housing Tax Credits were entirely distributed before January 1, 2009. ()

f. Federal Project Based Assistance. “Federal Project Based Assistance” means: ()

i. Rental assistance of any kind provided by the Department of Housing and Urban Development or other agencies of the United States federal government which allow for rental assistance payments to the owner on behalf of the project and not on behalf of any individual tenant; or ()

ii. Apartment projects that have federal financing at below market terms at the time when the financing was put in place, which financing is transferable without change in terms and conditions to subsequent transferees; or ()

iii. Apartment projects that receive financing from the federal Hope VI programs administered under 42 USC section 1437v. ()

g. Financial Statements. “Financial Statements” are profit and loss statements, or equivalent reports, that include a detailed schedule showing income and expense line items, the project’s rent roll showing the rent charged for each unit, and a copy of the IHFA’s Annual Occupancy Report that is submitted annually by each project’s owner or agent to the IHFA. ()

h. General Partner Fee. “General Partner Fee” is the portion of cash flow that is paid to the general partner to compensate the general partner for managing the partnership’s operating assets and coordinating the preparation of the required IHFA’s, federal, state, and local tax and other required filings and financial reports. ()

i. Housing Tax Credits. The “Housing Tax Credits” are the final total federal income tax credits as shown on the first year’s form 8609 and allocated by the IHFA to the project either in an original allocation or a new allocation and reported to the Tax Commission by the IHFA. ()

j. Tax Credit Regulatory Agreement. The “Tax Credit Regulatory Agreement” means the original agreement, or the extended agreement, between the section 42 project owner and the IHFA. ()

02. Appraisal Approaches. The cost approach, the sales comparison approach, and the income approach will be considered when appraising section 42 properties. The individual values produced by each approach will be correlated into a single property value. ()

a. The Cost Approach. The cost approach will be adjusted for any economic obsolescence caused by rent restrictions imposed by the Tax Credit Regulatory Agreement. ()

b. The Sales Comparison Approach. When available, sales of section 42 low-income properties that are similar and comparable will be used. When non-section 42 comparable sales are used in this approach, the sales must be adjusted for the appropriate property attributes. ()

c. The Income Approach. The application of the income approach will include the following procedures and provisions: ()

i. Market rents of section 42 properties and normalized expenses of section 42 properties must be used to determine net income unless the taxpayer fails to provide the Financial Statements in accordance with Subsection 220.03 of this rule. If the Financial Statements are not provided, the assessor may use market rents of non-section 42 properties and normalized expenses of non-section 42 properties to determine net income. If Financial

Statements are not provided, the Amount of Housing Tax Credits will not be added to the capitalized net income. ()

ii. The Amount of Housing Tax Credits will not be used in the appraisal of Existing Section 42 Projects. ()

iii. The Amount of Housing Tax Credits will, for the duration of the Tax Credit Regulatory Agreement, be included in the appraisal of section 42 properties that have received or will receive an allocation of Housing Tax Credits after January 1, 2009. ()

iv. The Amount of Housing Tax Credits, when applicable to the appraisal, will not be included in the net income capitalized to value but will be added to the capitalized net income. ()

v. The Tax Commission's determination of capitalization rates derived from sales will not preclude the use by the assessor of other methods for determining the capitalization rate, provided however, such other methods are consistent with Section 63-205A, Idaho Code, and this rule. ()

03. Financial Statements to be Provided by the Owners. The owners of section 42 properties will, by April 1 of each year, provide to the Tax Commission the prior year's Financial Statements. Failure to provide the Financial Statements by April 1 will result in the appraisal of the section 42 property as if it were an unrestricted rent, non-section 42 property. The Tax Commission will forward to the assessor all Financial Statements received from the owners of section 42 properties and the information received from the IHFA by April 15. The assessor will use the Financial Statements to develop normalized income and expense information to be used in the appraisal of section 42 properties. ()

04. Tax Commission to Provide Information on Section 42 Property Sales. The Tax Commission will gather information from sale transactions of section 42 properties and will compute the capitalization rate for each sale. The Tax Commission will, for sales acquired during the immediate prior year, send capitalization rates and all information used to determine these rates to each county assessor by April 15. If information from three (3) or more comparable sale transactions of section 42 properties is sent to the assessors, the assessors will consider these sales' capitalization rates in their determination of the capitalization rate to be used in appraising the particular section 42 property or group of section 42 properties. ()

05. Cross Reference. For an explanation of why income tax credits should be allowed in section 42 assessments, see *Brandon Bay, Ltd. Partnership v. Payette County*, 142 Idaho 681, 132 P.3d 438 (2006). ()

221. -- 224. (RESERVED)

225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, 63-3638, Idaho Code

01. Definitions. The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. ()

a. Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. ()

b. Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. ()

c. Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. ()

d. Deannex. Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA.

()

e. Disincorporate. Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. ()

f. Dissolve. Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. ()

g. Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: ()

i. Section, township, range and meridian. ()

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. ()

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. ()

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: ()

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or ()

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or ()

(3) References to recorded subdivision or town site plats, with copies of such plats; or ()

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. ()

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. ()

h. Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: ()

i. Section, township, range, and meridian identifications. ()

ii. North arrow, bar scale, and title block. ()

iii. District name and ordinance number or order date. ()

iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. ()

v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. ()

vi. Variations from the requirements of Paragraph 225.01.h. of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that

the property is assigned to the proper tax code area. ()

i. Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. ()

02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.
The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. ()

a. A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. ()

b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. ()

c. A copy of the ordinance or order effecting the formation or alteration. ()

d. For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. ()

e. In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a. through 225.02.c. of this rule. ()

03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.
()

a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. ()

b. Upon receipt of the ordinance or order from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list shall be sent by the fourth Friday of January. ()

c. After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). ()

d. For RAAs formed prior to July 1, 2011, within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve. ()

e. For RAAs formed beginning July 1, 2011, the notification procedures in Paragraph 225.03.d. of this rule shall be initiated within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in

the formation ordinance or the date as of which an RAA has been in existence for twenty (20) years. ()

04. Digital Map Information. Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. ()

05. Deadline for Completion. December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. ()

06. Approval of Property Tax Levy or Revenue Allocation. For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: ()

a. Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or ()

b. Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or ()

c. Has boundaries which overlap with like cities, taxing districts or RAAs. ()

d. Has had one (1) previous annexation on or after July 1, 2011 and is requesting to annex additional area. In this case, the annexation request will be denied, and the area of the RAA established prior to the new annexation will be considered to comprise the entire RAA. ()

07. Notification. Notification required pursuant to Section 63-215, Idaho Code, will be sent to affected taxing districts, urban renewal agencies, and to any auditor(s) and assessor(s) of the involved county(ies). ()

08. One Uniform System. The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. ()

09. Tax Code Areas. The State Tax Commission shall create a separate, unique number for each tax code area. If any area annexed to an existing RAA includes a taxing district with any fund levying prior to January 1, 2008, and continuing to levy but which is not to be used to generate funds to be distributed to an urban renewal agency, the boundaries of the area added to the existing RAA shall constitute a separate tax code area. Only the State Tax Commission shall initiate or change a tax code area number. ()

10. Furnished By The State Tax Commission. ()

a. Annually, the State Tax Commission will post the following documents on the State Tax Commission's website: ()

i. Updated tax code area maps: ()

ii. Updated taxing district maps; ()

iii. Updated urban renewal revenue allocation area maps; and ()

iv. Documentation of changes related to the above maps. ()

b. This information is available to all parties. Upon specific request, the State Tax Commission will furnish without charge, one (1) hardcopy set of the above documents to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other hardcopy maps. ()

226. -- 229. (RESERVED)

230. EXTENSIONS OF STATUTORY DEADLINES FOR DISASTER RELIEF (RULE 230).

Section 63-220, Idaho Code

01. Application by County Officials. A county official who, because of any extension of time authorized by Section 63-220, Idaho Code, is unable to comply with a statutory deadline imposed in Title 63, Idaho Code, may apply to the Tax Commission for a reasonable delay, not to exceed sixty (60) days, of any such act. ()

02. Contents of Application. The application will be submitted prior to the statutory deadline in regard to which the approval of delay is sought and will include: ()

a. A description of the nature of the relief granted, or expected to be granted, to taxpayers pursuant to Section 63-220(1), Idaho Code, by the Board of County Commissioners; and ()

b. Identification of any statutory deadline in regard to which the delay is sought; and ()

c. The date by which the official making the application expects to accomplish the action in regard to which the delay is sought; and ()

d. A request that the Tax Commission approve the delay sought. ()

03. Procedure. Within five (5) working days of receipt of the request the Tax Commission will respond in writing to the official requesting the delay. The Tax Commission will approve any request for extension that complies with Subsections 230.01 and 230.02 of this rule. ()

231. -- 303. (RESERVED)

304. MANUFACTURED HOME DESIGNATED AS REAL PROPERTY (RULE 304).

Sections 63-304, 63-305, Idaho Code

01. Statement of Intent to Declare (SID). To declare a manufactured home real property, the homeowner will complete a "Statement of Intent to Declare," SID form, as prescribed by the Tax Commission. ()

a. All information and signatures requested on the form will be provided prior to recordation. ()

b. The homeowner will record the completed form. ()

c. The homeowner will provide the assessor a copy of the recorded SID form and the title or Manufacturer's Statement of Origin (MSO). If proof of ownership is being provided through the MSO, the buyer's purchase agreement will be accepted by the assessor pending receipt of the MSO. For the purpose of this rule, the Manufacturer's Statement of Origin and Manufacturer's Certificate of Origin are synonymous. ()

d. For new manufactured homes, the assessor will verify that sales or use tax has been collected or will collect such tax. Any sales or use tax collected by the assessor will be remitted to the Tax Commission. ()

e. The assessor will forward a copy of the SID form and the title or MSO to the Idaho Transportation Department. The Idaho Transportation Department will cancel the title. ()

02. Reversal of Declaration of Manufactured Home as Real Property. To provide for the reversal of the declaration of the manufactured home as real property, the homeowner will complete the "Reversal of Declaration of Manufactured Home as Real Property" form as prescribed by the Tax Commission. The homeowner will submit this completed form to the assessor within the required time period. ()

a. The homeowner will also submit to the assessor a title report with the appropriate signatures of consent attached and will make application for a title to the manufactured home. ()

b. The assessor will transmit to the Idaho Transportation Department a copy of the completed reversal form, title report with appropriate signatures of consent, and the application for title to the manufactured home. ()

03. Definition of Permanently Affixed. In the year any manufactured home is to be declared to be real property, permanently affixed means complying with the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, "Rules Governing Manufactured Home Installations," Section 004. ()

04. Status of Manufactured Housing Previously Declared Real. All manufactured housing upon which a "non-revocable option to declare the mobile home as real property" or SID was correctly completed and properly recorded and filed will be treated as real property until such time as a reversal (as provided for in Section 63-305, Idaho Code, and this rule) is correctly completed and properly recorded and filed. This status as real property is based on all criteria existing when said manufactured housing was originally declared real property. This property must be treated as real property and considered "permanently affixed" without any need to be retrofitted to comply with subsequent changes to the requirements for "permanently affixed," including changes to the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, "Rules Governing Manufactured Home Installations," Section 004, that occur after the manufactured home was originally declared real property. ()

305. -- 311. (RESERVED)

312. PARTIAL YEAR ASSESSMENT OF REAL AND PERSONAL PROPERTY (RULE 312).
Sections 63-311, 63-602Y, Idaho Code

01. Quarterly Assessment. For each partial year assessment of any non-transient personal property, the assessment will comply with the quarterly schedules provided in Sections 63-311 and 63-602Y, Idaho Code. ()

02. Change of Status. The real or personal property that has a change of status as described in Section 63-602Y, Idaho Code, includes exempt governmental property. Such property of the United States, this state and its instrumentalities, including counties, cities, urban renewal agencies, school districts, and other taxing districts, that is transferred to a non-exempt owner or otherwise ceases to qualify for a property tax exemption is to be assessed as described in Section 63-602Y, Idaho Code. ()

03. Cross Reference. The partial year assessment of any non-transient personal property will comply with the Idaho Supreme Court decision in *Xerox Corporation v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980). When assessing all non-transient personal property, each assessor should be aware of the following quotation from this decision: "Where the county undertakes to update its initial (personal property) declarations during the course of the tax year, it cannot increase a taxpayer's tax burden to reflect the taxpayer's acquisition of non-exempt property without decreasing that tax burden to reflect the fact that property reported by the taxpayer in an earlier declaration was no longer subject to the county's ad valorem tax." (Clarification added.) ()

04. Effective Date. In the interest of addressing all property transfers made from the public sector to private ownership within the same year (2019) in a consistent manner, as per the proration schedule in Section 63-602Y, Idaho Code, the effective date for "Rule 312" is to be January 1, 2019. ()

313. ASSESSMENT OF TRANSIENT PERSONAL PROPERTY (RULE 313).
Sections 63-213, 63-313, 63-602KK, Idaho Code

01. Definitions. The following definitions apply for the assessment of transient personal property. ()

a. Home County. Home county is identified in Section 63-313, Idaho Code, as the county selected by the owner of any transient personal property as that county where that transient personal property is usually kept.

That county selected by the owner will be a county in the state of Idaho. ()

b. Periods of Thirty (30) Days or More. Periods of thirty (30) days or more mean increments of no less than thirty (30) consecutive, uninterrupted days, during which any transient personal property is located in any one (1) county. For any period of less than thirty (30) days, the property owner will report the transient personal property as being in the home county. ()

c. Prorated Assessment. Prorated assessment means the ratio of the number of days, exceeding twenty-nine (29), to three hundred sixty-five (365) days multiplied by the total market value of the transient personal property. For additional clarification, refer to the following examples. ()

i. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. ()

ii. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the total market value in the second county and for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. ()

iii. If located in a second Idaho county (not the home county) for thirty-one (31) consecutive, uninterrupted days, in a third Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, and in the home county for the remainder of the year, the transient personal property should be assessed for thirty-one/three hundred sixty-five (31/365) of the total market value in the second county, fifty-nine/three hundred sixty-five (59/365) of the total market value in the third county, and two hundred seventy-five/three hundred sixty-five (275/365) of the total market value in the home county. ()

iv. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and later in that same county for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. ()

v. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, outside the state of Idaho for any thirty-five (35) days and taxed in the other state, and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the value in the second county and for two hundred seventy-one/three hundred sixty-five (271/365) of the total market value in the home county. However, if the property in this example that was outside the state of Idaho for thirty-five (35) days was not taxed in the other state, then the time should be counted in the home county, and the property therefore should be assessed for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. ()

d. Transient Personal Property. Transient personal property is defined in Section 63-201, Idaho Code. ()

02. Overassessment Prohibited. Section 63-213, Idaho Code, prohibits the assessment of any property in any one (1) county for the same period of time that property has been assessed in another county. The sum of the assessments of transient personal property in the home county and each other county where the property has been located will not exceed the market value of the property. ()

03. Non-taxable Transient Personal Property. ()

a. Transient Personal Property in Transit. Under Subsection 63-313(4), Idaho Code, any transient personal property only in transit through the home county or any other county and not remaining in any county for the purpose of use is not subject to property taxation. ()

b. Sold Transient Personal Property on Which Taxes Have Been Paid. Under Subsection 63-313(4), Idaho Code, any transient personal property, which was sold by the owner in the home county and upon which the full

current year's property taxes were paid, is not subject to property taxation for the current year in any other county regardless of whether that property is to be used in or only in transit through any other county. ()

c. Qualified Investment Exemption. For information and directions relating to the qualified investment exemption, see Rule 988 of these rules. ()

04. Exempt Transient Personal Property. ()

a. Section 63-602KK, Idaho Code, when applicable provides for exemption of each eligible taxpayer's personal property to the extent of one hundred thousand dollars (\$100,000) within each county. The limit on the exemption will apply to the sum of the taxpayer's non-transient personal property and transient personal property. Prior to applying the exemption, transient personal property will be allocated among the counties based on the prorated value as provided in Subsection 63-313(2), Idaho Code. ()

b. In cases where the taxpayer has transient personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not make an election as to where to apply the exemption, the county will have discretion regarding the property to which the exemption will apply. ()

314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR (RULE 314).
Sections 63-314, 63-316, Idaho Code

01. Definitions. ()

a. Continuing Program of Valuation. "Continuing program of valuation" means the program by which each assessor completes the assessment of all taxable properties each year. ()

b. Field Inspection. The "field inspection" will include an observation of the physical attributes of all structures which significantly contribute to the property value, the visible land amenities, and a notation of any other factors which may influence the market value of any improvements. ()

c. Index. "Index" refers to any annual adjustment or trending factor applied to existing assessed values to reflect current market value. Ratio studies or other market analyses can be used to develop indexes based on property type, location, size, age or other characteristics. ()

d. Prediction of Market Value. As used in Section 63-314, Idaho Code, "prediction of market value" means an estimate of market value. ()

e. Category to be Assessed at Current Market Value. The level of assessment of each category will be considered to be current market value unless there is reasonable statistical certainty that the category is not equalized pursuant to Section 63-109, Idaho Code, and Rule 131. ()

02. Plan for Continuing Program of Valuation. The plan for continuing program of valuation will include: ()

a. General Contents. A parcel count by category, the number of parcels to be appraised each year, maps that show each of the market areas, an analysis of staff requirements, a budget analysis that provides adequate funding for labor costs, capital and supply costs, travel and education costs and the method of program evaluation. ()

b. Market Data Bank. A market data bank including collection, verification and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. To mail assessment notices by the first Monday in June as required by Section 63-308, Idaho Code, assessors should include income and expense data submitted by property owners by the first Monday in April. Income and expense data for low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code includes actual rents, the monetary benefit of income tax credits, and expenses. ()

c. Maps. Maps prepared in accordance with Section 63-209, Idaho Code, which identify characteristics of each geographic area. ()

d. Property Record. A property record for each parcel, complete with the assigned secondary category and property characteristics necessary for an estimate of the current market value. Such characteristics may include data elements as described in the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal of Real Property and the IAAO Standard on Digital Cadastral Maps and Parcel Identifiers. Common elements identified in these standards include: ()

i. Date of most current physical review. ()

ii. Significant improvements, buildings and structures. ()

iii. Photographs of significant improvements. ()

iv. Sketches and/or blue prints of significant improvements. ()

v. Location data, such as market area, neighborhood, site amenities and external nuisances. ()

vi. Year built, effective age and/or condition of significant improvements. ()

vii. Land size or diagram of all taxable parcels within the county. ()

e. Date plan is submitted. The plan must be submitted to the Tax Commission on or before the first Monday of February in 2017, and every fifth year thereafter. ()

f. Request for extension. As provided in Section 63-314, Idaho Code, a county may request an extension to the current five (5) year county valuation plan. ()

i. Amended Plan. Any request for an extension must include an amended plan incorporating an inventory of the parcels to be appraised during the period of the approved extension. This inventory will constitute the schedule of required appraisals for the initial year or years of the subsequent five (5) year valuation program. Parcels appraised during the extension will be considered appraised during both the current and subsequent five (5) year plan valuation program periods, maintaining the same five (5) year cycle for all counties. ()

ii. Approval of the Extension and Amended Plan. A county will be notified of the Tax Commission's decision regarding the granting of an extension as provided in Section 63-314, Idaho Code, within thirty (30) days of receipt of the written request for the extension when accompanied by an amended plan. ()

iii. Approval of the Amended Plan. The Tax Commission's approval of any extension will specify timing and nature of progress reports. ()

iv. Voiding of the Extension. The Tax Commission can void an extension unilaterally. ()

03. Field Inspections. The methods of observation of the physical attributes of property as described in the International Association of Assessing Officers (IAAO) "Standard on Mass Appraisal of Real Property" referenced in Rule 003 of these rules should be followed to the extent that resources are available. This includes the use of aerial photographs and other digital imaging technology tools, which may be used to supplement, but not replace physical inspections. ()

04. Testing for Current Market Value. Assessed values will be tested annually by the Tax Commission as described in Section 63-109, Idaho Code, and Rule 131 of these rules to determine whether the level of assessment reflects "current market value." ()

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 Tax Commission to comply with the requirements of Section 63-315, Idaho Code, will be conducted in accordance with the “Standard on Ratio Studies” referenced in Rule 003 of these rules. The following specific procedures will be used.

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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 Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The Tax Commission may delete sales when necessary to improve representativeness.

()

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.

()

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.

()

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.

()

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 will 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 non-representative ratios. In this case the median may be substituted:

()

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.

()

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 will be adjusted by adding the increment value. If any ratio study-based adjustments are warranted, as provided in this rule, they apply 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 will be provided as soon as practical.

()

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.

()

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

()

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. ()

k. “Appraisal” or “appraised value” refers to any Tax Commission provided independently conducted property appraisal. ()

02. Use of Property Designations. In computing the ratio for the Boise School District, the Tax Commission will designate property as residential or commercial and will 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 will 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 will be the adjusted market value for said designation for said school district. ()

03. Assessor to Identify Boise School Districts. Each county assessor will identify for the Tax Commission which sales submitted for the ratio study are located within the Boise School District. ()

04. Abstracts of Value for the Boise School District. Each applicable county auditor will provide to the Tax Commission abstracts of the taxable value of all property within the portion of the Boise School District in that county. These abstracts will be submitted in the same manner and at the same time as provided for county abstracts of value. ()

05. Urban Renewal Increment and Exemption to be Subtracted. The taxable value of each primary or secondary category within the Boise School District will 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 will not include the value of any property exempt from property tax. ()

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 applies 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 will 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. ()

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, will be published on the 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. ()

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. ()

316. COMPLIANCE OF CONTINUING VALUATION PROGRAM (RULE 316).
Sections 63-314, 63-316, Idaho Code

01. Definitions. ()

a. Continuing Appraisal. "Continuing appraisal" means the program by which each assessor completes the assessment of all taxable properties each year. This term includes any appraising or indexing done to accomplish the continuing program of valuation as defined in Rule 314 of these rules. ()

b. Monitor. "Monitor" means collecting data and compiling statistical reports that show the number and percentage of parcels physically inspected at scheduled intervals within each year of each five (5) year appraisal cycle. The term "monitor" also includes an examination of and summary report of compliance with the most recently completed ratio study under Section 63-109, Idaho Code, and Rule 131 of these rules showing the status of appraisal and indexing to achieve market value. ()

c. Progress Reports. "Progress reports" mean any informational or statistical report compiled and distributed by the Tax Commission regarding the physical appraisal progress of a county. ()

d. Appraisal Cycle. "Appraisal cycle" means consecutive five (5) year periods beginning with appraisals completed for the 1998 property roll, as established by the requirement in Section 63-314, Idaho Code. ()

e. Remediation Plan. "Remediation plan" means, a written statement of the actions that will be taken by the county not in compliance with the requirements of Section 63-314, Idaho Code, to bring the continuing program of valuation into compliance with said Section. ()

02. Monitoring Procedure. The Tax Commission will monitor compliance with the continuing program of valuation in each county no less than annually. The Tax Commission will monitor the completion of the appraisal of not less than fifteen percent (15%) of all parcels by the end of the first year of the appraisal cycle, not less than thirty-five percent (35%) by the end of the second year, not less than fifty-five percent (55%) by the end of the third year, not less than seventy-five percent (75%) by the end of the fourth year, and not less than one hundred percent (100%) by the end of the fifth year in order that all parcels are appraised not less than every five (5) years. As a result of the monitoring process, the Tax Commission will prepare and distribute progress reports to each county assessor at the end of each monitoring period. Each monitoring period will be conducted in the following manner: ()

a. The Tax Commission will compile a progress report each July. The Tax Commission will use this progress report in each county to determine compliance with Section 63-314, Idaho Code. This report will consist of an analysis of the county's progress within the current appraisal cycle as well as a summary report of the most recently completed ratio study showing the status of appraisal and indexing to achieve market value. The Tax

Commission will notify each county assessor on or before August 15 each year of the current status of the continuing program of valuation progress and any necessary corrective action. The Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ()

b. Upon receipt of a written request from the county assessor, the Tax Commission will complete and distribute a six (6) month progress report in January. This January report will show the total parcels in the county, the number of parcels that need to be physically inspected for the current year's assessment, a summary report of the most recently completed ratio study, and the number of parcels upon which physical inspections were completed during the preceding six (6) months. The Tax Commission will distribute any January progress report only to inform the county assessor of the status of the continuing program of valuation and will not use the data gathered for this report to determine compliance with Section 63-314, Idaho Code. The Tax Commission will notify the board of county commissioners that this report has been provided to the county assessor. ()

03. Remediation Plans. If the results of any July report show that a county has not achieved the adequate appraisal of the required percent of the parcels, as stated in Subsection 316.02 of this rule, the assessor and board of county commissioners will be required to submit to the Tax Commission, a remediation plan that demonstrates how compliance will be achieved. The remediation plan will be submitted to the Tax Commission on or before September 15. The Tax Commission will determine whether the plan is acceptable on or before October 1. Once a remediation plan has been approved, the continuing valuation program of the county will be considered in compliance so long as the county meets the terms of the remediation plan. The Tax Commission will monitor progress toward successful completion of any remediation plan at intervals scheduled with the county assessor. ()

04. Tax Commission To Ensure Corrective Action. ()

a. During the first four (4) years of any appraisal cycle, if any July progress report shows that a county assessor has not achieved the adequate appraisal of the required percent of parcels, as stated in Subsection 316.02 and implementation of the subsequent remediation plan does not achieve the required percent or the next July progress report shows the number of completed appraisals continues to be less than the required percent, the Tax Commission will begin proceedings to ensure corrective action is taken up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. ()

b. If, at the end of any appraisal cycle a county has not achieved adequate appraisal of all parcels, the Tax Commission may begin proceedings to ensure corrective action is taken, up to and including taking exclusive and complete control of the continuing program of valuation as provided for in Section 63-316, Idaho Code. If, at the end of an appraisal cycle, a county has not met the requirements of Section 63-314, Idaho Code, and no extension has been granted pursuant to the provisions of Section 63-316(6), Idaho Code, the county plan for the next appraisal cycle submitted to the Tax Commission must include provision for field inspection of those parcels not field inspected by the end of the expired appraisal cycle and an additional field inspection of the same parcels for the current plan for the continuing program of valuation. ()

05. Compliance Procedure Examples. ()

a. Example 1: The following chart outlines what will occur if a county assessor fails to complete the appraisal of the required number of parcels for 2003 and subsequently fails to complete the appraisal of the required number of parcels for 2004.

January 2003 (If requested.)	-	Informational Progress Report
July 2003	-	First Compliance Progress Report
Compliance	-	No Action
Non-compliance	-	Remediation Plan and Monitoring
January 2004 (If requested.)	-	Informational Progress Report
July 2004	-	Second Compliance Progress Report

	Compliance	-	No Action
Non-compliance		-	Enforcement of Section 63-316, Idaho Code (Tax Commission may start proceedings to take exclusive and complete control of the program.)

()

b. Example 2: The following chart outlines what will occur if a county assessor successfully completes the appraisal of the required number of parcels for 2003, 2004, and 2005 but fails to complete the appraisal of the required number of parcels for 2006 and subsequently fails to complete the appraisal of the required number of parcels for 2007.

January 2003 (If requested.)	-	Informational Progress Report
July 2003	-	First Compliance Progress Report
Compliance	-	No Action
January 2004 (If requested.)	-	Second Informational Progress Report
July 2004	-	Second Compliance Progress Report
Compliance	-	No Action
January 2005 (If requested.)	-	Informational Progress Report
Compliance	-	No Action
July 2005	-	Third Compliance Progress Report
Compliance	-	No Action
January 2006 (If requested.)	-	Informational Progress Report
July 2006	-	Fourth Compliance Progress Report
Compliance	-	No Action
Non-compliance	-	Remediation Plan and Monitoring
January 2007 (If requested.)	-	Informational Progress Report
July 2007	-	Fifth Compliance Progress Report
Compliance	-	No Action
Non-compliance	-	Enforcement of Section 63-316, Idaho Code (Tax Commission may start proceedings to take exclusive and complete control of the program.)

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317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).

Section 63-317, Idaho Code

01. Property Subject to Occupancy Tax. Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing.

()

02. Prorated Market Value. The market value for occupancy tax purposes shall be the full market

value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. ()

03. Notice of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. ()

04. Examples for Calculation of Value Less Homestead Exemption (HO). The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): ()

a. Example for prorated market value exceeding maximum amount of the homestead exemption for improvements subject to the occupancy tax beginning July 1, 2016.

Full Market Value of Home - \$300,000
Prorated Market Value for 11 Month Occupancy - $\$300,000 \times 11/12 = \$275,000$
Taxable Value - $\$275,000 - \$100,000 \text{ (HO)} = \$175,000$

()

b. Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home - \$120,000
Prorated Market Value for 3 Month Occupancy - $\$120,000 \times 3/12 = \$30,000$
Taxable Value - $\$30,000 - \$15,000 \text{ (HO)} = \$15,000$

()

05. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. ()

06. Allocation to Urban Renewal Agencies. Occupancy tax revenue shall be distributed to urban renewal agencies in the same manner as property taxes, except as provided in Paragraphs 317.06.a. and 06.b. of this rule. ()

a. The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. ()

b. For parcels within a newly formed revenue allocation area or within an area newly annexed to an existing revenue allocation area, occupancy tax for the tax year during which the formation or annexation took effect is not distributed to the urban renewal agency. ()

07. Property Qualifying for the Homestead Exemption on Occupancy Value. When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. ()

318. -- 403. (RESERVED)

404. OPERATOR'S STATEMENT -- CONTENTS (RULE 404).
Sections 63-401, 63-404, Idaho Code

01. Operator's Statement. In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. ()

02. Tax Code Area Maps. By March 1 of each year, the Tax Commission will furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic extension in the filing requirement, equal to the delay, for the portion of the operator's statement that includes taxing district or taxing authority specific information that is to be reported by tax code area as required in Section 404.01 of this rule. All other information, excluding the mileage as required in Sections 404.01 and 404.03 of this rule will still be required by April 30 as required in Section 404.06 of this rule. The reporting entity will review the list of changes to identify any tax code areas, within which any of the entity's operating property is located. The reporting entity will report, under Subsection 404.01 of this rule based on these identified tax code areas. The Tax Commission will provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. ()

03. Reporting of Mileage. The following procedures apply for reporting mileage. ()

a. Railroad Track Mileage. The railroad track mileage will be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., will be reported as Secondary Track Miles. ()

b. Electric Power Line Mileage. The electric power companies will report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includable in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines will be reported by single linear wire mile. ()

c. Telephone Wire Mileage. All telephone wire mileage will be reported on a single linear wire mile basis, and include any ground wires. ()

d. Natural Gas Pipeline and Gathering Line and Water Distribution Pipeline Mileage. Beginning January 1, 2013, all natural gas and water distribution companies will report pipeline and gathering line miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. ()

e. Transmission Pipeline Mileage. All transmission pipeline companies will report pipeline miles on a one-inch (1") comparison basis. ()

04. Situs Property. Situs property includes microwave stations and radio relay towers. This property also includes facilities, used for and in conjunction with thermal generation of electricity, constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. The investment in this property will be reported in the tax code area(s), within which it is located. ()

05. Record of Property Ownership. The following procedures apply for maintaining records of operating property ownership. ()

a. STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility will be maintained by the Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record will be maintained on a form identified as STC Form R. The Tax Commission will send a copy of each STC Form R to the appropriate company

and the appropriate county assessor's office. ()

b. Identification of Operating Property and Non-operating Property. On the STC Form R, the Tax Commission will identify which property is operating property and which property is non-operating property. ()

c. Filing of Property Ownership by Railroad Companies. Each railroad company will file the original railroad right-of-way maps with the Tax Commission. Each railroad will file an STC Form R, only, for property that is acquired, leased, or transferred between operating and non-operating status, or sold during the prior year. ()

06. Filing Date for Operator's Statement. By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho will file information pertinent to the entity's ownership and operation with the Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. Such automatic extension will apply only to the taxing district, taxing authority, and tax code area specific information contained in the operator's statement. ()

07. Cross Reference. For information relating to the exemption of certain intangible personal property, see Section 63-602L, Idaho Code, and Rule 615 of these rules. For valuation, allocation, and apportionment information, see Section 63-405, Idaho Code, and Rule 405 of these rules. ()

405. ASSESSMENT OF OPERATING PROPERTY (RULE 405).
Section 63-405, Idaho Code

01. The Unit Method. The unit method of valuation is preferred for valuing a railroad or public utility when the individual assets function collectively, are operated under one ownership and one management, are interdependent, and the property would be expected to trade in the marketplace as a unit. Under the unit method, the value of the tangible and intangible property is equal to the value of the going concern. The market value of the unit will be referred to as the system value. For interstate property, allocation factors will be used to determine what part of the system value is in Idaho. ()

02. Identify the Unit. The unit includes all property used or useful to the operation of the system, property owned, used or leased by the business and the leased fee and leasehold interests. Assess all title and interest in unit property will be assessed to the owner, lessee or operating company. ()

03. Appraisal Approaches. The three (3) approaches to value may be considered for all property. ()

04. Appraisal Procedures. Market value will be determined through procedures, methods, and techniques accepted by nationally recognized appraisal and valuation organizations. For operating property, the direct capitalization techniques or derivatives thereof will not be used in estimating value. ()

05. The Cost Approach. For operating property, the appraiser may consider replacement, reproduction, original or historical cost. ()

a. Contributions in aid of construction. Contributions in aid of construction are valued at zero in the cost approach. ()

b. Construction work in progress. Construction work in progress may be considered in the cost approach. ()

c. Obsolescence. The appraiser will attempt to measure obsolescence, if any exists. If obsolescence is found to exist, it may be considered in the cost approach. ()

06. The Income Approach. For operating property, the income approach is based on the premise that

value can be represented by the present worth of future benefits derived from the ownership, use or operation of the unit. The appraiser will consider yield capitalization in processing the income approach. ()

07. The Market Approach. In the market approach for operating property, the appraiser will consider the sales comparison approach or the stock and debt approach. ()

08. Reconciliation. Reconciliation, also called correlation, is an opinion regarding the weight that should be placed on each approach. The appropriate weight to be given each indicator is based on the appraiser's opinion of the inherent strengths and weaknesses of each approach and the data utilized. The appraisal report will disclose the weight given to the indicators. ()

09. Allocation. Use readily available data from existing records to calculate the factors that are multiplied by the correlated system value to allocate that value to Idaho. ()

10. Situs Property Apportionment. For situs property, as described in Subsection 404.04 of these rules, apportionment is based on physical location meaning the taxable value will not be apportioned based on mileage but only to the tax code area(s) within which said property is situs or physically located. ()

11. Cross Reference. For reporting information, see Section 63-404, Idaho Code, and Rule 404 of these rules. For information relating to the exemption of certain intangible personal property, see Section 63-602L, Idaho Code, and Rule 615 of these rules. ()

406. RULES PERTAINING TO MARKET VALUE OF OPERATING PROPERTY OF RATE REGULATED ELECTRIC UTILITY COMPANIES (RULE 406).
Section 63-105(2), Section 63-205(1), Idaho Code

01. Valuation of Operating Property of Rate Regulated Electric Utility Companies. The market value for assessment purposes of operating property of rate regulated electric utility companies will be determined by the Tax Commission using statute, these rules as referenced in Rule 001 of these rules, any other applicable law, and the following: ()

a. Depending on the weighting placed on the income approach, as described in Subsection 406.01.d. of this rule, no more than twenty percent (20%) weight will be placed on the cost indicator when utilizing the Historic Cost Less Depreciation (HCLD) method in the system value correlation. ()

b. In the income approach, income to be capitalized will be normalized, utilizing the Gross Domestic Product Implicit Price Deflator found in Table 1.1.9 from the United States Department of Commerce, Bureau of Economic Analysis, by using an average of at least the previous four (4) years' net operating incomes and by adjusting each year's net operating income for unusual non-recurring items. ()

c. In the income approach, a market discount rate will be determined to which a flotation cost component of twenty hundredths of one percent (0.20%) will be added. ()

d. A weighting between eighty percent (80%) and one hundred percent (100%) will be placed on the income approach in the system value correlation. ()

e. Within the market approach, as prescribed in Rule 405 of these rules, a sales comparison approach may be used if reliable data is available and appropriate comparison adjustments can be made. No weight will be placed on a stock and debt approach in the system value correlation. ()

f. For rate regulated electric utility companies, the weightings prescribed in this rule will supersede any weightings in the system correlation prescribed in Subsection 405.08 of this rule. ()

02. Accounting For Obsolescence. Subsection 406.01.a. of this rule will be construed to mean that the use of no more than twenty percent (20%) weight placed on the cost indicator, when utilizing HCLD method to calculate the cost approach, accounts for any and all forms of depreciation, including any and all forms of obsolescence, and the appraiser will not consider any further obsolescence as provided for in Subsection 405.05 of

these rules. ()

407. HEARING TO REVIEW OPERATING PROPERTY APPRAISALS (RULE 407).

Section 63-407, Idaho Code

01. Procedure Governed. This rule will govern all practice and procedure before the Tax Commission sitting as a Board of Equalization in hearings under Section 63-407, Idaho Code. Hearings are not contested cases under the Idaho Administrative Procedures Act. Hearings are open meetings under the Idaho open meetings law and all written materials are subject to Idaho public records law. The taxpayer may request that the board of equalization go into executive session to discuss confidential materials. ()

02. Liberal Construction. These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Tax Commission. For good cause the Tax Commission may permit deviation from these rules and the taxpayer may request a stipulated finding that would result in an appealable decision in lieu of a hearing before the state board of equalization. ()

03. Communication. All notices and petitions required to be filed with the Tax Commission must be in writing. Each notice must identify the filing party, be signed by the filing party, be dated and give the filing party's mailing address and telephone number. The provisions of Section 63-217, Idaho Code, apply to the filing of documents with the Tax Commission. ()

04. Service by Tax Commission. All notices and orders required to be served by the Tax Commission may be served by mail. Service will be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail. ()

05. Notice to County Assessors. When the calendar of hearings under Section 63-407, Idaho Code, is final, the Tax Commission will send a copy of this calendar to the assessor of each county. ()

06. Parties. The following are parties to a hearing of the Tax Commission meeting as Board of Equalization. ()

a. Petitioner. A person petitioning for a hearing will be called the petitioner. ()

b. Staff. The Tax Commission staff may appear as a party at the hearing and may be represented by one (1) or more Deputy Attorneys General assigned to the Tax Commission. ()

c. Legal advisor to the Tax Commission. When sitting as a Board of Equalization, the Tax Commission may obtain legal advice from a Deputy Attorney General who is not representing the Tax Commission staff. ()

07. Appearances and Practice. The following apply for appearances and practice in a hearing. ()

a. Rights of parties. At any hearing, both parties may appear, introduce evidence, ask questions through the presiding officer, make arguments, and generally participate in the conduct of the proceeding. ()

b. Taking of appearances. The presiding officer conducting the hearing will require appearances to be stated and will see that both parties present are identified on the record. ()

c. Representation of taxpayers. An individual may represent himself or herself or be represented by an attorney. A partnership may be represented by a partner, authorized employee or by an attorney. A corporation may be represented by an officer, authorized employee or by an attorney. ()

08. Pre-Hearing Conferences. ()

a. The Tax Commission may, upon notice to both parties, hold a pre-hearing conference for the following purposes: ()

- i. Formulating or simplifying the issues; ()
 - ii. Obtaining admissions of fact and of documents which will avoid unnecessary proof; ()
 - iii. Arranging for the exchange of proposed exhibits or prepared expert testimony; ()
 - iv. Limiting the number of witnesses; ()
 - v. Setting the hearing procedure, and including allocation of an amount of time for the hearing; and ()
 - vi. Reviewing other matters to expedite the orderly conduct and disposition of the proceedings. ()
 - vii. Allowing any continuance. ()
- b.** Action taken. Any action taken at the conference and any agreement made by the parties concerned may be recorded and the Tax Commission may issue a pre-hearing order which will control the course of subsequent proceedings unless modified. ()
- c.** Compromise and offers to compromise. Evidence of an offer or agreement to compromise the dispute and the conduct and statements made in compromise negotiations are not admissible at the hearing. ()
- 09. Hearings.** The following apply to the hearings. ()
- a.** Request for hearing. A request for a hearing will be in writing and filed with the Tax Commission on or before August 1 of the current year. The request will state the factual and legal basis on which the request is based. ()
- b.** Notice of hearing. The Tax Commission will notify both parties and all counties of the place, date and time of the hearing. ()
- c.** Submission of documents and other evidence. The taxpayer's operating statement, applicable yield studies, the staff's appraisal and the taxpayer's notice of appeal and request for hearing are deemed a part of the record of the hearing. Other written appraisals, exhibits, statements, arguments and other documents for the Commissioners to consider will be submitted by both parties at least three (3) days in advance of the hearing. Additional information may be presented by either party at the time of their oral presentations, but such additional information should be limited to subject matter and evidence provided at least three days prior to the hearing. Parties will submit ten (10) copies. ()
- d.** Presiding officer. The Chairman of the Tax Commission will appoint an individual who is not a member of the Tax Commission's staff to conduct the hearing. In the absence of a conflict of interest or other good cause, this person will normally be the Commissioner overseeing the centrally assessed property section of the Tax Commission or the designee thereof. A Commissioner will not vote on any matters where he has oversight. ()
- e.** The proceeding. In a non-adversarial proceeding witnesses will present evidence and arguments directly to the Commissioners. The presentation may include written materials including a transcript of the witnesses' oral statements. Copies of written materials (including copies of visual presentations) will be provided each Commissioner, the Tax Commission's secretary and the Staff. At the conclusion of a witness' testimony, Commissioners may pose questions. The party with the burden of proof on the matter to be considered will present first and may make a closing presentation. This closing presentation should be limited to the subject matter and evidence presented during the proceeding. ()
- f.** Testimony under oath. All testimony to questions of fact to be considered by the Tax Commission

in hearings, except matters noticed officially or entered by stipulation, will be under oath. Before testimony is presented each person will swear, or affirm, that the testimony he is about to give will be the truth. Attorneys may present oral and written legal argument on behalf of clients as part of the presentation by the party they represent. ()

g. Rules of evidence. No informality in any proceeding or in the manner of taking testimony will invalidate any order or decision made by the Tax Commission. Unless otherwise provided in these rules the Idaho Rules of Evidence will be generally followed but may be modified at the discretion of the Tax Commission to aid in ascertaining the facts. When objection is made to the admissibility of evidence, the evidence may be received subject to later ruling by the Tax Commission. The Tax Commission, at its discretion either with or without objection may limit or exclude inadmissible, incompetent, cumulative or irrelevant evidence. Parties objecting to the introduction of evidence will briefly state the grounds of objection at the time such evidence is offered. ()

h. Recessing hearing for conference. In any proceeding the presiding officer may, in at his discretion, call both parties together for a conference prior to the taking of testimony, or may recess the hearing for a conference. The presiding officer will state on the record the results of the conference. ()

i. Transcript. An official electronically recorded transcript of the hearing may be taken at the discretion of the Tax Commission when requested by a party. A petitioner desiring the taking of stenographic notes by a qualified court reporter may notify the Tax Commission in writing and will arrange for the hiring of a reporter and bear the expense of the reporter's fees. If the reporter's transcript is deemed by the Commission or presiding officer as the official transcript of the hearing, the petitioner will furnish the Commission a transcript free of charge. ()

j. Transcript copies. A request for a copy of a transcript of proceedings at any hearing must be in writing or on the record. Upon completion of the transcript, the Tax Commission will notify the person requesting a copy of the fee for producing the transcript. Upon receipt of the fee, the Tax Commission will send a copy of the transcript. ()

408. RE-EXAMINATION OF VALUE -- COMPLAINT BY ASSESSOR (RULE 408).
Section 63-408, Idaho Code

01. Request for Reexamination of Value. Section 63-408, Idaho Code, entitles the assessor (complainant) of any county in which the value of operating property is apportioned, to request that the Tax Commission reexamine the valuation. ()

02. Information to be Provided by the Tax Commission. After preliminary values are established and sent to the respective taxpayers, the Tax Commission will send to each County Assessor a statement of the value allocated to Idaho for each centrally assessed taxpayer, together with the previous year's Idaho value for that taxpayer. ()

03. Complaint. On or before July 15, a complainant may file a complaint under Section 63-408, Idaho Code. A complaint by an assessor to the Tax Commission to examine the valuation and allocation of value of operating property must be in writing and contain clear and concise questions regarding the valuation and allocation in question. The Tax Commission will send a copy of the complaint promptly to the taxpayer. ()

04. Meeting to Examine Valuation and Allocation. Upon receipt of a complaint under Section 63-408, Idaho Code, the staff of the Tax Commission will schedule a meeting between the staff appraiser(s) who performed the valuation and allocation and the complainant. Notice of this meeting will be sent to the taxpayer in question. At this meeting, the staff appraiser(s) will answer the complainant's questions to the best of his knowledge. The taxpayer or representative may participate in this meeting. ()

409. -- 410. (RESERVED)

411. PRIVATE CAR REPORTING BY RAILROAD COMPANIES (RULE 411).

Section 63-411, Idaho Code. The president or other officer of each railroad company whose railroad tracks run through, in or into Idaho shall, by April 15 of each year file a report with the State Tax Commission that includes the

following: ()

01. Name of Reporting Railroad Company. Report the name of the railroad company making the report. ()

02. Name of Private Railcar Fleet. Report the name of each private railcar fleet, defined under Sections 63-201(14) and 63-411, Idaho Code, having traveled on the reporting railroad company's track. ()

03. Private Railcar Fleet's Address. Report the business address of each reported private railcar fleet. ()

04. Car Type. Report the type of cars by identifying symbol. ()

05. Marks. Report the car marks. ()

06. Miles Traveled. Report the total number of miles traveled on the reporting railroad's track, including main line, branches, sidings, spurs, and warehouse or industrial track in Idaho during the year ending December 31 of the preceding year. ()

412. (RESERVED)

413. SPECIAL PROVISIONS FOR PRIVATE RAILCAR FLEETS (RULE 413).
Section 63-411, Idaho Code

01. Definitions. The following terms are defined for the valuation, allocation and apportionment of private railcar fleets. ()

a. Idaho Miles. The Idaho miles are the total number of miles traveled in Idaho by all cars in the private railcar fleet during the calendar year immediately preceding the current tax year. ()

b. Idaho Taxable Value. The Idaho taxable value is that portion of the system value that reflects the value of that part of the private railcar fleet located in Idaho during all or part of a tax year. ()

c. System Miles. The system miles are the total number of miles, both in and out of Idaho, traveled by all cars in the private railcar fleet during the calendar year immediately preceding the current tax year. ()

d. System Value. The system value is the value of the entire private railcar fleet regardless of the location of its various components. ()

02. Railcar Valuation, Allocation and Apportionment. For tax years beginning on or after 1998, the Tax Commission will appraise the system value of each private railcar fleet and allocate a portion of the system value to Idaho to obtain the Idaho taxable value as set forth below. The Idaho taxable value will be apportioned to the appropriate counties in Idaho pursuant to section 63-411, Idaho Code. ()

03. Allocation. System value is allocated using the "miles to miles" method of allocation. ()

04. "Miles to Miles" Method of Allocation. The Tax Commission will divide Idaho miles by system miles and multiply the quotient by five-tenths (0.5). The product of this calculation will be multiplied by the system value to determine Idaho taxable value. ()

414. (RESERVED)

415. APPORTIONMENT OF RAILCAR FLEET'S ASSESSED VALUES WITHIN THE STATE (RULE 415).
Section 63-411, Idaho Code

01. Private Railcar Fleet Apportionment. Railroad track miles will be used for the apportionment of

each private railcar fleet's assessed value when the value within Idaho equals five hundred thousand dollars (\$500,000) or more. The Idaho value of each private railcar fleet will be multiplied by a ratio of this private railcar fleet's mileage for each railroad to this private railcar fleet's total mileage in Idaho and divided by the in service main track mileage of that particular railroad, to obtain a rate per mile. This rate per mile is multiplied by the in service main track mileage in each county and tax code area to calculate the apportioned value. For the purpose of apportioning value by miles traveled, main track includes branch lines, as well as main lines, but does not include industrial spurs, sidings or passing tracks. ()

02. Determination of Average Tax Rate -- Private Railcar Fleets Under Five Hundred Thousand Dollars Assessed Value. For private railcar fleets having an assessed value of less than five hundred thousand dollars (\$500,000), the average tax rate is computed each year by dividing the current taxes for all private railcar fleets with assessed value of five hundred thousand dollars (\$500,000) or more by the current Idaho value of all such fleets. By November 15 of each year, each county treasurer must provide the Tax Commission with the amount of taxes due from all private railcar fleets in the county. ()

416. (RESERVED)

417. PENALTY FOR FAILURE TO MAKE STATEMENT (RULE 417).

If a private railcar fleet fails or refuses to file the operator's statement as provided by Section 63-404, Idaho Code, by April 30 of each year, the Tax Commission will add a penalty. The penalty is fifty percent (50%) of the assessed value, determined by the Tax Commission, as provided by Section 63-411, Idaho Code. When an emergency exists, the company may petition the Tax Commission for an extension of time for filing, not to exceed thirty (30) days. For such petition to be valid it must be submitted in writing to the Tax Commission by April 30 of each year. ()

418. -- 508. (RESERVED)

509. ABSTRACTS OF VALUE (RULE 509).

Sections 63-105A, 63-509, Idaho Code

01. Definitions. The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. ()

a. Increment Value. Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. ()

b. Primary Category. Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the Tax Commission to test for equalization under Section 63-109, Idaho Code. ()

c. Secondary Category. Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the Tax Commission under Section 63-509, Idaho Code, and this Rule. Secondary categories may also be tested for equalization purposes, provided they meet the criteria in Subsection 131.05 of these rules. ()

d. Abstract. A document summarizing taxable (net taxable value) and market value for assessment purposes (full market value) by secondary category of property. Abstracts are prepared for the county, cities, the Boise School District, and any taxing district or unit of government which does not levy property tax against all otherwise taxable property. Abstracts are to be prepared for the property roll and the combined missed and subsequent property rolls. ()

02. Additional Information to be Included. In addition to the taxable value and the market value for assessment purposes of property on the property rolls, the abstract must report the value of exemptions required to be reported under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under

Sections 63-602W(4), 63-602GG, 63-602HH, 63-602II, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code. Increment value and exemption value thus reported will be subtracted from the market value for assessment purposes shown for each secondary category of property on each abstract. ()

03. Verification of Abstracts. For the purposes of this rule and meeting the requirements of Section 63-509, Idaho Code, the abstract of the property rolls prepared by the county auditor will be considered duly verified provided that the auditor signs a document indicating: ()

a. That the required summary information is based on the most current available information received from the assessor following the conclusion of the county board of equalization, and; ()

b. That the assessor certifies to the auditor that all changes, corrections, additions, and exemptions entered onto the rolls as a result of county board of equalization action have been duly entered. ()

04. Nature of Verification Document. The abstract verification document will include the signatures of the county assessor and auditor or duly appointed representatives. The substance of the verbiage in the document will be equivalent to that found in the following sample:

(Name of county auditor), being first duly sworn, deposes and says that he/she is the duly qualified and acting auditor in and for the county of (Name), State of Idaho, and that the above and foregoing is a full, true and correct abstract of the valuation of all property entered on the property roll (or subsequent and missed property rolls) for the year (Year), as certified by the assessor to the auditor and equalized by the Board of County Commissioners of said county in session as a board of equalization. ()

05. Submittal of Corrections to Erroneous Abstracts or Related Documents. When completing the procedures set forth in Section 63-810, Idaho Code, boards of county commissioners should submit the corrections to the taxable values submitted on the abstracts or related documents under provisions of Section 63-509, Idaho Code, and this rule, no later than when they submit the corrected levies under Section 63-810, Idaho Code. ()

06. Cross Reference. See Rule 115 of these rules for requirements to submit city, Boise School District, and special district or unit of government abstracts. For the descriptions of the categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. For information relating to notification of corrections to erroneous levies, see Sections 63-809 and 63-810, Idaho Code, and Rule 809 of these rules. ()

510. SECONDARY CATEGORIES FOR LAND - LISTING AND REPORTING (RULE 510).

Section 63-509, Idaho Code. County assessors will use the secondary categories described in the following subsections, indicated by numbers, to list land values on the valuation assessment notices under Sections 63-301 and 63-308, Idaho Code. County assessors will use these secondary categories described in the following subsections, indicated by numbers, and the secondary categories described in the following paragraphs, indicated by letters, to report land values to the Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary land categories to parcels of property put to multiple uses. ()

01. Secondary Category 1 - Irrigated Agricultural Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ()

02. Secondary Category 2 - Irrigated Grazing Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture.

(See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ()

03. Secondary Category 3 - Non-Irrigated Agricultural Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ()

04. Secondary Category 4 - Meadow Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ()

05. Secondary Category 5 - Dry Grazing Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. ()

06. Secondary Category 6 - Productivity Forestland. All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. ()

07. Secondary Category 7 - Bare Forestland. All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. ()

08. Secondary Category 8. Not presently used. ()

09. Secondary Category 9 - Patented Mineral Land. All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code. ()

10. Secondary Category 10 - Homesite Land. Rural non-subdivided land being utilized for homesites with secondary categories 1 through 9. Note: This land is always land with improvements located on it since land with no improvements should be in one (1) or more of categories 1 through 9. ()

11. Secondary Category 11 - Recreational Land. Rural land used in conjunction with recreation but not individual homesites. ()

a. Secondary Category 11 - Vacant Recreational Land. Vacant rural land used for recreational purposes but not individual homesites or in a properly recorded subdivision. ()

b. Secondary Category 11 - Improved Recreational Land. Rural land with improvements, including exempt improvements, used for recreational purposes on that land but not individual homesites or in a properly recorded subdivision. ()

12. Secondary Category 12 - Rural Residential Tracts. Rural residential land not in a properly recorded subdivision. ()

a. Secondary Category 12 - Vacant Rural Residential Tracts. Vacant rural land used for residential purposes but not in a properly recorded subdivision. ()

b. Secondary Category 12 - Improved Rural Residential Tracts. Rural land with improvements, including exempt improvements, used for residential purposes on that land but not in a properly recorded subdivision. ()

13. Secondary Category 13 - Rural Commercial Tracts. Rural commercial land not in a properly recorded subdivision. ()

a. Secondary Category 13 - Vacant Rural Commercial Tracts. Vacant rural land used for commercial purposes but not in a properly recorded subdivision. ()

b. Secondary Category 13 - Improved Rural Commercial Tracts. Rural land with improvements, including exempt improvements, used for commercial purposes on that land but not in a properly recorded subdivision. ()

14. Secondary Category 14 - Rural Industrial Tracts. Rural industrial land not in a properly recorded subdivision. ()

a. Secondary Category 14 - Vacant Rural Industrial Tracts. Vacant rural land used for industrial purposes but not in a properly recorded subdivision. ()

b. Secondary Category 14 - Improved Rural Industrial Tracts. Rural land with improvements, including exempt improvements, used for industrial purposes on that land but not in a properly recorded subdivision. ()

15. Secondary Category 15 - Rural Residential Subdivisions. Rural residential land in a properly recorded subdivision. ()

a. Secondary Category 15 - Vacant Rural Residential Subdivisions. Vacant rural land used for residential purposes and in a properly recorded subdivision. ()

b. Secondary Category 15 - Improved Rural Residential Subdivisions. Rural land with improvements, including exempt improvements, used for residential purposes on that land and in a properly recorded subdivision. Also use this category for rural homesites within subdivisions when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. ()

16. Secondary Category 16 - Rural Commercial Subdivisions. Rural commercial land in a properly recorded subdivision. ()

a. Secondary Category 16 - Vacant Rural Commercial Subdivisions. Vacant rural land used for commercial purposes and in a properly recorded subdivision. ()

b. Secondary Category 16 - Improved Rural Commercial Subdivisions. Rural land with improvements, including exempt improvements, used for commercial purposes on that land and in a properly recorded subdivision. ()

recorded subdivision. ()

17. Secondary Category 17 - Rural Industrial Subdivisions. Rural industrial land in a properly recorded subdivision. ()

a. Secondary Category 17 - Vacant Rural Industrial Subdivisions. Vacant rural land used for industrial purposes and in a properly recorded subdivision. ()

b. Secondary Category 17 - Improved Rural Industrial Subdivisions. Rural land with improvements, including exempt improvements, used for industrial purposes on that land and in a properly recorded subdivision. ()

18. Secondary Category 18 - Other Land. Land not compatible with other secondary categories. ()

a. Secondary Category 18 - Vacant Other Land. Vacant land not compatible with other secondary categories. ()

b. Secondary Category 18 - Improved Other Land. Land with improvements, including exempt improvements, on that land but not compatible with other secondary categories. ()

19. Secondary Category 19 - Waste. Public Rights-of-Way includes roads, ditches, and canals. Use this secondary category to account for total acres of land ownership. Only list acres, not value, in this secondary category on the abstract. ()

20. Secondary Category 20 - Residential Lots or Acreages. Land used for residential purposes and inside city limits. ()

a. Secondary Category 20 - Vacant Residential Lots Or Acreages. Vacant land used for residential purposes and inside city limits. ()

b. Secondary Category 20 - Improved Residential Lots Or Acreages. Land with improvements, including exempt improvements, used for residential purposes on that land and inside city limits. Also use this category for urban homesites when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. ()

21. Secondary Category 21 - Commercial Lots or Acreages. Land used for commercial purposes and inside city limits. ()

a. Secondary Category 21 - Vacant Commercial Lots Or Acreages. Vacant land used for commercial purposes and inside city limits. ()

b. Secondary Category 21 - Improved Commercial Lots Or Acreages. Land with improvements, including exempt improvements, used for commercial purposes on that land and inside city limits. ()

22. Secondary Category 22 - Industrial Lots or Acreages. Land used for industrial purposes and inside city limits. ()

a. Secondary Category 22 - Vacant Industrial Lots Or Acreages. Vacant land used for industrial purposes and inside city limits. ()

b. Secondary Category 22 - Improved Industrial Lots Or Acreages. Land with improvements, including exempt improvements, used for industrial purposes on that land and inside city limits. ()

23. Secondary Category 25 - Common Area Vacant Land. Common area vacant land not included in individual property assessments. ()

24. Secondary Category 45 - Utility System Vacant Land. Vacant land used for locally assessed utility systems not under the jurisdiction of the Tax Commission for appraisal. ()

25. Secondary Category 57 - Equities In Vacant Land Purchased From the State. For identification purposes under Section 63-211, Idaho Code, vacant land purchased from the state under contract. ()

26. Secondary Category 81 - Exempt Land. Category 81 is for county use to keep an inventory, including acreage, of exempt land. ()

27. Cross Reference. For descriptions of secondary categories used to list values for improvements, see Rule 511 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ()

511. SECONDARY CATEGORIES FOR IMPROVEMENTS - LISTING AND REPORTING (RULE 511).

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list improved property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and to report improved property values to the Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary improvement categories to parcels of property put to multiple uses. ()

01. Secondary Category 25 - Common Area Land and Improvements. Common area land and improvements on that land not included in individual property assessments. ()

02. Secondary Category 26 - Residential Condominiums. Land and improvements included in individual assessments of condominiums or townhouses and used for residential purposes. ()

03. Secondary Category 27 - Commercial or Industrial Condominiums. Land and improvements included in individual assessments of condominiums and used for commercial or industrial purposes. ()

04. Secondary Category 30 - Improvements. Improvements, other than residential, located on secondary category 20. ()

05. Secondary Category 31 - Improvements. Improvements used for residential purposes and located on secondary category 10. ()

06. Secondary Category 32 - Improvements. Improvements, other than residential, located on secondary categories 1 through 12 and 15. ()

07. Secondary Category 33 - Improvements. Improvements used in conjunction with recreation but not associated with homesites and located on secondary category 11. ()

08. Secondary Category 34 - Improvements. Improvements used for residential purposes and located on secondary category 12. ()

09. Secondary Category 35 - Improvements. Improvements used for commercial purposes and located on secondary category 13. ()

10. Secondary Category 36 - Improvements. Improvements used for industrial purposes and located on secondary category 14. ()

11. Secondary Category 37 - Improvements. Improvements used for residential purposes and located on secondary category 15. ()

12. Secondary Category 38 - Improvements. Improvements used for commercial purposes and

located on secondary category 16. ()

13. Secondary Category 39 - Improvements. Improvements used for industrial purposes and located on secondary category 17. ()

14. Secondary Category 40 - Improvements. Improvements located on secondary category 18. ()

15. Secondary Category 41 - Improvements. Improvements used for residential purposes and located on secondary category 20. ()

16. Secondary Category 42 - Improvements. Improvements used for commercial purposes and located on secondary category 21. ()

17. Secondary Category 43 - Improvements. Improvements used for industrial purposes and located on secondary category 22. ()

18. Secondary Category 44. Not presently used. ()

19. Secondary Category 45 - Utility System Land and Improvements. Locally assessed land and improvements used as utility systems and not under the jurisdiction of the Tax Commission for appraisal. ()

20. Secondary Category 46 - Manufactured Housing. Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare as real property has been filed but becomes effective the following year. ()

21. Secondary Category 47 - Improvements to Manufactured Housing. Additions not typically moved with manufactured housing. ()

22. Secondary Category 48 - Manufactured Housing. Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. ()

23. Secondary Category 49 - Manufactured Housing. Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. ()

24. Secondary Category 50 - Residential Improvements on Leased Land. Improvements used for residential purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land, or any other land under different ownership than the improvements. ()

25. Secondary Category 51 - Commercial or Industrial Improvements on Leased Land. Improvements used for commercial or industrial purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land, or any other land under different ownership than the improvements. ()

26. Secondary Category 57 - Equities in Land With Improvements Purchased From the State. Land with the improvements on that land that are purchased from the state under contract. ()

27. Secondary Category 60. Not presently used. ()

28. Secondary Category 61. Not presently used. ()

29. Secondary Category 62. Not presently used. ()

30. Secondary Category 65 - Manufactured Housing. Manufactured housing not designated real property and located on exempt, rented or leased land under separate ownership. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. ()

31. Secondary Category 69 - Recreational Vehicles. Unlicensed recreational vehicles. ()

32. Secondary Category 81 - Exempt Improvements. Category 81 is for county use to keep an inventory of exempt improvements. ()

33. Cross Reference. For descriptions of secondary categories used to list land values, see Rule 510 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ()

512. SECONDARY CATEGORIES, OTHER THAN LAND OR IMPROVEMENTS - LISTING AND REPORTING (RULE 512).
Section 63-509, Idaho Code

County assessors will use the following secondary categories to list property values, other than that for land or improvements, on assessment notices under Sections 63-301 and 63-308, Idaho Code, and will use these secondary categories to report values for property, other than land or improvements, to the Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. ()

01. Secondary Category 45 - Utility System Personal Property. Personal property that is part of locally assessed utility systems not under the jurisdiction of the Tax Commission for appraisal. ()

02. Secondary Category 55 - Boats or Aircraft. Unlicensed watercraft or unregistered aircraft. ()

03. Secondary Category 56 - Construction Machinery, Tools, and Equipment. Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. ()

04. Secondary Category 57 - Equities in Personal Property Purchased From the State. Personal property purchased from the state under contract. ()

05. Secondary Category 59 - Furniture, Libraries, Art, and Coin Collections. Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. ()

06. Secondary Category 63 - Logging Machinery, Tools, and Equipment. Unlicensed logging machinery, shop tools, and equipment not assessed as real property. ()

07. Secondary Category 64 - Mining Machinery, Tools, and Equipment. Unlicensed mining machinery, shop tools, and equipment not assessed as real property. ()

08. Secondary Category 66 - Net Profits of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. ()

09. Secondary Category 67 - Operating Property. Property assessed and apportioned by the Tax Commission. ()

10. Secondary Category 68 - Other Miscellaneous Machinery, Tools, and Equipment. Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture.

()

11. Secondary Category 70 - Reservations and Easements. Reservations, including mineral rights reserved, divide ownership of property rights. Easements convey use but not ownership. ()

12. Secondary Category 71 - Signs and Signboards. Signs and signboards, their bases and supports. ()

13. Secondary Category 72 - Tanks, Cylinders, Vessels. Containers. ()

14. Secondary Category 81 - Exempt Property, Other Than Land or Improvements. Category 81 is for county use to keep an inventory of exempt property other than land or improvements. ()

15. Cross Reference. For descriptions of secondary categories used to list land values on the valuation assessment notice or report land values on the abstracts, see Rule 510 of these rules or used to list values for improvements on the valuation assessment notice or report improvement values on the abstracts, see Rule 511 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. ()

513. -- 599. (RESERVED)

600. PROPERTY EXEMPT FROM TAXATION (RULE 600).
Section 63-602, Idaho Code

01. Burden of Proof. The burden of proof of entitlement to the exemption is on the person claiming exemption for the property. ()

02. Notice of Decision. ()

a. For property subject to local assessment with exemptions requiring annual application as specified in the statute providing the exemption or in Section 63-602(3), Idaho Code, the taxpayer must be notified of the decision of the county commissioners to grant or deny the exemption by May 15 unless a different date is prescribed in the law providing the exemption. ()

b. For property subject to assessment by the Commission, application for any exemption will be included with the operator's statement to be submitted as provided in Section 404, of these rules. ()

03. Confidentiality. Information disclosed as part of an application for an exemption is confidential to the extent provided by in Section 74-107, Idaho Code, or elsewhere in law. Information disclosed to the county commissioners as part of the application process for an exemption will be deemed submitted to the assessor and entitled to any confidentiality that would have been conferred had such information been disclosed initially to the assessor. ()

601. -- 602. (RESERVED)

603. PROPERTY EXEMPT FROM TAXATION – RELIGIOUS CORPORATIONS OR SOCIETIES (RULE 603).
Section 63-602B, Idaho Code

01. Valuing the Taxable Part of Qualifying Property. Under Section 63-602B(2), Idaho Code, a county will determine the value of the part of the property used or leased for business or commercial purposes by considering the particular facts of each case, examining the amount of time, during the calendar year, the property is used for business or commercial purposes, the percentage of the property used for business or commercial purposes, or a combination thereof. The county may require reporting by the religious corporation or society of any use of the property for business or commercial usage in such form, and by such date, as the county establishes. ()

02. Comparable Valuation Methodology to Partially Exempt Property Under Section 63-602C,

Idaho Code. To value the taxable part of any otherwise qualifying property exempt under Section 63-602B, Idaho Code, each county should use comparable methods to those being used to value the taxable part of qualifying exempt property under Section 63-602C, Idaho Code. ()

604. (RESERVED)

605. PROPERTY EXEMPT FROM TAXATION - PROPERTY USED FOR SCHOOL OR EDUCATIONAL PURPOSES (RULE 605).

Section 63-602E, Idaho Code

01. Eligibility of Leased Property. Leased property used exclusively for non-profit school or educational purposes, including charter school purposes, will be eligible for the exemption provided in Section 63-602E, Idaho Code, provided the following criteria are met: ()

a. Leased real property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. Such leased real property may be part of a multi-use property, in which case only the portions of the property used for the educational purposes will be eligible for the exemption. ()

b. Leased personal property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. To be considered exclusively used in this manner, such personal property must: ()

- i.** Be used exclusively at a non-profit school or charter school facility; or ()
- ii.** Have its use constrained or restricted in such a way as to effectively eliminate the possibility of use for other than educational purposes. ()

02. Application for Exemption for Leased Personal Property. Only the owner of leased personal property can apply for this exemption. Proof of compliance with the requirements of Paragraph 605.01.b. of this rule is required and may be provided by the lessee. ()

606. -- 607. (RESERVED)

608. PROPERTY EXEMPT FROM TAXATION - HOMESTEAD - CONTINUED ELIGIBILITY AFTER DEATH OF CLAIMANT (RULE 608).

Section 63-602G, Idaho Code

01. Ownership Interest. For the homestead previously qualifying for the exemption provided in Section 63-602G, Idaho Code, to continue to qualify in the year following the death of the qualifying claimant, the homestead must continue to be part of the claimant's estate, without change in record owner. If the ownership interest upon which the exemption had been granted was a life estate, the continuation provided in Section 63-602G(8), Idaho Code, does not apply. ()

02. Occupancy. The continuation of this exemption will not be affected by occupancy status of the property during the year following the claimant's death. For example, the property may be vacant or rented during that period and may be used for something other than residential purposes. ()

609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code

01. Homestead Exemption. The Homestead Exemption granted in 63-602G, Idaho Code will also be known as the homeowner's exemption. ()

02. Maximum Amount of Homestead Exemption. The homestead exemption is limited to the lesser of fifty percent (50%) of assessed value or one hundred thousand dollars (\$100,000). ()

03. Partial Ownership. Any partial ownership will be considered ownership for determining

qualification for the homeowner's exemption; however, the amount of the exemption will be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction will not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of these rules. ()

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	\$62,000	Mr. Smith's interest
Homeowner's Exemption	\$31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest (land and improvement)	\$54,500	Mr. Anderson's interest
Homeowner's Exemption	\$27,250	For Mr. Anderson as owner occupant

()

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	Split 50% to each owner
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

()

c. Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 50%)	\$155,000	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2010 (\$100,000 X 50%)	\$50,000	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 50%)	\$155,000	Ms. Smith's interest
Homeowner's Exemption Maximum for 2017 (\$100,000 X 50%)	\$50,000	Ms. Smith's Homeowner's Exemption

()

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X 50%)	\$130,000	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2017 is 50% up to \$100,000)	\$65,000	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 50%)	\$130,000	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

()

04. Part Year Ownership. For qualifying taxpayers who claimed the homeowner's exemption on an eligible property, the homestead that qualified on January 1 of the current tax year will continue to receive the exemption, provided however, the assessor may remove that property's exemption if, by April 15 of the tax year, the taxpayer owns a different homestead and requests that the exemption be transferred to the second homestead.

()

05. Determination of Residency. The Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure.

()

06. Notification of Erroneous Claims. When it is determined that an exemption granted under this

Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor will notify the Commission of the determination. ()

610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (RULE 610).

Sections 63-602G, 63-701(2), Idaho Code

01. Scope. This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. ()

02. Definitions. The following definitions apply to this rule: ()

a. Dual Residency Couples. As used in this rule, "dual residency couple" means a husband and wife, each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 609.03 of these rules. ()

b. Multidwelling or Multipurpose Building. "Multidwelling or Multipurpose Building" means a building which is the primary dwelling place of the owner and which has a portion used for any purpose other than the primary dwelling place of the owner. ()

c. Related Land. "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home. ()

03. Dual Residency Couples -- General Principles. ()

a. Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 609.03 of these rules. ()

b. If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. ()

c. Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(7) Idaho Code.) Thus, there is no authority to reduce the value of the improvement proportionally to reflect one (1) spouse's ownership in community property before determining the amount of the homeowner's exemption. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. ()

d. An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property except as provided in Subsection 610.07. ()

04. Example -- Both Residences are Community Property. ()

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. ()

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not

valid because the couple can not make more than one (1) application. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. ()

05. Example -- One Residence Is Community Property, the Other Is Separate Property. ()

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. ()

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. ()

06. Example -- Both Residences are Separate Property. ()

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. ()

b. Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. ()

07. Apportionment of Homeowner's Exemption by Dual Residency Couples. Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement will be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties will not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. ()

08. Multiple Ownerships Including Community Interests as Partial Owners. A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common provided ownership interests are not specified in the deed. The parents collectively hold a one-half (1/2) partial interest and the child holds a one-half (1/2) partial interest in the property. Ownership interests specified in the deed supersede this guidance. Qualification of the property for the homeowner's exemption is as follows: ()

a. If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. ()

b. If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. ()

c. If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. ()

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual

residency couple rules set out in Subsections 610.02 through 610.07. The one-half (1/2) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Paragraph 610.03.c. of this rule. ()

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. ()

09. Determining the Qualifying Portion of a Multidwelling or Multipurpose Building and the Related Land. The portion of a Multidwelling or Multipurpose Building and Related Land used for the primary dwelling place of the owner qualifies for the homeowner's exemption. When determining the value of the qualifying portion, the assessor will include the Related Land value. ()

611. VALUE OF RESIDENTIAL PROPERTY IN CERTAIN ZONED AREAS (RULE 611).
Sections 63-602H, Idaho Code

01. Residential Property. Residential property that may qualify for the special valuation exemption provided in Section 63-602H, Idaho Code, may include land and residential improvements. Such property may be owner or non-owner occupied, but must have been in continuous residential use from the time zoning was changed to other than residential. If use of any portion of the property changes to other than residential, the property loses this exemption. ()

02. Qualifying Residential Improvements. Qualifying residential improvements are those improvements categorized by the assessor as residential and not consisting of more than four (4) residential units within any qualifying structure. ()

612. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES, RECREATIONAL VEHICLES, AND VESSELS PROPERLY REGISTERED (RULE 612).
Sections 49-123, 49-401, 49-402A, 49-422, 49-432, 49-445, 49-446, 63-602J, Idaho Code

01. Motor Vehicle Defined. Motor vehicle means any vehicle as defined in Section 49-123(2), Idaho Code, and any recreational vehicle as defined in Section 49-119(6,) Idaho Code, and any personal property permanently affixed to any of those vehicles. ()

02. Exempt Motor Vehicles. Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49, Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code. ()

03. Taxable Vehicles. The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code. ()

a. Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

b. Any manufactured home registered under Section 49-422, Idaho Code. ()

04. Exempt Permanently Affixed Personal Property. Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. ()

05. Taxable Personal Property. The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. ()

a. Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. ()

b. Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

c. Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. ()

06. Recreational Vehicles. The owner of a recreational vehicle, as defined in Section 49-119(6), Idaho Code, must pay a recreational vehicle annual license fee as authorized by Section 49-445, Idaho Code, and as computed in accordance with Rule 020 of these rules in order to be exempt under Section 63-602J, Idaho Code. ()

a. Recreational vehicles that qualify for licensing and registration and have paid the required registration fee by August 31 each year are eligible for the exemption provided in Section 63-602J, Idaho Code. The owners of recreational vehicles that do not qualify or have not paid the fee must be sent a valuation assessment notice for the recreational vehicle after the August 31 deadline. The assessment of the recreational vehicle is subject to cancellation as provided in Rule 020, provided any applicable registration fee is paid before the fourth Monday of November. ()

b. The provisions of Paragraph 612.06.a. of this rule apply to a park model recreational vehicle unless it is determined by the assessor to: ()

- i.** Be permanently attached to a foundation; or ()
- ii.** Have an attached building addition; or ()
- iii.** Have been substantially modified and no longer meet the definition of a park model recreational vehicle. ()

07. Taxable Real Property Associated with Vehicles. Associated property, other than the vehicle itself, is taxable unless another exemption applies. Examples include the land on which the vehicle is located, fences, buildings, and appurtenances. Such property may be eligible for the exemption provided in Section 63-602G, Idaho Code, regardless of whether the vehicle is exempt as provided in Section 63-602J, Idaho Code. ()

613.-- 614. (RESERVED)

615. PROPERTY EXEMPT FROM TAXATION - CERTAIN INTANGIBLE PERSONAL PROPERTY (RULE 615).
Section 63-602L, Idaho Code

01. Definitions. The following definitions apply to the exemption for certain intangible personal property. ()

a. Contracts and contract rights. Contracts and contract rights are enforceable agreements, which establish mutual rights and responsibilities, and rights created under such agreements. Contracts and contract rights do not include tax credits received by low-income housing properties under Section 42 of the Internal Revenue Code. ()

b. Copyrights. Copyrights are rights granted to the author or originator of literary or artistic productions, by which he or she is invested with the sole and exclusive privilege of making, publishing or selling copies for a specified time. ()

c. Custom computer programs. Custom computer programs means those programs defined in Section 63-3616, Idaho Code. ()

d. Customer lists. Customer lists are proprietary lists containing information about a business enterprise's customers. ()

- e. Franchises. Franchises are special privileges. ()
 - f. Goodwill. Goodwill is the expectation of continued public patronage of a business. Goodwill is the ability of a business to generate income in excess of a normal rate due to such things as superior managerial skills, superior market position, favorable community and customer reputation and high employee morale. ()
 - g. Licenses. Licenses are permissions to do acts, which are not allowed without such permissions. ()
 - h. Method A. Method A is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the system level. ()
 - i. Method B. Method B is the method by which the value of exempt intangible personal property is excluded from the value of operating property by subtracting the market value of exempt intangible personal property from the market value of the operating property at the state level. ()
 - j. Method C. Method C is the method by which the value of exempt intangible personal property is excluded from the value of operating property by using valuation models which value only the non-exempt assets. ()
 - k. Patents. Patents are grants from the government conveying and securing the exclusive right to make, use and sell inventions. ()
 - l. Rights-of-way which are possessory only and not accompanied by title. Rights-of-way, which are possessory only and not accompanied by title, are easements by which grantees acquire only the rights to pass over or to access for installation or maintenance, without acquiring exclusive use of the rights-of-way. ()
 - m. Trademarks. Trademarks are marks of authenticity, through which products of particular manufacturers or vendible commodities of particular merchants may be distinguished from those of others. ()
 - n. Trade secrets. Trade secrets are formulas, patterns, compilations, programs, devices, methods, techniques or processes, deriving independent economic values from not being generally known by other persons who can obtain economic values from disclosure or use. Trade secrets are the subjects of efforts that are reasonable to maintain secrecy. ()
- 02. Tangible Property Value Not Affected by Intangible Personal Property Value.** The values of the exempt intangible personal properties will not affect the values of any tangible properties or the value of the attributes of any tangible properties, regardless of the role of the intangible personal properties in the use of the tangible properties. The exempt values will not include any values attributable to availability of a skilled work force, condition of surrounding property, geographic features, location, rights-of-way, accompanied by title, view, zoning, and attributes or characteristics of real properties. ()
- 03. Operating Property Election, Reporting and Methods.** The following apply to operating property for the identification of valuation methods to be used by the Commission, election of Method A, Method B or Method C by the property owners, reporting by owners and valuation using Method C. ()
- a. Identification of valuation methods. When the Commission mails the blank Operators' Statements to the property owners, the Commission will identify proposed changes in valuation methods compared to those relied on in the prior year. ()
 - b. Election default. In the event of default of the taxpayer to make an election, the Commission will use the method proposed in the notice accompanying the Operator's Statement. ()
 - c. Election of exclusion method. When submitting the Operator's Statement, the owner has the right to elect the method for exclusion of the values of the exempt intangible personal properties from the operating property value. ()

d. Amending Election. An owner may amend the elected method if written notice is received at least seven (7) business days prior to a hearing under Rule 407 of these rules. ()

e. Reporting. The Commission will consider the value and supporting data provided by the owners. If no supporting intangibles valuation information is provided by the owners, known exempt intangible personal property will be subtracted or will not be impounded in the value. ()

f. Valuation using Method C. When the owner elects Method C, the Commission will give primary consideration to the cost less depreciation model, without regulatory adjustment, in valuing tangible personal property and non-exempt intangible personal property. Only if this model fails to produce market value of the tangible personal property and nonexempt intangible personal property, will the Commission consider other appropriate valuation models. ()

04. Personal Property Reporting for Locally Assessed Property. The exemption for custom software, contracts and contract rights will be claimed by scheduling such property on the owner's personal property declaration form. ()

05. Cross Reference. For clarification of contracts and contracts rights, see *Brandon Bay, Ltd. Partnership v. Payette County*, 142 Idaho 681, 132 P.3d 438 (2006). ()

616. (RESERVED)

617. AGRICULTURAL LAND VALUATION DEFINITIONS AND GUIDELINES.
Section 63-602K, Idaho Code

01. Definitions. ()

a. Actual Use Value of Agricultural Land. The actual use value of agricultural land will be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The Actual Use Value will be considered market value for assessment purposes. ()

b. Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. Only the rent solely attributable to the agricultural land is included in economic rent. ()

c. Net Income (Rent). Net income is determined by deducting the landlord's share of all typical current expenses from economic rent per acre. ()

d. Agricultural Area. An identifiable geographical area of similar agricultural land. ()

02. Determination of Average Crop Rental Rates. ()

a. Determine the average per acre gross income from individual crop cash rents, whole farm cash rents, or crop share typical to the Agricultural Area over the immediate past five (5) growing seasons as reported by local farmers. ()

b. If data from local farmers is insufficient, data typical to the Agricultural Area from third party providers, such as the United States Department of Agriculture (USDA), University of Idaho Crop Enterprise Budgets, or similar sources, may be used. ()

c. The choice to use cash rent or crop share analysis in determining the taxable value of agricultural land should be predicated on the quantity and quality of data available when developing a supportable value conclusion. ()

03. Determination of Farm Credit Services Capitalization Rate. ()

a. The State Tax Commission will gather the interest rate data from the Spokane office of the Farm Credit Services and average the rate over the immediate past five (5) years and distribute the rate annually to assessors by the second Monday in September. ()

b. The local tax rate component is the rate most applicable to the Agricultural Area. ()

c. The local tax rate will be added to the Farm Credit Services capitalization rate to develop the overall capitalization rate. ()

04. Calculation of Net Income from a Cash Rent Analysis. Net Income from cash rent for land secondary categories 1 and 3 is calculated in the following manner: ()

a. Crops Grown. Determine the crops typically grown in the area. ()

b. Economic Rent. Determine the average per acre gross income from individual crop rents or whole farm cash rents typical to the Agricultural Area over the immediate past five (5) years. ()

c. Landlord's Expenses. Determine the landlord's share of all typical expenses paid in the immediately preceding growing season. ()

d. Landlord's Net Income. Subtract the landlord's share of all typical expenses from the average gross income per acre for the immediately preceding year to determine net income. ()

05. Calculation of Net Income from a Crop Share Analysis. Net income from crop share rent for secondary land categories 1 and 3 is calculated in the following manner: ()

a. Crops Grown. Determine the crops typically grown in the Agricultural Area. ()

b. Average Crop Production. Determine the most recent five (5) year average production for typical crops grown in the Agricultural Area. ()

c. Average Commodity Prices. The Tax Commission will publish five (5) year average crop prices by surveying publicly available data from various sources, including the annual crop summary published by the USDA National Agricultural Statistics Service (NASS). Average crop prices determined in this manner by the Tax Commission should be considered guidelines when determining net income, subject to modification based on local market data. ()

d. Gross Income. Multiply average crop production per acre by the average commodity price to determine gross income per acre. ()

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the Agricultural Area. ()

f. Landlord's Expenses. Determine the landlord's share of all typical expenses paid in the immediately preceding growing season. ()

g. Net Income. Subtract the landlord's share of all typical expenses from the landlord's share of gross income to determine net income. ()

06. Calculation of Grazing and Meadow Land Net Income. Net income from grazing and meadow rent for land secondary categories 2, 4, and 5 is calculated in the following manner. ()

a. Animal Unit Month (AUM) Defined. An AUM consists of the amount feed for a one thousand (1,000) pound cow-calf pair or other animal equivalent for one month. ()

b. Determine the gross yearly income of an AUM by multiplying the five (5) year average of locally

reported rent per AUM or third-party provider equivalent by the average number of months of the grazing season.

()

c. Divide the total acres grazed by the total number of cow-calf pairs, or other animal equivalent, to determine the number of acres making up an AUM. ()

d. Divide the income per AUM by the number of acres per AUM to determine a gross annual income per acre. ()

e. Subtract landlord's typical expenses from the immediately preceding year to determine net income per acre. ()

07. Calculation of Value Estimate per Acre to be used for Categories 1-5. Divide the Net Operating Income by the overall capitalization rate to calculate a value estimate per acre. ()

08. Cross Reference. For eligibility criteria, see Rule 645; for compliance standards, see Rule 131.

()

618. COMPUTATION OF THE IDAHO IRRIGATION EXEMPTION (RULE 618).

Section 63-602N, Idaho Code

01. Production and Delivery Ratio. This ratio is computed by comparing the Idaho investment in production and delivery property to the investment for all Idaho unitary property. The resulting ratio will be known as the production and delivery ratio. ()

02. Idaho Production and Delivery Value. This is computed by multiplying the allocated Idaho unitary value, before any exemptions, by the production and delivery ratio. ()

03. Irrigation Use Ratio. This ratio is computed by comparing Idaho irrigation revenue to the total Idaho revenue from unitary operations. The resulting ratio will be known as the irrigation use ratio. ()

04. Idaho Irrigation Exemption. This is computed by multiplying the Idaho production and delivery value by the irrigation use ratio. ()

619. PROPERTY EXEMPT FROM TAXATION -- FACILITIES FOR WATER OR AIR POLLUTION CONTROL (RULE 619).

Section 63-602P, Idaho Code

01. Exempt Property. Only those portions of installations, facilities, machinery, or equipment which are devoted exclusively to elimination, control, or prevention of water or air pollution are exempt. The owner of the property will annually apply for exemption. ()

02. Calculation of Partial Exemption. The exemption will not include the percentage of the value for any portion of the facility which is used for the production of marketable by-products. The exempted value is the difference between the market value of the pollution control facilities and the present value of the net income from the sale of by-products. Net income will be determined by subtracting the expenses of sale, raw materials required to produce by-products, and transportation to F.O.B. point from gross sales of recovered by-product. ()

03. Ineligibility. Landfills, toxic waste dumps, or storage facilities deriving revenue from processing or storing pollution or pollution by-products generated by other persons or businesses are ineligible for this exemption. ()

04. Filing Procedure. Application for exemption will be made in the following manner: ()

a. The property owner may obtain the application form issued by the Commission from the county assessor or the Commission. ()

b. The property owner completes the application to report an itemized listing of all installations, facilities, machines or equipment qualifying for exemption. Each component part of the system must be identified by a brief description (e.g., Dust Collector), the date of original acquisition, dollar amount of the original cost, and the percentage of the component devoted exclusively to pollution control. The application must be signed by the owner or duly authorized agent. Lack of required information will be grounds for denial. ()

c. The completed application must be filed with the county commissioners by April 15 for locally assessed property or with the Commission by April 30 for centrally assessed property. ()

05. Inspection. The county or Commission representative may inspect the property or audit the owner's records to identify components for which the exemption has been applied. Those components listed on the application must be identifiable as capital assets of the property. ()

06. Exemption Reported on Abstracts. For locally assessed property, exempt value will be reported on the property abstracts. ()

07. Exemption for Portion of Water Corporation Property. A portion of water corporation property may be exempt from taxation. ()

a. On or before April 30, each year, the Commission will receive a notice from the Idaho Public Utilities Commission listing the value of the investment percentage of the total plant of each water company that is devoted exclusively to the elimination, control, or prevention of water pollution or air pollution. ()

b. In estimating the market value of the company for assessment purposes, the Commission will take into consideration the investment as certified by the Public Utilities Commission that such equipment bears to the total invested plant of the company. ()

c. The Commission will notify the water company of the estimated market value, gross assessed value, and the amount of exemption allowed under Section 63-602P, Idaho Code, on or before July 15. ()

d. Any person or party wishing to contest the percentage of exemption reported to the Commission by the Public Utilities Commission may submit a written request for a public hearing to the Commission by August 1 of the current tax year. The request for a hearing will state the petitioner's grounds for contesting the percentage reported by the Public Utilities Commission. On or before the second Monday of August the Commission will notify the petitioner of the hearing time and place. ()

620. EXEMPTION FOR NEVER OCCUPIED RESIDENTIAL IMPROVEMENTS (RULE 620).
Section 63-602W, Idaho Code

01. Qualifying Residential Improvements. Improvements to any land parcel that are residential and have never been occupied for residential purposes may qualify for the exemption pursuant to Section 63-602W, Idaho Code. This rule is effective January 1, 1998. Such qualifying improvements can include the following: ()

a. Single family residences, residential townhouses, and residential condominiums; and ()

b. Attached or unattached ancillary structures which are not intended for commercial use and are constructed contemporaneously with the improvements identified in Paragraph 620.01.a. Such structures may include sheds, fences, swimming pools, garages, and other similar improvements, subject to the limitations of Subsection 620.02. ()

02. Non-Qualifying Improvements. Never previously occupied residential improvements listed in the following Subsections do not qualify for this exemption. ()

a. Location. Ancillary structures (see Paragraph 620.01.b.) that are not located on the parcel on which the improvement is located, identified in Subsection 620.01.a. of this rule, will not qualify for the exemption provided pursuant to Section 63-602W, Idaho Code. ()

b. Remodeled improvements. Remodeling of previously occupied residential improvements does not qualify for the exemption. ()

c. Improvements included in land value. Improvements included in land value, such as septic tanks, wells, improvements designed to provide utility services or access, and other similar improvements will not qualify for the exemption. ()

621. -- 624. (RESERVED)

625. HOMEOWNERS EXEMPTION ON OCCUPANCY TAX ROLL (RULE 625).

Sections 63-317, 63-602G, Idaho Code

01. Eligibility for Multiple Exemptions. Obtaining the exemption in Section 63-602G, Idaho Code, will not preclude a property owner from eligibility for the exemption granted by Section 63-317, Idaho Code. More than one (1) property may be eligible for this exemption provided that ownership and occupancy of the properties occurs at different times during the year and application is made on the owner's primary residence. ()

02. Separate Applications. The application for this exemption may substitute for the application required by Section 63-602G, Idaho Code. ()

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).

Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, 63-602KK, Idaho Code

01. Locally Assessed Property - Application Required. ()

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) will 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. ()

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, will not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. ()

02. Locally Assessed Property - Taxpayers' Election of Property Location. ()

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 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 will have discretion regarding the property to which the exemption will 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. ()

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. ()

03. Centrally Assessed Property - Application Required. ()

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 will 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: ()

i. A description of the personal property located in Idaho; ()

ii. Cost and depreciated cost of the personal property located in Idaho. ()

b. For private railcar fleets subject to assessment by the Commission, the Idaho taxable value will 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. Provided that the remaining taxable value is five hundred thousand dollars (\$500,000) or more, this value is to be apportioned to each taxing district and urban renewal revenue allocation area in accordance with procedures described in Rule 415 of these rules. ()

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 will be subject to apportionment, and the remaining taxable value will be taxed as provided in Rule 415 of these rules. ()

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 third Monday in July. 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. ()

04. 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. ()

05. 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 will so notify the Commission, which will 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. ()

06. Limitation on Eligibility for the Exemption. ()

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. ()

b. Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, will not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ()

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. ()

d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, will not be eligible for the exemption provided in Section 63-602KK. Improvements will 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 will 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. ()

07. Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code. ()

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. ()

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. ()

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ()

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. ()

08. Limitation on Replacement Money. ()

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: ()

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. ()

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 will be summed and, in the future, distributed to the consolidated taxing or urban renewal district. ()

iii. No urban renewal district will 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. ()

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 626.09 of this rule will be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years will not cause any resumption of this payment. ()

b. There will 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. ()

09. 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 will be remitted directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. ()

10. 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 will first be to the increment value, and there will 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 will 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. ()

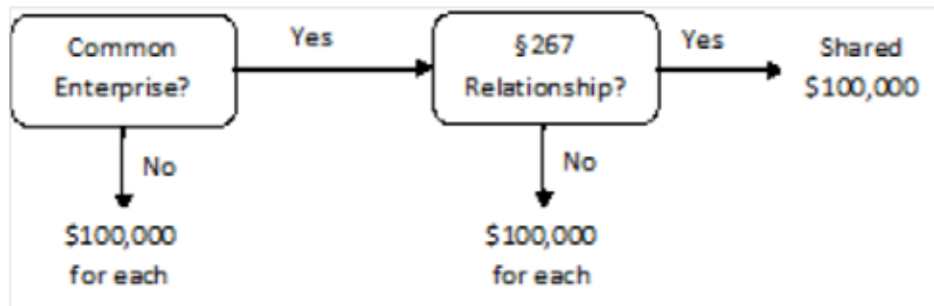
11. No Reporting of Exempt Value. Beginning in 2014, taxing district values submitted to the Commission as required in Section 63-510, Idaho Code, will not include or indicate the otherwise taxable value exempt pursuant to Section 63-602KK(2), Idaho Code. ()

12. 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. ()

627. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY – OWNERSHIP CLARIFICATION (RULE 627).
Section 63-602KK(2), Idaho Code

01. Idaho Code Section 63-602KK(2) Provides Persons With One Exemption in Each Idaho County in Which They Meet the Ownership Rules. Although persons are limited to receiving one (1) exemption per county, a person owning more than one (1) business within one (1) county may be entitled to more than one (1) exemption within the county. ()

02. Illustration of Common Enterprise and IRC Section 267 Restriction. For purposes of the Idaho Code Section 63-602KK(2) exemption, a 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:



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. ()

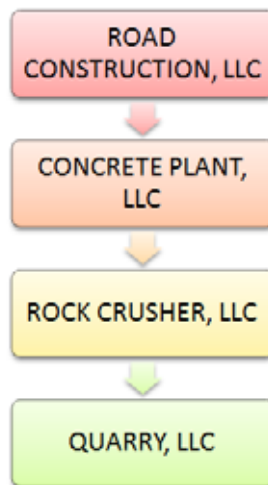
i. Horizontal Commonality is demonstrated by the following chart:



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

()

- 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.

()

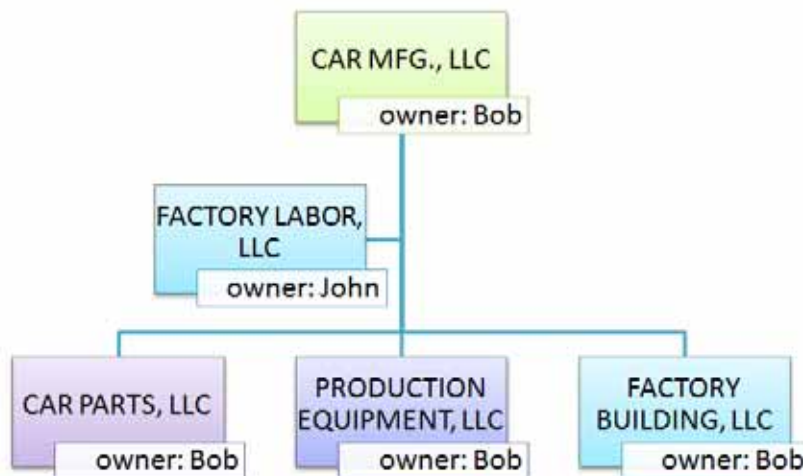
b. Second, an analysis would be made to determine whether the ownership between the entities is within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, and the businesses are in a common enterprise, then the entities or individuals would be considered one (1) person for purposes of this exemption.

()

c. Ownership alone does not determine whether entities are considered one (1) 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. ()

d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: ()

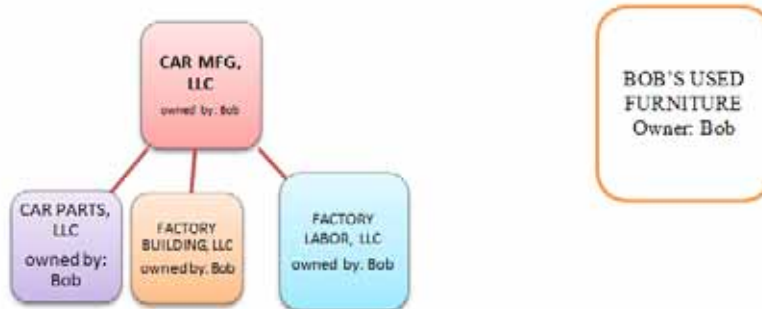
i. Example 1. This is an example of a common enterprise, that is entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code.



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.

()

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.



()

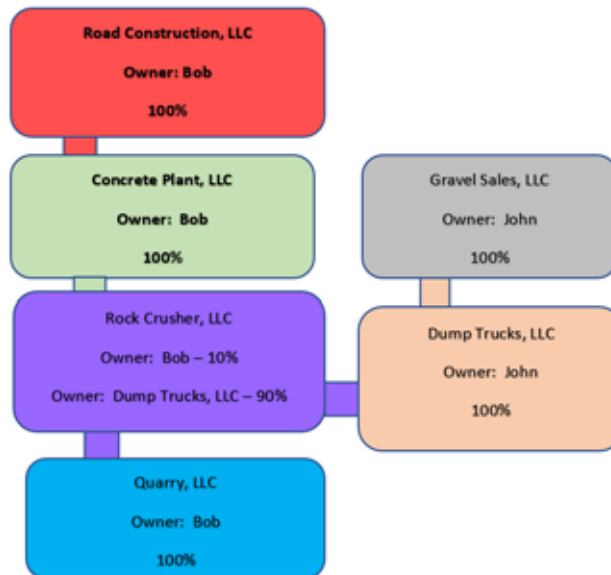
iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because a common enterprise exists and all the businesses are constructively owned in a manner identified in IRC 267. ()



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.

()

iv. Example 4. This is an example showing how owners of common enterprises may intersect. ()



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.

()

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.

()

03. Cross Reference. For information on applying for the exemption provided in Section 63-602KK(2), Idaho Code, see Rule 626 of these rules.

()

628. PARTIAL EXEMPTION FOR REMEDIATED LAND (RULE 628).

Sections 63-602BB, 39-7203, 39-7204, 39-7207, Idaho Code

01. Definitions. For the purpose of implementing the partial exemption for remediated land the following terms are defined.

()

a. Application for Partial Exemption. The "application for partial exemption" is the form, provided by the Commission, available from the Commission or the county assessor and used to apply for the exemption provided by Section 63-602BB, Idaho Code.

()

b. Certificate of Completion. The "certificate of completion" is the document issued by the Department of Environmental Quality after the successful completion of a voluntary remediation work plan pursuant to Section 39-7207(1), Idaho Code. The person receiving the "certificate of completion" will record a copy of the "certificate of completion" with the deed for the "site" on which the remediation took place pursuant to Section 39-7207(2), Idaho Code.

()

c. Covenant Not to Sue. The "covenant not to sue" is the document issued by the Department of Environmental Quality pursuant to Section 39-7207(4), Idaho Code, upon request from a person receiving the "certificate of completion."

()

d. Qualifying Owner. The “qualifying owner” is the entity identified as the owner on the deed to the property at the time the “certificate of completion” is issued by the Department of Environmental Quality. ()

e. Remediated Land. The “remediated land” is the “site” on which the remediation, as defined in Section 39-7203(7), Idaho Code, has been completed. ()

f. Remediated Land Value. The “remediated land value” is the market value for assessment purposes of the land on January 1 of the year following the issuance of the “certification of completion” (after remediation) less the market value for assessment purposes of the land on January 1 prior to the issuance of the “certification of completion” (before remediation). ()

g. Site. As defined in Section 39-7203(8), Idaho Code, a “site” is a parcel of real estate for which an application has been submitted under Section 39-7204, Idaho Code. The “site” will be that parcel identified on the application as described in IDAPA 58.01.18, “Idaho Land Remediation Rules,” Subsection 020.02.c., including the assessor’s parcel numbers(s) and on the voluntary remediation work plan as described in IDAPA 58.01.18, Section 022. ()

02. Procedures to Qualify for the Exemption. The “qualifying owner,” or agent thereof, must complete the following procedures for the “site” to qualify for the exemption. ()

a. Obtain and complete the “application for partial exemption.” ()

b. Submit the “application for partial exemption” and copies of the “certificate of completion” and the “covenant not to sue” to the county assessor of the county in which the “site” is located. If the legal description of the “site” and a map identifying the location and size of facilities and relevant features is included in the information supporting the voluntary remediation work plan, pursuant to IDAPA 58.01.18, “Idaho Land Remediation Rules,” Subsection 022.03.a.i., a copy of this information will be included with the “application for partial exemption.” ()

c. File the “application for partial exemption” with the county assessor on or before March 15 of the year for which the exemption is claimed. The “application for partial exemption” must be filed only once, during the first year of seven (7) year exemption period. ()

03. Calculation of the Exemption. The exemption is fifty percent (50%) of the “remediated land value.” This exempt value is constant throughout the term of the exemption. The amount of the exemption will never exceed the current market value of the land. ()

04. Exempt Value Subject to Taxation. For any property eligible for the exemption provided by Section 63-602BB, Idaho Code, the exempt value will immediately be subject to taxation when any of the following events occur: ()

a. If the “covenant not to sue” is rescinded during any year the exemption is in effect, the exempt value will immediately be subject to taxation for the entire year. Pursuant to IDAPA 58.01.18, Subsection 025.02, the Department of Environmental Quality will notify the assessor of the county in which the “site” is located that the “covenant not to sue” is rescinded. ()

b. If the “site” is transferred to a new owner during any year in which the exemption is in effect, the exempt value will immediately be subject to taxation for the entire year. ()

c. The seven (7) year exemption period expires. ()

05. Sites Previously Granted the Exemption are Ineligible. No “site” will be granted the exemption provided in this section if said “site” had been previously granted this exemption regardless of whether the entire seven (7) years of the exemption had been used. ()

629. PROPERTY EXEMPT FROM TAXATION -- QUALIFIED EQUIPMENT UTILIZING POST CONSUMER OR POST INDUSTRIAL WASTE (RULE 629).

Section 63-602CC, Idaho Code

01. Qualified Personal Property. Only that qualified personal property, located in Idaho, which utilizes postconsumer waste or post industrial waste in the production of a “product,” will be exempt from taxation as personal property. The owner of the equipment will, annually, petition the assessor for exemption. ()

02. Application. The exemption will be allowed only if the owner files the form prescribed by the Tax Commission, which reports for the previous calendar year, the actual time each piece of qualified equipment is in use in the production of qualified “product” and non-qualified “product.” ()

03. Exempt Petition’s Definitions. Petition for exemption will be filed in the following manner: ()

a. Forms. Declaration forms for the reporting of personal property qualifying for exemption may be obtained from the county assessor or Tax Commission. ()

b. Declaration - qualified equipment. The declaration will contain an itemized listing of all machinery or equipment qualifying for exemption. Each component part of the system must be identified by a brief description, the date of purchase and original cost, and the percentage of production time the component is devoted exclusively to the production of “product.” The petition must be signed by the owner or duly authorized agent. Lack of required information will be grounds for denial. ()

c. Declaration - non-qualifying equipment. The declaration will contain an itemized listing of all non-qualifying machinery or equipment used in the production of “product.” This declaration will list all non-qualifying taxable personal property as described in Section 63-302, Idaho Code. ()

d. Timing. The completed declarations must be filed with the county assessor by March 15th of each year. ()

e. Inspection. The county or Tax Commission representative may inspect the property or the owner’s records to identify components petitioned for exemption. Those components listed on the declaration must be identifiable as qualifying personal property assets of the claimant. ()

630. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).

Section 63-4502, Idaho Code

01. Notification of New Capital Investment – Locally Assessed Property. ()

a. Prior to receiving the benefit of the tax exemption, the taxpayer will notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification will be accomplished by submitting a written declaration or notification with the board of county commissioners containing the following information: ()

i. The name and address of the taxpayer; ()

ii. A description of the new capital investment project; ()

iii. The assessor’s parcel number(s) identifying the location of the project site; ()

iv. The date that the qualifying period began; ()

v. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which will be specified. ()

b. The notification required hereunder may be submitted by the taxpayer to the board of county

commissioners at any time after the qualifying period begins. However, if the notification is submitted after April 15 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the notification required hereunder will constitute application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the name and address of the taxpayer and the location of the project site, but does not need to provide additional information as required in Paragraph 630.01.a. of this rule. ()

02. Notification of New Capital Investment – Centrally Assessed Operating Property. For taxpayers applying for the exemption for operating property subject to assessment by the Tax Commission, the taxpayer will provide notice to the Tax Commission no later than April 30 of the first year the exemption is sought, as part of the operator's statement required pursuant to Section 63-404, Idaho Code, and Rule 404 of these rules, that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. ()

a. To be eligible for the exemption, information to be provided on the operator's statement must include: ()

i. A description of the new capital investment project; ()

ii. The location of the project site, including county and tax code area(s); ()

iii. The date that the qualifying period began; ()

iv. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which will be specified. ()

b. The notification required hereunder may be submitted by the taxpayer to the Tax Commission at any time after the qualifying period begins. However, if the notification is submitted after April 30 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the operator's statement including notification information required hereunder will constitute application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the location of the project site, but does not need to provide additional information as required in Paragraph 630.02.a. of this rule. ()

03. Notification of New Capital Investment – Taxpayers Applying on Behalf of both Locally and Centrally Assessed Property. A taxpayer may apply for this exemption on behalf of both locally and centrally assessed property located in the same county. ()

a. The taxpayer must comply with notice requirements in Subsection 630.01 of this rule for locally assessed property and for centrally assessed property the April 30 filing deadline found in Paragraph 630.02.b. of this rule will apply. ()

b. Once the taxpayer notifies the Tax Commission as provided in Subsection 630.02 of this rule, the Tax Commission will notify the county commissioners and county assessor by the second Monday in May of the taxpayer's new capital investment project property to be locally assessed and of the taxpayer's filing an application for the exemption. By the later of the fourth Monday in July or the conclusion of the county board of equalization, as provided in Section 63-501, Idaho Code, the county clerk must provide to the Tax Commission a statement of the equalized assessed value of the taxpayer's locally assessed property. ()

c. The exemption will be granted by the Tax Commission, which will notify the county commissioners and taxpayer by the first Monday in September of the amount of the exemption and the remaining taxable value of the centrally assessed operating property of the taxpayer. This remaining value is to be calculated so that the sum of the centrally and locally assessed property of the taxpayer in the county in which the exemption is being granted does not exceed four hundred million dollars (\$400,000,000). ()

d. The exemption will apply to the combined total value of the locally and centrally assessed property

of the taxpayer within the county in which the project site is located. For continuation of the exemption for both locally and centrally assessed property, Subsections 630.07 and 630.08 of this rule will apply, and, upon satisfaction of the requirements therein, the Tax Commission will notify the county of the continuing exemption. ()

04. Property of the Taxpayer. Property of a taxpayer includes all real, personal, or operating property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. ()

05. New Construction. Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. ()

06. Failure to Make the Qualifying New Capital Investment. ()

a. If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property will lose the exemption granted by this section at the conclusion of the qualifying period. ()

b. In the event that, at any time during the qualifying period, the taxpayer receiving the exemption for locally assessed property no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the county commissioners who will notify the county assessor. Upon receipt of such notification, the property previously granted the exemption will become taxable for the remainder of the year in which the notification is provided, pursuant to Section 63-602Y, Idaho Code. Failure of the taxpayer to provide such notice does not prevent the county assessor from discovering the taxpayer's intent through alternate procedures and then notifying the county commissioners that the requirements for the exemption are no longer met. In such an instance, the taxpayer must be notified and may appeal loss of the exemption to the county board of equalization as provided in Section 63-501A, Idaho Code. ()

c. In the event that, at any time during the qualifying period, the taxpayer receiving the exemption for operating property no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the Tax Commission. Upon receipt of such notification, the property previously granted the exemption will become taxable. If the notification is received before the Tax Commission has completed the assessment of the operating property for a given year, the exemption will not be granted for that year. If the notification is received after the assessment is completed, the exemption will be rescinded beginning the following tax year. If the taxpayer owns centrally and locally assessed property, the Tax Commission will also notify the county commissioners and assessor of the rescinding of the exemption. ()

07. Continuation of Tax Exemption Following the End of the Qualifying Period – Locally Assessed Property. ()

a. At any time during the qualifying period, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the county commissioners with sufficient evidence to prove that the required qualifying new capital investment has been made. ()

b. Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the county commissioners pursuant to Paragraph 630.07.a. of this rule, the county commissioners will notify the county assessor and taxpayer of the taxpayer's continuing qualification for the exemption for all years thereafter. The county assessor will retain this notice. ()

c. After the year in which the taxpayer has been notified of continuing qualification as provided in Paragraph 630.07.b. of this rule, the taxpayer must continue to notify the county annually to identify the property to be exempted pursuant to Subsection 630.07. Failure to make such notification will not invalidate the exemption; the county assessor must then apply the exemption against the assessed value of the taxpayer's highest value parcel within the county. ()

08. Continuation of Tax Exemption Following the End of the Qualifying Period – Centrally Assessed Operating Property. ()

a. At any time during the qualifying period after the requirements for this exemption have been met, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the Tax Commission with sufficient evidence to prove that the required qualifying new capital investment has been made. ()

b. Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the Tax Commission pursuant to Paragraph 630.08.a. of this rule, the Tax Commission will notify the taxpayer that the exemption will continue to be granted in perpetuity, and will notify the taxpayer annually prior to the due date for the operator's statement that they must identify the property qualifying for the exemption in these statements. Failure to provide either notification will not invalidate the exemption; the Tax Commission must then apply the exemption against the assessed value of the taxpayer's operating property within the county. Centrally assessed taxable property otherwise permitted to be included on the new construction roll will be reported to the county assessor for inclusion on the next available new construction roll. ()

09. Cross Reference. For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. ()

631. TAX EXEMPTION FOR INVESTMENT IN NEW OR EXISTING PLANT AND BUILDING FACILITIES UPON COUNTY COMMISSIONERS' APPROVAL (RULE 631).
Section 63-602NN, Idaho Code

01. The Investment in Plant. In order to qualify for this exemption a taxpayer must invest at least the minimum required investment as established by county ordinance in new or existing plant or building facilities excluding the investment in land. ()

a. Ordinance to establish the minimum required investment. The county commissioners must pass an ordinance to establish any minimum required investment amount of not less than five hundred thousand dollars (\$500,000). Once passed, any minimum so established will remain in place until superseded by another ordinance. ()

b. Frequency of ordinances to establish minimum required investment. Any ordinance establishing a minimum required investment must remain in effect during the tax year in which it is first in effect. After that tax year, the county commissioners may provide a different required investment amount by passing a new ordinance. However, any agreement entered into under minimum investment criteria established by prior ordinance will be effective for the duration of the exemption time period granted. ()

02. The Exemption. The board of county commissioners may agree to exempt all or a portion of the value of non-retail commercial and industrial real property improvements and associated personal property that would otherwise be in excess of the base value for property designated as the defined project for a period of up to five (5) years. Real property improvements owned or leased, and personal property owned, by the taxpayer applying for the exemption may be granted the exemption. Land is not eligible to be included in this exemption. ()

a. Base value. The base value is the taxable value, as found on the property roll, subsequent property roll, or missed property roll, of the property associated with the plant investment for the tax year immediately preceding the first year in which the exemption is to be granted. This includes the taxable value of existing buildings and personal property but not the taxable value of land. ()

b. Site improvements. Site improvements, which may add value to land, but are not otherwise categorized as improvements for property tax purposes, are not eligible for this exemption. ()

c. Mixed use properties. Non-retail portions of any mixed use building or structure otherwise used for commercial or industrial purposes may qualify. ()

d. Application. Except as provided in Paragraph 631.02.f. with respect to occupancy tax, the taxpayer must make application by April 15 of the first year for which the exemption is sought. Such application must be made with the county commissioners who have complete discretion to accept or deny the application. ()

e. Agreement for exemption. The agreement granting the exemption will be considered a contract arrangement between the county and the taxpayer for the exemption time period as granted by the county commissioners, not to exceed five (5) years. The amount of exemption as provided by the agreement may be any amount related to taxable value added due to the investment, to the extent the property's total taxable value before considering the exemption exceeds the base value and the increase in value is not associated with or due to an increase in land value. ()

f. Occupancy tax. As provided in Section 63-602Z, Idaho Code, the exemption may apply to property subject to occupancy tax. Granting of the exemption from occupancy tax will not reduce the period during which the property tax exemption provided in Section 63-602NN, Idaho Code, may be granted. The April 15 application deadline is not applicable to exemption from occupancy tax, which may be granted any time during the year. ()

03. Examples. The exemption applies only to plant or building facilities in which the required investment is to be made during the project period and that are located at the project site. The exemption may be applied to any value increases if these increases are directly attributable to the investment. See the following clarifying examples, all of which are based on the assumptions that the county has established five hundred thousand dollars (\$500,000) as the required minimum amount of investment and the county enters into an agreement with the taxpayers for the period shown in the examples. ()

a. A company chooses your community to tear down an existing facility and build a new manufacturing facility. Prior to the project, the base value is four million dollars (\$4,000,000) which is comprised of the market value of the land three million dollars (\$3,000,000) and the market value of the existing facility at one million dollars (\$1,000,000), thus, the base value is one million dollars (\$1,000,000). After construction, the land and facility have a taxable value of thirteen million dollars (\$13,000,000), three million (\$3,000,000) of which is the land value. Providing all conditions of the agreement have been met and the commissioners agreed to a full exemption, the exempt amount will be nine million dollars (\$9,000,000). ()

b. An existing company chooses to expand and build a new processing line. Prior to the project, the base value of the existing building and land is twelve million dollars (\$12,000,000). After the expansion project is complete, the new processing line increased the value of the building and land to sixteen million dollars (\$16,000,000), with all of the increase in value attributed to the building. Providing all conditions of the agreement have been met and the commissioners previously agreed to a full exemption, the exempt amount will be four million dollars (\$4,000,000). No portion of the original taxable value of twelve million dollars (\$12,000,000) can be granted this exemption. ()

c. A company purchases an existing building and land which are valued at eight million dollars (\$8,000,000). The company will purchase new equipment in the amount of three million dollars (\$3,000,000). After the investment is made, the existing land, building and equipment are now valued at twelve million dollars (\$12,000,000). The additional one million dollars (\$1,000,000) in building value is attributed to the contributory value of the investment. The investment did not add value to the land. Providing all conditions of the agreement have been met and the commissioners agreed to a full exemption, the exempt amount will be four million dollars (\$4,000,000). No portion of the original taxable value of eight million dollars (\$8,000,000) can be granted this exemption. ()

d. A company buys a building with a prior year's value of one million dollars (\$1,000,000). The company makes application to the county commissioners requesting a full exemption for the next five (5) years for any increases in value that are directly related to its plan to invest in the facility. An agreement is reached whereby the taxpayer will be granted a limited exemption for the increase in market value up to two million dollars (\$2,000,000) for three years. In the first year, the company invests two million dollars (\$2,000,000) in the facility and the market value of the building increases to two million five hundred thousand dollars (\$2,500,000) (not all of the investment contributes to market value). Providing all conditions of the agreement have been met, the first year exempt amount will be one million five hundred thousand dollars (\$1,500,000). In year two (2), the company invests an additional eight hundred thousand dollars (\$800,000) and the value of the building increases to three million three hundred thousand dollars (\$3,300,000). The exemption in year two (2) will be two million dollars (\$2,000,000). This is the difference between the original base value of one million dollars (\$1,000,000) and the current value in year two (2), but is limited by the agreed-upon two million dollar (\$2,000,000) maximum. In year three (3), the company makes

additional investments and the building value increases to four million dollars (\$4,000,000). The exemption in year three (3) is limited to two million dollars (\$2,000,000) as provided in the original agreement. Beginning in year four (4), there will be no exemption allowed under the original agreement. ()

04. Cross Reference. See Rule 802 of these rules for instructions relating to the valuation of new construction. ()

632. PROPERTY EXEMPT FROM TAXATION - OIL OR GAS RELATED WELLS (RULE 632).
Section 63-602OO, Idaho Code

01. Definitions of Oil or Gas Well. ()

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. ()

b. The well will include the part where the gas producing stratum has been successfully cased off from any oil. ()

02. Ineligible Land and Equipment. ()

a. Wellheads and gathering lines or any line extending above ground level will not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate will not qualify. ()

b. Land, other than that used for the well as defined in Subsection 632.01 of these rules, will not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land will reflect the increase, unless the land qualifies independently for any other property tax exemption. ()

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. ()

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. ()

b. Associated Site Improvements. The "associated site improvements" include developed access, grading, sanitary facilities, water systems and utilities. ()

c. Nursery Stock. Nursery stock is defined in Section 22-2302, Idaho Code. ()

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. ()

e. Speculative Value Exemption. The "speculative value exemption" is the exemption allowed on land actively devoted to agriculture. ()

02. Homesite Assessment. Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, will be assessed at market value each year. ()

a. Accepted Assessment Procedures. Market value will 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 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. ()

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. ()

c. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. ()

03. Valuing Land, Excluding the Homesite. The assessor will value land, excluding the homesite, on the following basis: ()

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, will be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and will not qualify for the speculative value exemption. ()

b. Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use will be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and will 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 will 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. ()

c. Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less will be presumed non-agricultural, will be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and will 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, will 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 will 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 April 15, each year. ()

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, will qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and will be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. ()

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. ()

646. -- 699. (RESERVED)

700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).
Section 63-701, Idaho Code

01. Blind. A person for whom there exists the medically documented opinion that the person is

functionally blind as defined in Section 67-5402(2), Idaho Code. ()

02. Burden of Proof. See Rule 600 of these rules. ()

03. Claimant's Income. All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. ()

a. An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: ()

i. The annuity must not be part of any pension plan available to an employee; ()

ii. No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); ()

iii. The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and ()

iv. Earnings from investments in the annuity must be tax-deferred prior to withdrawal. ()

b. Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums will not be treated as the principal of an annuity. ()

c. The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. ()

04. Fatherless/Motherless Child. Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. ()

05. Proportional Reduction of Value. Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. ()

a. There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. ()

b. In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. ()

i. Example 1. The claimant is the sole occupant of the property but only owns fifty percent (50%) of the property. In this example, the claimant's property tax reduction benefit applies to the tax on his/her net taxable market value of \$50,000.

Land Market Value	\$50,000
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Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value & Improvement Market Value (Land Market Value & Improvement Market Value x Percentage of Ownership)	\$100,000
Claimant's Homeowner's Exemption (Claimant's Share of Improvement and Land Market Value x 50%, not to exceed \$100,000)	<\$50,000>
Claimant's Eligible Net Taxable Value equals Claimant's Share of Market Value less Homeowner's Exemption (\$100,000 - \$50,000 = \$50,000)	\$50,000

()

ii. Example 2. Tom Johnson and Marie Johnson, husband and wife, and property tax reduction claimant June Smith jointly own a property and occupy one (1) residential improvement located on the property. Calculate both homeowners' exemptions, and apply Ms. Smith's property tax reduction benefit to the tax on the net taxable value of her interest in the property.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 50%)	\$155,000	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum (100,000 X 50%)	\$50,000	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 50%)	\$155,000	Ms. Smith's interest
Homeowner's Exemption Maximum (\$100,000 X 50%)	\$50,000	Ms. Smith's Homeowner's Exemption
Value of prorated interest less homeowner's exemption.	\$105,000	Ms. Smith's property tax reduction benefit is applied to the tax on the net taxable value.

()

06. Physician. Physician means a licensed physician, as defined in Section 54-1803(3), Idaho Code.

()

07. Widow/Widower. A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled.

()

08. Cross Reference. See Chapter 79, Title 67, Idaho Code, for requirements relating to lawful presence in the United States. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Subsection 702.02.c. for information concerning authorization to release applicant information to a state or federal elected official.

()

701. (RESERVED)

702. VETERAN'S BENEFIT – CONTINUED ELIGIBILITY AFTER DEATH OF CLAIMANT (RULE 702).

Sections 63-701, 63-705A, Idaho Code

01. Surviving Spouse. The veteran's benefit applies to the qualifying homestead, as defined in Section 63-701(2), Idaho Code, of the veteran and surviving spouse. The surviving spouse may not transfer the benefit to a different homestead. ()

02. Application By Surviving Spouse. The surviving spouse may file an application on behalf of the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 or before April 15 of the year in which the claim is filed. ()

703. -- 708. (RESERVED)

709. PROPERTY TAX REDUCTION BENEFIT PROGRAM – SPECIAL SITUATIONS (RULE 709).

Section 63-701, Idaho Code

01. Scope. This rule addresses issues relating to the property tax reduction benefit program as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. The following examples apply to qualified property tax reduction claimants. ()

02. General Principles. Benefits under the property tax reduction program are only available to owners of property that have first qualified for the homeowner's exemption under Section 63-602G, Idaho Code. See Rule 610 of these rules. ()

03. Dual Residency Couples. The definition of "dual residency couple" in Rule 610.02 of these rules applies to this rule. ()

a. Example -- Both residences are community property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.04 of these rules. ()

b. Example -- One (1) residence is community property, the other is separate property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.05 of these rules. ()

c. Example -- Both residences are separate property. Property tax reduction is available in regard to both residential improvements. See Rule 610.06 of these rules. ()

d. Household income. In the three (3) examples in Subsection 709.03, the household income upon which qualification is determined is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence. ()

04. Apportionment of Property Tax Reduction Benefits by Dual Residency Couples. If a dual residency couple makes the election provided in Subsection 610.07 of these rules and the applicable county assessor provided the Tax Commission with a copy of the election required under that rule, each spouse will be entitled to one-half (1/2) of the amount of any property tax reduction available to that spouse alone. The household income of the spouse will be one-half (1/2) of the community income plus any separate income of the spouse residing in the residence. The total property tax reduction benefit will not exceed the amount of benefit available to the individual spouse with the least household income if no election were made. ()

05. Multiple Ownerships Including Community Interests as Partial Owners. Example: A deed

conveys title to real property to a husband and wife and to an adult child of theirs. The husband and wife hold a community property interest in the improvement and the child is a tenant-in-common provided ownership interests are not specified in the deed. The parents collectively hold a one-half (1/2) partial interest and the child holds a one-half (1/2) partial interest in the property. Ownership interests specific in the deed supersede this guidance. For clarification of the calculation of the net taxable value, see Rule 700.05.b. of these rules. Qualification for the property tax reduction is as follows: ()

a. If the residential improvement is the primary dwelling of the husband and wife but not of the child, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses. ()

b. If the residential improvement is the primary dwelling of the qualifying child, but neither the husband or wife, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the child's income. ()

c. If the residential improvement is the primary dwelling of the husband, wife and a qualifying child, the claimant qualifies for the full benefits applied on full value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses and the income of the child. ()

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the claimant qualifies for full benefits applied on one-half (1/2) of the value of the property less the homeowner's exemption unless the residential improvement of the other spouse has qualified for the homeowner's exemption. Household income is the total income of both spouses. ()

e. If the residential improvement is the primary dwelling of one (1) spouse and a qualifying child, the claimant qualifies for the full benefits applied on the full value of the property less the homeowner's exemption unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption. Household income is the total income of both spouses plus the income of the child. ()

710. -- 716. (RESERVED)

717. PROCEDURE AFTER CLAIM APPROVAL (RULE 717).

Sections 63-115, 63-317, 63-707, Idaho Code

01. Formatting Requirements. The property tax reduction roll and supplemental occupancy tax reduction roll will be formatted as required by Section 63-707, Idaho Code. ()

02. Preliminary Property Tax Reduction Roll. Except as provided in Subsections 717.06 and 717.07 of this rule, the roll, certified by the assessor to the county auditor and the State Tax Commission by June 1st of each year, will be termed the preliminary property tax reduction roll. The preliminary property tax reduction and occupancy tax reduction roll will list property tax reduction and occupancy tax reduction claimants in alphabetical order unless the Tax Commission grants permission for claimants to be listed in an alternate order. Each original claim form will be submitted to the Tax Commission in the same order as shown on the preliminary property tax reduction roll. ()

03. Final Property Tax Reduction Roll. Except as provided in Subsections 717.06 and 717.08 of this rule, the completed property tax reduction roll, certified by each county clerk to the Tax Commission by the fourth (4th) Monday in October, will be termed the final property tax reduction roll. The final property tax reduction roll will list property tax reduction claimants and occupancy tax reduction claimants who applied by September 1, in the same order as shown on the preliminary property tax reduction roll. Erroneous claims which are partially or fully disapproved by the Tax Commission will be shown on the final property tax reduction roll after the county clerk has made all adjustments or corrections listed on the notice sent to the county auditor pursuant to Section 63-707(6), Idaho Code, termed county change letter. ()

04. Certification of Electronic Property Tax Reduction Roll by County Assessor. The county assessor will certify the property tax reduction roll to the county auditor and send a copy to the Tax Commission by

June 1st of each year. In addition, each county assessor will send a copy of all claims listed on the roll to the Tax Commission. Claims are to be sent in a password protected electronic data file formatted as directed or approved by the Tax Commission. This password protected electronic file will contain the following information: ()

- a. Claimant's Social Security Number; ()
- b. Claimant's Date of Birth; ()
- c. Claimant's Last Name; ()
- d. Claimant's First Name; ()
- e. Claimant's Spouse's Social Security Number; ()
- f. Claimant's Spouse's Date of Birth; ()
- g. Claimant's Spouse's Last Name; ()
- h. Claimant's Spouse's First Name; ()
- i. Claimant's Telephone Number; ()
- j. Claimant's Address; ()
- k. Claimant's City; ()
- l. List the state's postal abbreviation; ()
- m. Claimant's Zip Code; ()
- n. Claimant's Parcel Number(s). List the parcel number for the property on which the claimant is receiving the homeowner's exemption. When more than one (1) parcel owned by the claimant is eligible, list all eligible parcel numbers; ()
- o. Current Year; ()
- p. Claimant's County Number; ()
- q. Income Data; ()
- r. Identify New Applicants. Identify claimants did not receive this benefit in the previous year; ()
- s. Maximum Benefit; ()
- t. Qualifying Eligibility Status. Identify all of the following status criteria that the claimant meets; ()
 - i. Sixty-five (65) years old or older; ()
 - ii. Blind; ()
 - iii. Disability granted by the Social Security Administration, Railroad Retirement Board, or federal civil service; ()
 - iv. Orphan, under eighteen (18) years of age; ()

- v. Prisoner of war or hostage, certified by Veteran's Affairs; ()
- vi. Non-service connected disability or service connected disability at ten percent (10%) to thirty percent (30%), certified by Veteran's Affairs; ()
- vii. Service connected disability at forty percent (40%) or more, certified by Veteran's Affairs; ()
- viii. Widow or widower, include date of spouse's death; ()
- ix. Whether the claimant is lawfully present in the United States; ()
- x. 100% Service connected disabled veteran, certified by Veterans Affairs; and ()
- u. Occupancy tax reduction claimants ()

05. Certification of Completed Property Tax Reduction Roll by County Auditor. Except as provided in Section 63-317, Idaho Code, and Subsections 717.06, 717.07, and 717.08 of this rule, no later than the fourth (4th) Monday in October, each county auditor will certify the final property tax reduction roll to the Tax Commission. The roll will contain the preliminary roll information plus the additional occupancy tax reduction claims submitted between June 1 and September 1 as provided in Subsection 717.06 of this rule, and the following information formatted as directed or approved by the Tax Commission. ()

a. Current Year's Levy. List the current year's levy for the tax code area where each claimant's property is located. ()

b. Current Year's Taxable Value. List the current year's taxable value for each claimant's qualifying property. ()

c. Claimed Property Tax Reduction or Occupancy Tax Reduction Amount. For each claimant, list the amount of property tax or occupancy tax reduction claimed based on the current year's levy and the current year's eligible taxable value. ()

06. Occupancy Tax Reduction Claims. Claims submitted to the county assessor between January 1 and May 15 will be listed on the preliminary property tax reduction roll and submitted to the Tax Commission by June 1. Claims submitted to the county assessor between June 1 and September 1 will be submitted to the Tax Commission by the third Monday in September. These claims will be added to the final property tax reduction roll by the county change letter pursuant to Subsection 717.03 of this rule. Claims submitted to the county assessor after September 1 until the fourth Monday in January of the following year will be listed and submitted as follows in Subsections 717.07 and 717.08 of this rule. ()

07. Preliminary Supplemental Occupancy Tax Reduction Roll. This roll will be certified by the assessor to the county auditor and the Tax Commission by the first Monday in March of the following tax year. Claims submitted to the county assessor after September 1 will be listed on the preliminary supplemental occupancy tax reduction roll in the manner outlined in Subsection 717.02 of this rule. Occupancy tax reduction claims will be subject to the procedures outlined in Section 63-707, Idaho Code. ()

08. Final Supplemental Occupancy Tax Reduction Roll. By the first Monday in April in the following year, the Tax Commission will notify the county auditor of all adjustments or corrections. By the fourth Monday in April of that year, the county auditor will certify the final supplemental occupancy tax reduction roll which will list occupancy claimants in the same order as shown on the preliminary supplemental occupancy tax reduction roll after the county auditor makes corrections. Claims included on the final supplemental occupancy tax reduction roll are to be formatted as outlined in Subsection 717.05 of this rule. ()

718. -- 799. (RESERVED)

800. BUDGET CERTIFICATION RELATING TO OPERATING PROPERTY ANNEXATION VALUE (RULE 800).

Section 63-802, Idaho Code

01. “Appropriate County Auditor” Defined. The “appropriate county auditor” is the county auditor of each county within which any taxing district with an annexation is located. ()

02. Annexation Values for Operating Properties. Pursuant to Section 63-802, Idaho Code, the Tax Commission will certify the current year’s taxable values of operating properties within annexations made during the previous calendar year. This certification will be a list summarizing the values of said operating properties for each applicable taxing district or unit. The Tax Commission will send this list to the appropriate county auditor on or before the third Monday in July. The Tax Commission will calculate these values based on the best available information. ()

03. Corrected Annexation Values for Operating Properties. If any annexation values reported pursuant to Subsection 800.02 require correction, the Tax Commission will report such corrections on or before the first Monday of September. The Tax Commission will send these values to the appropriate county auditor. ()

04. County Auditor to Notify Taxing Districts or Units. As soon as possible, but not later than fourteen (14) days after receipt of the list pursuant to Subsection 800.02 or the corrected values pursuant to Subsection 800.03, the appropriate county auditor will send these values to the affected taxing districts or units. ()

801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (RULE 801).

Sections 63-802, 33-804, 33-317A, 33-909, Idaho Code

01. Limits on Plant Facilities Funds. For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 of the year prior to the first year in which a plant facilities fund levy is made. This limitation will not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code, or to any cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ()

02. No Additional Plant Facilities Fund Permitted. Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation will not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code or the cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ()

03. Plant Facilities Fund Extensions or Increases. Except for increases related to cooperative service agency school plant facility levies, any school or library district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-804, Idaho Code. For the purpose of such increase, the “total levy for school or library plant facilities and bonded indebtedness” will be computed as follows. ()

a. For the first year in which the increased or extended plant facilities fund levy is to be made, sum of the amount to be levied for the plant facilities fund and for any bond fund in existence prior to the new plant facilities fund. ()

b. Divide the sum computed in Subsection 801.03.a. by the district’s actual market value for assessment purposes as of December 31 of the year immediately preceding the year in which the increased or extended plant facilities fund is to be levied. ()

c. The value used for this calculation will include any portion of increment value in any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. For example, an

existing plant facilities fund levy raises one hundred thousand dollars (\$100,000) per year. The district wishes to increase this by fifty thousand dollars (\$50,000) per year. The “total levy” would be computed excluding the increment value for the one hundred thousand dollars (\$100,000) portion, but including the increment value for the fifty thousand dollars (\$50,000) new portion of the amount to be levied. ()

d. Any plant facilities fund levy that is extended, pursuant to Section 33-804, Idaho Code, will be considered passed after December 31, 2007 for the purposes of section 50-2908, Idaho Code, and increment value will be included in the calculation of the “total levy” and the actual levy. ()

04. Cooperative Service Agency School (COSA) Plant Facility Fund Increases. Any school district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-317A. For the purpose of determining whether the increase has been approved by the electors, the “total levy for school plant facilities” will be computed as follows. ()

a. The first year’s dollar amount of the proposed COSA plant facility levy will be divided by the school district’s actual market value for assessment purposes, including any increment value in any Revenue Allocation Area in the district, as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. ()

b. The dollar amount most recently certified by the school district for an existing plant facilities fund levy will be divided by the district’s actual market value for assessment purposes as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. The value used for this calculation will include any portion of increment value in any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. ()

c. The quotients computed in Paragraphs 801.04.a. and 801.04.b. will be summed. ()

05. Maximum Amount of Increased Plant Facilities Fund. Except as provided in Subsection 801.04, when any district increases its plant facilities fund amount to be levied, the maximum amount will not in any year exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the year immediately preceding the first year the increased fund is to be levied. This limitation will not apply to Cooperative Service Agency school plant facility levies, which, in any year, will not exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the immediate prior year. ()

06. Special Reporting Requirements for State-Authorized Plant Facilities Levy. When the state Department of Education certifies a state-authorized plant facilities levy to any county under Section 33-909, Idaho Code, the county clerk will forward a copy of such certification to the Tax Commission as an attachment to the L-2 Form described in Rule 803 of these rules and submitted for the affected school district. ()

07. Special Reporting for COSA and Increased Plant Facilities Levies. Any COSA plant facilities levy will be reported on a separate line on the L-2 Form defined in Rule 803 of these rules. In addition, the increased amount of a plant facilities levy originally approved on or before December 31, 2007 will be reported on a separate line on the L-2 Form. ()

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, 63-602W, 63-602NN, Idaho Code

01. Definitions. ()

a. “Change of Land Use Classification.” “Change of land use classification” means 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. ()

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. ()

c. “Non-residential Structure.” “Non-residential structure” means 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. ()

02. New Construction Roll Listing. “Listing” means a summary report of the net taxable value of property listed on the new construction roll. This listing will include the taxable value of qualifying new construction throughout each taxing district or unit, but will 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 will be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. ()

a. Qualifying new construction which is valued by the Tax Commission will be reported to the county assessor for each applicable taxing district by October 1 and will 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 will 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 will 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. ()

c. Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing will separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code, and Paragraph 802.02.e. of this rule. In addition to other requirements, the amount of value deducted will never exceed the amount originally added to a new construction roll. ()

d. Determining the amount of taxable market value to be deducted – appeals. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, will 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 will be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. ()

e. Determining the amount of taxable market value to be deducted – provisional exemptions. Provided the addition occurred within the immediate preceding five (5) years but not earlier than 2016, the amount of taxable market value added to any new construction roll for property subsequently granted a provisional exemption under Section 63-1305C, Idaho Code, will be deducted from the taxable market value otherwise included on the immediate next new construction roll prepared following the granting of the provisional exemption. ()

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. ()

a. Value increases. Certain related land value increases are to be included on the new construction roll. ()

i. Except as provided in Subparagraph 802.03.a.iii., increases in land value will be reported on the new construction roll in the year in which the new category appears on the current property roll. ()

ii. Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported will 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. ()

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, will 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 will be reported on the new construction roll in the immediate following year. ()

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 will never exceed the amount of value originally added to the new construction roll for the same property. ()

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 will 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. ()

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 will 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). ()

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 will 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). ()

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. ()

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. ()

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 will be required for up to three (3) years, provided the property continues to receive the exemption. ()

04. Manufactured Housing. “Installation” of new or used manufactured housing means capturing the net taxable market value of the improvement(s) that did not previously exist within the county. ()

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 will 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 non-residential parcel’s taxable value, due to new construction, will 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, will not be included on the new construction roll. ()

06. Change in Status. ()

a. A previously exempt improvement which becomes taxable will 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 will be the value of the portion of the property subject to the exemption at the time the exemption was first granted. For otherwise qualifying property that loses the exemption provided in Section 63-602NN, Idaho Code, but that has had its value added to the base assessment roll in a revenue allocation area as provided in Rule 804 of these rules, the value so added may be added to the new construction roll. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: ()

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 will be no subtraction, nor will 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. ()

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. ()

b. Except as provided in Paragraph 802.06.d. of this rule, upon receipt by the Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any not previously included positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” or the entire current increment value, if there was no such value as of December 31, 2006, will be added to the appropriate year’s new construction roll. Upon the effective date of any de-annexation of a portion of an RAA, the immediate prior year’s increment value associated with the parcels in the de-annexed area is to be included in the appropriate year’s new construction roll as described in Paragraph 802.06.d. of this rule, provided such value has not been previously included on any new construction roll. When this information is received after the fourth Monday in July, this positive net increment value will be added to the following year’s new construction roll. ()

c. Upon receipt by the Tax Commission of an attestation indicating that an urban renewal plan has been modified in such a way as to result in resetting the base value in an RAA, as provided in Section 50-2903A, Idaho Code, increases in base value due to the addition of previously determined increment value may be added to the new construction roll as described in Section 63-301A(3)(j), Idaho Code, provided such value has not previously been included on any new construction roll. In such a case, at termination of the RAA, only new additional increment

value following the reset of the base value will be included on the new construction roll. ()

d. 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." ()

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. ()

ii. Step 2. Subtract the increment value determined in Step 1 from the immediate prior year's increment value for the parcels in the de-annexed area. ()

iii. Step 3. Add any positive difference calculated in Step 2 to the current year's new construction roll value. ()

iv. Step 4. Adjust the "incremental value as of December 31, 2006" for the RAA by subtracting the increment value determined in Step 1. ()

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, 2016.

Steps (as designated in Paragraph 802.06.d.)	Area	Value
	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, 2015, 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 2017 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

()

vi. If the de-annexation in the example in sub-paragraph v. had taken effect prior to the fourth Monday of July 2016, the 2015 increment value for the affected parcels would have been added to the 2016 new construction roll after subtracting the 2006 increment value. ()

vii. The value of operating property increment value to be included on the new construction roll when a de-annexation occurs is computed as shown in the following example:

Sum the previous year's increment values of the locally assessed parcels in the area to be de-annexed	\$15,000,000
Divide this sum by the previous year's increment value of all locally assessed parcels in the RAA	$\$15,000,000 \div \$130,000,000 = .1154$
Multiply by 100 to determine the percentage applicable to the locally assessed parcels located within the area to be de-annexed	$.1154 \times 100 = 11.54\%$

Determine the difference between the operating property increment value in the whole RAA for the year preceding the de-annexation from the 2006 increment value of all operating in the whole RAA	$\$2,000,000 - \$500,000 = \$1,500,000$
Multiply the locally assessed percentage by the increase in the operating property increment value	$11.54\% \times \$1,500,000 = \$173,100$
The value of operating property increment to be included on the new construction roll when a de-annexation occurs	\$173,100

()

e. For taxing districts formed after December 31, 2006, or annexing or being annexed into a revenue allocation area after that date, the amount of increment value to be added to the new construction roll will equal any positive difference between the increment value at the time of formation of the taxing district or annexation by or into the revenue allocation area and the increment value at the time of dissolution of the revenue allocation area or the increment value within the area deannexed from the revenue allocation area.

()

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 will 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.

()

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 of locally assessed property within annexed areas for each appropriate taxing district or unit to that taxing district or unit. Annexation value contributed by centrally assessed operating property will be provided to each county auditor by the first Monday in September.

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803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).
Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), 63-3502B, 50-2903A, 50-2913, 63-3638(11), and (13), 63-1305C, Idaho Code

01. Definitions. ()

a. “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the Tax Commission the budget request from each board of county commissioners for each taxing district. This form will 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.

()

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

()

c. “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget includes any amount approved as a result of an election held pursuant to Sections 63-802(1)(g) or 63-802(1)(h), 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)(g) or 63-802(1)(h), Idaho Code, then the amount not used will be added to the foregone increase amount determined for the taxing district, provided the district reserves this amount as provided in Paragraph 803.03.b, of these rules.

()

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 Tax Commission, and subject to the

limitations of Section 63-802, Idaho Code. ()

e. “Recovered/Recaptured Property Tax and Refund List.” Recovered/recaptured property tax and refund list means the report sent by the county auditor to the appropriate taxing district(s) by the first Monday in August and to the Tax Commission with the L-2 Forms, listing the amount of revenue distributed, or refunds charged, to each appropriate taxing district during the twelve (12) month period ending June 30 each year under the following sections: ()

- i. Section 63-602G(5), Idaho Code; ()
- ii. Section 63-3029B(4), Idaho Code; ()
- iii. Section 63-602KK(7), Idaho Code, for personal property exempted after 2013 for which no replacement money was paid; ()
- iv. Section 63-3502B(2), Idaho Code, for distributions of gross earnings tax on solar farms; ()
- v. Section 50-2903A(3), Idaho Code, for distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, when required; ()
- vi. Section 50-2913(3)(c), Idaho Code, for distributions of urban renewal allocations in excess of the amount received during the immediate prior tax year, when required; ()
- vii. Section 63-1305C(3), Idaho Code, for revoked provisional property tax exemptions; and ()
- viii. Section 63-1305C(6), Idaho Code, for refunds related to provisional property tax exemptions. ()

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 governmental entities without authority to levy property taxes but on whose behalf such taxes are levied by an authorized entity such as the county or city. ()

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). ()

02. Budget Certification. The required budget certification will 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 Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget will 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 Tax Commission will not exceed the levy computed using the amount shown in the notice of budget hearing. ()

03. Budget Certification Requested Documents. Using the completed L-2 Form, each board of county commissioners will submit to the 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 will only submit documentation specifically requested by the Tax Commission. ()

a. Foregone Increase Documentation. For any taxing district submitting a budget including previously forgone increases, required documentation includes a copy of the resolution certifying the amount of the forgone increase being included and the specific purpose for which this increase is being budgeted. Each such taxing district must submit the resolution to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the Tax Commission. ()

b. Forgone increase reservation. Any resolution to reserve the right to accrue an annual increase in the forgone amount must state the amount of such forgone increase being reserved and must be submitted to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the Tax Commission. ()

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

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

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. ()

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

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. ()

e. “Property Tax Replacement.” Report the following amounts received for the twelve (12) month period ending June 30 of the current tax year: ()

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; ()

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 and refund list”; ()

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 and refund list”; ()

iv. The amount of money received under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code; ()

v. The amount of money received 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 and refund list”; ()

vi. The amount of money received as a result of distributions of the gross earning tax on solar farms, as provided in Section 63-3502B(2), Idaho Code., and listed on the “Recovered/recaptured property tax and refund list”; ()

vii. The amount of money received as a result of distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, as provided in Section 50-2903A(3), Idaho Code, and listed on the “Recovered/recaptured property tax and refund list”; ()

viii. The amount of money received as a result of distributions of urban renewal allocations in excess of the amount received by the urban renewal agency in the immediate prior year, as provided in Section 50-2913(3)(c), Idaho Code and listed on the “Recovered/recaptured property tax and refund list”; and ()

ix. The amount of money received as a result of distributions of recovered property tax for revoked provisional property tax exemptions pursuant to Section 63-1305C(3), Idaho Code. ()

f. “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. ()

g. Other Information. Provide the following additional information. ()

i. The name of the taxing district or unit; ()

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; ()

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

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

v. For any taxing district including previously forgone increases in their budget or reserving any forgone increase, an attestation to having held the required public hearing on the resolution to include or reserve the forgone amount. ()

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

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

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

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, cooperative service agency funds, and plant facility funds), notice of election and election results, and the expiration date of any voter approved levies. ()

iv. Voter approved fund tracker. ()

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. ()

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. ()

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. ()

viii. For any taxing district including previously forgone increases in their budget or reserving any forgone increase, a copy of the resolution describing the amount of the forgone increase being reserved, or the amount included and specific purpose for which it is being included. ()

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 will not be permitted further increases under this provision unless the following conditions are met: ()

a. The fire district and public utility have entered into a new agreement of consent to provide fire

protection to the public utility; and ()

b. Said new agreement succeeds the original agreement; and ()

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. ()

06. Special Provisions for Property Tax Replacement and Refunds Pursuant to Section 63-1305C(6), Idaho Code. 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 or, in the case of refunds, not included in, the "balance to be levied". The reduced balance will be used to compute levies. The maximum amount permitted pursuant to Section 63-802(1), Idaho Code, will be based on the sum of these property tax replacement monies including recoveries received pursuant to Section 63-1305C(3), Idaho Code, but excluding monies received pursuant to Section 63-3502B(2), Idaho Code, and the amount actually levied. Each taxing district's proportionate share of refunds pursuant to Section 63-1305C(6), Idaho Code, as reported in Paragraph 803.01.e. of this rule, must be subtracted from the maximum amount permitted pursuant to Section 63-802(1), Idaho Code. ()

a. The Tax Commission will, 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 Tax Commission will 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. ()

b. By no later than the first Monday of August of each year, each county clerk will notify each appropriate taxing district or unit of the total amount of property tax replacement monies, and 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 will be reported. ()

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 these subtractions must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. ()

d. For taxing districts receiving distributions of the gross earning tax on solar farms described in Section 63-3502B(2), Idaho Code, the amount of any such distribution received during the 12 (twelve) months ending June 30 of the current tax year will be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. In addition to the amounts reported as described in Paragraph 803.06.b. of this rule, the county clerk will, by the first Monday in August, notify each taxing unit of the total amount of the gross earnings tax on solar farms billed for the current tax year. ()

e. Levy limits will be tested against the amount actually levied. ()

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 will 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. ()

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 will be distributed to the Tax Commission. Once received, the amount of future payments to the affected taxing districts will 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 will be added to that library district's property tax funded budget in effect at the time of the election for consolidation. This total will 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. ()

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 will be subtracted from that city's total property tax funded budget in effect at the time of the election for the consolidation. This difference will 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. ()

09. 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. ()

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, the agricultural equipment replacement revenue, and the personal property replacement revenue, 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. ()

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 will 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, will be the amount of property tax revenue approved for the interim abatement district. ()

12. Special Provisions for Consolidating Cemetery Districts. When two (2) or more cemetery districts consolidate, the first year in which the consolidated cemetery district levies property tax, the maximum budget subject to the limitations of Section 63-802, Idaho Code, will be computed as follows: ()

a. Determine the highest levy rate of any of the former cemetery districts now consolidating, based on the sum of the immediate prior year's levies subject to the limitations of Section 63-802, Idaho Code. ()

b. Multiply this levy rate by the current taxable value of property within the area of the former cemetery districts other than the district with the highest rate. ()

c. Multiply this levy rate by the current taxable value of new construction, as reported on the new construction roll, within the area of the former cemetery district with the highest levy rate. ()

d. Add: ()

i. The amounts computed in Paragraphs 803.12.b. and 803.12.c., of this rule; ()

ii. Three percent (3%) of the highest amount of property taxes certified by the former cemetery district determined in Paragraph 803.12.a. of this rule, to have had the highest levy rate, for its annual budget, as defined in

Section 63-802(1)(a), Idaho Code; and ()

iii. Any forgone amounts of the former cemetery districts now consolidating. ()

13. Special Provisions for Highway Districts in Urban Renewal Revenue Allocation Areas. For highway districts located wholly or partially within urban renewal revenue allocation areas (RAAs) formed July 1, 2020, or later or RAAs which annex property within a highway district, any agreement for an allocation of revenue to the urban renewal agency, as provided in Section 50-2908, Idaho Code, is to be submitted to the tax commission and the county clerk by September 1 of tax year to be in effect for that year's revenue allocation. ()

14. 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. ()

804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).
Sections 50-2908, 50-2033, 50-1903, 50-2903A, 50-2905A, 50-2913, 63-803, 63-811, Idaho Code

01. Definitions. ()

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. ()

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. A new urban renewal plan is required when an urban renewal agency establishes a new RAA. Revenue allocation areas (RAAs) are not taxing districts. ()

c. "Current base value." Current base value does not include value found on the occupancy roll. Current base value includes the previous year's non-prorated value of current taxable property subject to assessment under Sections 63-602Y and 63-313, Idaho Code during the year the initial base value was established. ()

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. The initial base value includes any prorated value added for property subject to Sections 63-602Y and 63-313, Idaho Code. ()

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. Newly constructed improvements with value listed on the occupancy roll within a newly formed RAA or within an area newly annexed to an existing RAA will be added as increment value in the year following the year of formation or annexation. ()

f. "Revenue allocation financing provision." A revenue allocation area (RAA) shall be considered to be a revenue allocation financing provision. ()

02. Establishing and Adjusting Base and Increment Values. ()

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. ()

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). ()

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. ()

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). ()

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). ()

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. ()

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. ()

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

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 Subparagraph 804.02.c.i. and then the value of the combination will be calculated as set forth in Subparagraph 804.02.c.ii. ()

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

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 as it existed at the time the RAA was established. ()

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 Subparagraph 804.02.d.iii. of this rule. ()

iii. Partially exempt parcels other than those losing the speculative value exemption. Except as provided in Subparagraph 804.02.d.vi. of this rule, 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. ()

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). ()

v. Change of exempt status. Except as provided in Subparagraph 804.02.d.vi. of this rule, 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). ()

vi. Special case for exemption provided in Section 63-602NN, Idaho Code. Upon loss of the exemption, any newly taxable value in excess of the taxable value of the property in the year immediately preceding the first year of the exemption is to be added to the increment value provided the property was within an RAA when the exemption was granted and remains within the RAA at the time the exemption expires. If the parcel was annexed to an RAA during the period of the exemption, the value that would have been added to the base value at the time of annexation had the property not received the exemption would be added to the base at the time the exemption expires,

while any remaining taxable value would be added to the increment. If the exemption has been granted in part, the adjustments provided in this subparagraph shall only apply to the portion of the property granted the exemption. ()

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. ()

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). ()

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). ()

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

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). ()

g. Adjustments to increment values. In addition to the adjustment illustrated in Subparagraph 804.02.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). ()

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. ()

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: ()

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). ()

b. For taxing district or taxing unit funds meeting the criteria listed in Subsections 804.05 and 804.07 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). ()

04. Modification of an Urban Renewal Plan. Except when inapplicable as described in Paragraphs 804.04.a, b, or c, of this rule, when an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, for the tax year immediately following the year in which the modification occurs, the base value of property in the RAA shall be reset by being adjusted to reflect the current taxable value of the property. All modifications to boundaries of RAAs must comply with the provisions of Rule 225 of these rules. ()

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. ()

b. Modification by annexation. ()

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. ()

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 annexation (B) increment	\$10 Million

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> School District Area \$500 M base </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 2008 RAA Annexation (B) \$10 M Increment </div> <div style="border: 1px solid black; padding: 5px;"> Pre 2008 RAA (A) Boundaries \$40 M Increment </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

()

iii. An annexation permitted pursuant to section 50-2033, Idaho Code, to an RAA in existence prior to July 1, 2016 shall not change the status of the urban renewal agency or the RAA and its related plan regarding inapplicability of the base reset or attestation provisions found in section 50-2903A, Idaho Code. ()

c. Other modifications – attestation requirements. Modification resulting in adjustment of base value to reflect the current taxable value of the property within the RAA shall not be deemed to have occurred when the urban renewal agency attests to having made no modifications to a plan or is not required to attest to plan modifications. Certain urban renewal agencies are required to attest annually to having made or not made plan modifications. These include: ()

i. Urban renewal agencies that establish new RAAs on or after July 1, 2016, provided however that such agencies are only required to attest to having made or not made modifications with regard to any new RAA. ()

ii. Urban renewal agencies that enact new plans including an RAA on or after July 1, 2016. ()

d. Modifications when there is outstanding indebtedness. When any urban renewal agency attests to having had a plan modification that is not an exception identified in Paragraphs 804.04.a. or b. or c. of this rule or fails to provide the required attestation, the base value will be determined without regard to the modification, provided that the agency certifies to the State Tax Commission by June 30 of the tax year that there is outstanding indebtedness as defined in Section 50-2903A(2), Idaho Code. In this case, the allocation of revenue to the urban renewal agency shall be limited to the amount certified as necessary to pay the indebtedness. Any additional revenue shall be distributed to each taxing district or unit in the same manner as property taxes. Such revenue shall be treated as property tax revenue for the purpose of the limitations in Section 63-802, Idaho Code. The county clerk will notify the Tax Commission of the amount so distributed for each year beginning July 1 of the prior year and ending June 30 of the current tax year. ()

e. Failure to submit attestation regarding plan modification. For any urban renewal agency subject to the requirements of Section 50-2903A, Idaho Code, attestation of plan modification or attestation that there has been no plan modification is required to be made to the State Tax Commission by the first Monday of June each year. Except as provided in Paragraph 804.04.d. of this rule, if such agency fails to provide the required attestation, the State Tax Commission will proceed to reset the base value or limit allocation of property tax to the urban renewal agency as otherwise required in Section 50-2903A, Idaho Code. Provided there is no new plan, an urban renewal agency with a plan including one or more revenue allocation financing provisions (RAAs) in existence prior to July 1, 2016 shall only be required to provide this attestation or be subject to base resetting or other limitations for failure to submit this attestation with respect to new RAAs formed on or after July 1, 2016. If such an agency develops a new plan, on or after July 1, 2016, or provides for a new RAA under an existing plan, the agency shall be subject to the attestation requirements and other provisions of Section 50-2903A, Idaho Code, with respect to any RAAs formed

July 1, 2016 or later. ()

f. Notice of actions related to base reset or revenue allocation limitations. ()

i. The Tax Commission will notify any urban renewal agency within thirty (30) days of the time the Tax Commission receives an attestation that an urban renewal plan has been modified, or by July 30 in any year in which an attestation is required but none is received, of the Tax Commission's intent to initiate the process to reset the base value in the following tax year. Said notice will be provided to affected county commissioners and city officials. ()

ii. In the case of base reset due to failure to attest to a modification or to having made no modification in an urban renewal plan, despite being required to provide this attestation, the agency and county and city officials will be so notified and will be given an opportunity to provide the necessary attestation. This further notice will provide that, if the Tax Commission has not received the attestation by December 31 of the tax year, the base will be reset in the immediate following year. ()

iii. In the case of a revenue allocation limitation pursuant to Section 50-2913, Idaho Code, notice will be provided to the agency, county, and city officials including the county assessor and county clerk, within thirty (30) days of the due date of the plan or plan update. ()

iv. In the case of a revenue allocation limitation due to a plan modification but outstanding indebtedness, notice will be provided to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of receipt by the Tax Commission of the certification of the amount needed to repay the indebtedness. ()

v. Once decisions about base reset or revenue allocation limitations are final, additional notice will be sent to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of any such final decision. Said notice will include an identification of the year in which the reset or revenue allocation limitation will take effect and the amount of any revenue allocation limitation. ()

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. ()

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; ()

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.; ()

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.; ()

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or ()

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; ()

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. ()

g. Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. ()

- ()
- h. Levies authorized by Section 33-805, Idaho Code, known as school emergency fund levy.

()

06. Setting Levies When There is a De-annexation From an RAA. In any de-annexation from an RAA, levies will be set using the base value and, as indicated in Subsection 804.05 of this rule, the appropriate amount of increment value associated with the parcels and operating property remaining in the RAA after the de-annexation, provided that the de-annexation is in effect no later than September 1 of the current tax year and provided further that the de-annexation is approved by the Tax Commission in accordance with Section 225 of these rules.

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07. Setting Levies When There is a Refinancing of Bonded Indebtedness. Refinancing of bonded indebtedness in existence as of December 31, 2007 does not create new bonded indebtedness for any taxing district with respect to the levy setting criteria in Subsection 804.05 of this rule.

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08. Cross Reference. The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. See also Rule 802 of these rules for calculation of new construction given de-annexation from an RAA and see Rule 805 of these rules for penalties for failure to submit plans.

805. PENALTY FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS (RULE 805).
Sections 63-802A, 50-2913, 67-450E, Idaho Code

01. Property Tax Limitation Penalties for Non-compliance. Penalties applies to any taxing district that fails, by April 30 of each year, to provide each appropriate county clerk with written notification of the budget hearing information required pursuant to Section 63-802A, Idaho Code, or, beginning in 2015, that is found by September 1 to be out of compliance with the requirements of section 67-450E, Idaho Code. There will be no increase in the portion of the budget subject to the limitations of Section 63-802, Idaho Code. This restriction will apply to otherwise available budget increases from the three percent (3%) growth factor, new construction or change of land use classification, and annexation. There will also be no increase resulting from adding previously accrued foregone increase amounts to the budget and the total accrued foregone amount will not change for a non-complying district.

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02. Exceptions. Voter approved budget increases permitted pursuant to Section 63-802(4), Idaho Code, will be allowed.

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03. County Clerks to Submit Lists. By the fourth Monday of May, each county clerk will submit to the Tax Commission a list of taxing districts out of compliance with the requirements of Section 63-802A, Idaho Code, along with other documents required pursuant to Rule 803 of these rules and Section 63-808, Idaho Code.

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04. Notification by Tax Commission. By September 3 each year, the Tax Commission will provide each county clerk a list of all taxing districts in the county that are subject to the penalties in Section 63-802A, Idaho Code. The Tax Commission will also notify each county clerk when a previously non-complying taxing district is found to be in compliance with the requirements of Section 67-450E, Idaho Code. Such notification will be done by September 3 of the year in which the compliance status is re-established.

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05. Additional Penalties. For taxing districts that fail to comply with the requirements of Section 67-450E, Idaho Code, additional penalties affect the distribution of sales tax money for which the district may be eligible. See Rule 995 of these rules.

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06. Applicability to Urban Renewal Agencies. Urban renewal agencies failing to annually submit to the Tax Commission plans as required pursuant to Section 50-2913, Idaho Code, will be subject to penalties found in that Section.

a. Urban renewal agencies having once submitted such plans, and having made no modification or amendment to such plans, may, by December 1 each year, attest to the currency of the previously submitted plan in

lieu of re-submitting that plan. ()

b. Providing the Tax Commission with, and updating links to, plans on urban renewal agency websites will constitute compliance with submittal requirements. ()

806. ELECTION TO CREATE A NEW TAXING DISTRICT -- CLERK'S MAILED NOTICE (RULE 806).

Section 63-802C, Idaho Code. The sponsors of a new taxing district, including interim abatement districts, will submit an estimate of the first year's property tax budget to the county clerk sixty (60) days prior to the election. When the estimate of the first year's budget is received, the county clerk will estimate the levy rate based on the most recent actual or estimated taxable value information available. If the sponsors fail to provide the budget information, the county clerk will, for taxing districts with funds subject to maximum levy rates, estimate the amount of property taxes to be raised in the proposed district by multiplying the maximum levy rate permitted by law times the most current available estimate of taxable value. Pertaining to the estimate of the first year's levy only, the estimated levy rate, computed based on the information supplied by the sponsors, or the maximum levy rate permitted by law if the information has not been supplied, will be used to compute the estimated taxes per one hundred thousand dollars (\$100,000) of net taxable value. The maximum levy rate means the sum of every maximum statutory levy rate for any fund subject to such rates for the taxing district type. ()

807. LEVY BY NEW TAXING UNITS - DUTIES OF AUDITOR (RULE 807).
Section 63-807, Idaho Code

01. Levy by Newly Formed or Organized Taxing Districts. Regardless of whether other formation or organization requirements have been met, newly formed or organized taxing districts that fail to meet the requirements of Rule 225 of these rules, will not be authorized to levy property taxes. ()

02. Levy by Taxing Districts Altering Boundaries. Regardless of whether other boundary alteration requirements have been met, taxing districts that alter their boundaries and fail to meet the requirements of Rule 225 of these rules, will not be authorized to levy property taxes within any area added to the district. If area is withdrawn from any district that fails to meet the requirements of Rule 225 of these rules, any levy by the district applies to taxable property within the withdrawn area. ()

03. Levy Considered Not Authorized. If a taxing district fails to meet the requirements of Subsection 807.01 or 807.02 of this rule, the district's levy or its levy within an altered area will be considered not authorized, pursuant to Section 63-809, Idaho Code. ()

808. ADDITIONAL DOCUMENTATION BY TAXING DISTRICTS NOT LEVYING AGAINST ALL TAXABLE PROPERTY (RULE 808).

Sections 25-2401, 31-1425, 42-3115, 42-3708, 42-4116, 50-3113, 63-510 63-803, Idaho Code

01. Tax Levy Rate Calculations and Documentation of Categories to be Taxed. For any taxing district which does not levy property taxes against all taxable property within the district, the tax levy is to be calculated by dividing the taxing district's property tax budget by the taxable value of property against which the levy is to be applied. If the taxing district elects the property categories to be taxed, documentation of such election must be either: ()

a. If initiated by the taxing district and not currently available to each county clerk, submitted by the taxing district to each county clerk, who will then submit the documentation to the Tax Commission by the first Monday in August in the first year in which the election takes place or in 2012, and in any year in which the categories elected to be taxed change; or ()

b. If elected by an action of the Board of County Commissioners, submitted by the county clerk to the Tax Commission by the first Monday in August in the first year in which the election takes place or in 2012, and in any year in which the categories elected to be taxed change. ()

02. Fire Districts. Fire districts may levy against property of public utilities provided there is an agreement between the fire district and the public utility to do so. In addition, fire districts may exempt all or a

portion of unimproved real property and taxable personal property. ()

a. Public Utility Agreements. Written agreements with public utilities permitting property taxes to be levied for fire protection of all or a portion of the property of the public utility, pursuant to Section 31-1425(1), Idaho Code, must be submitted as documentation required in Subsection 808.01 of this rule. Such agreements need only be submitted once, provided there is no change and such agreements are on file with the county clerk and Tax Commission in 2012. ()

b. Exemption of all or a portion of unimproved real property and taxable personal property. Exemption of all or a portion of unimproved real property and taxable personal property must be documented in the fire district's formation ballot or other documents creating the fire district or by an ordinance enacted pursuant to Section 31-1425(2), Idaho Code, by the Board of County Commissioners, of each county in which the fire district is located. If the county does not have the necessary documentation, it must be submitted by the fire district by the third Monday in July, 2012 or, for fire districts created during or after 2012, by the third Monday in July of the first year in which the fire district intends to levy property taxes. If such documentation is not available, the fire district will be presumed to be levying against all otherwise taxable real and personal property. ()

03. Flood Control, Levee, Watershed Improvement, Community Infrastructure Districts, and Herd Districts. Property tax may only be levied against real property. No special documentation is required. ()

04. Ambulance Districts. Exemption of all or a portion of unimproved real property and taxable personal property must be documented by an ordinance enacted pursuant to Section 31-3908A, Idaho Code, by the county commissioners of the county in which the ambulance district is located. If such documentation is not available, the ambulance district will be presumed to be levying against all otherwise taxable real and personal property. ()

05. Abstracts Showing Value of Property Against Which Levy is to be Applied. For taxing districts not levying property tax against all otherwise taxable property, abstracts must be submitted as required in Rule 115 of these rules. ()

809. CORRECTION OF ERRONEOUS LEVY (RULE 809).
Sections 63-809, 63-810, Idaho Code

01. Errors Discovered by the Fourth Monday in October. When the Tax Commission receives by the fourth Monday in October from a board of county commissioners notice of corrections for unintentional clerical, mathematical, or electronic errors under Section 63-810, Idaho Code, the Tax Commission will make the corrections to any approved levies by the fourth Monday in October. ()

02. Errors Discovered After the Fourth Monday in October. When the Tax Commission receives after the fourth Monday in October and prior to the following February 15 notices of corrections for any unintentional errors, as referenced in Subsection 809.01 of this rule, the Tax Commission will make the corrections and approve the appropriate corrected levies within one (1) week. ()

03. Cross Reference. For information on reporting of corrections for unintentional clerical, mathematical, or electronic errors, see Sections 63-809 and 63-810, Idaho Code, and Rule 509 of these rules. ()

810. (RESERVED)

811. COMPUTATION OF PROPERTY TAXES (RULE 811).
Section 63-811, Idaho Code

01. Duty of the County Auditor. Upon distribution of the approved final levy rates for the current year from the Tax Commission by the fourth Monday in October, the county auditor will deliver the final levy rates and the total tax charge for each taxing district or unit that is levying for the current year within the county to the county treasurer by the first Monday in November for the property roll and operating property roll, by the first

Monday in December for the subsequent property roll, and by the first Monday in March of the following year for the missed property roll. ()

02. Duty of the County Treasurer. Upon receipt of the final levy rates and total tax charge for each taxing district or unit, the county treasurer will compute the individual tax charge for each taxable property in the county and prepare and mail the property tax bill for each taxable property according to Section 63-902, Idaho Code, and Rule 902 of these rules. ()

812. -- 901. (RESERVED)

902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).
Sections 63-704 and 63-902, Idaho Code. The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code. For these taxpayers, the tax notice will show the amount to be paid on behalf of the taxpayer and zero taxes owed. ()

903. -- 935. (RESERVED)

936. CANCELLATION OF TAXES BY BOARD OF COUNTY COMMISSIONERS (RULE 936).
Section 63-1302, Idaho Code authorizes boards of county commissioners to cancel property taxes that for any lawful reason should not be collected. The board may cancel taxes for double payment of taxes or the double or erroneous assessment of any property for the same year or other errors. Additionally, when the canceled taxes have been paid, the board may refund the taxes. The authority to cancel taxes under Section 63-1302, Idaho Code, extends neither to hardship situations nor to cancellation of tax resulting from unequal or excessive valuation by the assessor. Mere unequal or excessive valuation by the assessor does not make the assessment illegal, nor constitute any lawful reason that the taxes should not be collected. A taxpayer who believes the value placed on his property is excessive must file his appeal with the county board of equalization within the time prescribed by law. A taxpayer seeking relief due to hardship must apply pursuant to Section 63-602AA, Idaho Code. ()

937. -- 938. (RESERVED)

939. COURT OR BOARD OF TAX APPEALS ORDERED REFUNDS OR CREDITS - LEVY RESTRICTIONS (RULE 939).
Section 63-1305, Idaho Code. Section 63-1305, Idaho Code, allows taxing districts to certify and levy a judgment levy for an amount equal to property tax refunds or credits ordered by a court or the board of tax appeals and to include such amount with amounts certified and levied under Sections 63-802 through 63-807, Idaho Code. For each affected taxing district, the decision to certify and levy such amounts is permissive. For any taxing district to use this provision, amounts to be levied must be certified within the two years immediately following the order becoming final. Any amount, not certified and levied within that two-year period, is lost. In the second year following the order, the amount remaining will be lost for any taxing district for which such amount is less than \$100. ()

940. -- 959. (RESERVED)

960. DEFINITIONS (RULE 960).
Section 63-1701, Idaho Code

01. Present Use. Present use means that the land contains trees of a marketable species which are being actively managed to produce a forest crop for eventual harvest and which may be accepted by a commercial mill. ()

02. Silviculture. Silviculture includes the following activities: site preparation, planting, vegetation control, precommercial thinning, commercial thinning, fertilization, mechanical or chemical pest and disease control, pruning, inventorying, cruising, or regeneration surveys, fencing established to protect seedlings, and genetic tree improvement. ()

03. Custodial Expenses. Custodial expenses are some of the expenses incurred in the management of forestlands. ()

a. Included Expenses. Custodial expenses include the following expenses, except as provided in Paragraph 960.03.b of this rule: ()

i. Reforestation expenses are the cost of seeds, seedlings, and planting for the establishment of a forest to the specifications of the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code); ()

ii. Road maintenance expenses are those costs necessary to prevent major deterioration or maintain the integrity of forest roads including culvert maintenance, public access control, and erosion prevention, but not including the cost of original construction, opening the road for silviculture, driveway maintenance, or recreation access; ()

iii. Managing public use expenses are limited to the costs of installing and maintaining gates and signage; ()

iv. Forest inventory expenses are the costs of collection and analysis of forest inventory data; ()

v. Forest management planning expenses are the costs associated with a geographic information system (GIS) or similar information database and those activities integral to the planning process; ()

vi. Facility operations and maintenance expenses are those costs of maintaining and operating facilities necessary for forestland management; ()

vii. Environmental analysis and documentation expenses are analysis and documentation costs associated with federal and state environmental requirements; ()

viii. Appeals and litigation expenses are those costs associated with litigating items associated with federal and state environmental requirements; ()

ix. Land survey expenses are those costs associated with surveying forestland; ()

x. Forest fire suppression expenses are the portion of those costs associated with the suppression of wildfires on forestlands borne by the forestland owner, that exceed the annual fire protection fee under Section 38-111, Idaho Code; ()

xi. Other management expenses are unspecified costs agreed to by the committee on forestland taxation methodologies (CFTM) and determined to be annualized custodial expenses by the forest management cost study conducted pursuant to Section 63-1705, Idaho Code. ()

b. Excluded Expenses. Custodial expenses exclude the following: ()

i. Fertilization; ()

ii. Precommercial thinning; ()

iii. Tree improvement; ()

iv. Genetic improvement; ()

v. Site preparation; ()

vi. Harvesting; ()

vii. Road building; ()

viii. Timber harvest layout and silvicultural layout; ()

- ix. Slash management; ()
- x. Brush control; ()
- xi. Litigation pertaining to Subparagraphs 960.03.b.i. through 960.03.b.xi., of this rule. ()

04. Forestland Management Plan. Forestland management plan means a written management plan reviewed by a professional consulting forester, Idaho Department of Lands private forestry specialist, professional industry forester, or federal government forester, to include eventual harvest of the forest crop. Professional forester is defined as an individual holding at least a Bachelor of Science degree in forestry from an accredited four (4) year institution. The forestland management plan will include as a minimum: ()

- a. Date of the plan preparation; ()
- b. Name, address, and phone number of the land owner, and person preparing and/or reviewing the plan; ()
- c. The legal description of the property; ()
- d. A map of the property of not less than 1:24,000 scale; ()
- e. A general description of the forest stand(s) including species and age classes; ()
- f. A general description of the potential insect, disease, and fire hazards that may be present and the management systems which will be used to control them; ()
- g. The forest management plans of the landowner over the next twenty (20) years. ()

05. Bare Forestland. Bare forestland will qualify as forestland only if, within five (5) years after harvest or initial assessment, they are planted or regenerated naturally to minimum stocking levels as specified by the Idaho Forest Practices Act. (Title 38, Chapter 13, Idaho Code). ()

06. County Weighted Average Forestland Levy Rate. The county weighted average forestland levy rate is calculated by summing the products of the levy rate times the number of forested acres for each forested tax code area in each county and dividing this sum by the total number of forested acres in all forested tax code areas in each county. ()

07. Weighted Average Forestland Levy Rate. The weighted average forestland levy rate is the weighted average forestland levy rate defined in Subsection 960.06 of this rule multiplied by the total number of designated forestland acres in each county. The sum of the product of this calculation for each county in a forest value zone is then divided by the total number of designated forestland acres in the forest value zone. ()

08. Guiding Discount Rate. The guiding discount rate will be determined in accordance with procedures found in the User's Guide and derived from ten (10) year treasury constant maturity rates as reported by the federal reserve system, the producer price index (PPI) published by the U.S. bureau of labor statistics, and a risk premium. ()

09. Real Price Appreciation of Stumpage. A real price appreciation (RPA) of stumpage in Idaho will be determined in accordance with procedures found in the User's Guide and will be benchmarked to the PPI for softwood logs and bolts as reported by the U.S. bureau of labor statistics, less inflation as reported in the PPI. ()

10. Joint Ownership. Joint ownership as used in Subsections 963.01 and 966.01 of these rules includes ownership of a single parcel of forestland by two (2) or more legal entities irrespective of their proportionate ownership interests in the parcel, but will not include the community property interests of a spouse. ()

961. HOMESITE ASSESSMENT AND FORESTLANDS OF LESS THAN FIVE ACRES AND CONTIGUOUS PARCELS (RULE 961).

Sections 63-1702, 63-1703, Idaho Code

01. Definitions. The following definitions apply to the valuation of residential parcels that are contiguous to lands classified as forestlands. ()

a. Homesite. The “homesite” is that portion of land, contiguous with but not qualifying as forestlands, and the associated site improvements used for residential purposes. ()

b. Associated Site Improvements. The “associated site improvements” include developed access, grading, sanitary facilities, water systems, and utilities. ()

02. Homesite Assessment. Each homesite and residential and other improvements, located on the homesite, will be assessed at market value each year. ()

a. Accepted Assessment Procedures. Market value will 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 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. ()

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. ()

c. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. ()

03. Forestlands of Less Than Five Acres and Contiguous Parcels. A parcel of forestland that is less than five (5) acres is not eligible for valuation and taxation as forestland unless the land is contiguous with one (1) or more other parcels of forestland under the same ownership and the contiguous parcels together constitute five (5) acres or more of forestland as defined in Section 63-1701, Idaho Code. The five (5) acre minimum requirement must exclude any homesite. In the following examples each parcel of land is forestland as defined in Section 63-1701, Idaho Code, unless otherwise stated in the example. ()

a. Example 1. A landowner owns a fifteen (15) acre parcel which contains four (4) acres of forestland, nine (9) acres of irrigated row crop, and two (2) acres of homesite. The four (4) acres of forestland is not eligible for valuation and taxation as forestland. ()

b. Example 2. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland, that are not contiguous either to one another or to the five hundred (500) acre parcel. The five hundred (500) acre parcel is eligible for valuation and taxation as forestland. The six (6) one (1) acre parcels, are not eligible for valuation and taxation as forestland. ()

c. Example 3. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland that are contiguous to the five hundred (500) acre parcel but may or may not be contiguous to one another. The entire five hundred and six (506) acres are eligible for valuation and taxation as forestland. ()

d. Example 4. A landowner owns six (6) non-contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are not eligible for valuation and taxation as forestland. ()

e. Example 5. A landowner owns six (6) contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are eligible for valuation and taxation as forestland. ()

962. TAXATION OF DESIGNATED FORESTLANDS (RULE 962).

Section 63-1705, Idaho Code

01. Forestland Valuation Process. The process used to determine the forestland value under the productivity option will be as specified in the User's Guide referenced in Section 63-1701, Idaho Code. ()

02. Forest Valuation Zones. The state will be divided into four (4) forest valuation zones: ()

a. ZONE 1 - Boundary, Bonner, Kootenai counties. ()

b. ZONE 2 - Benewah, Shoshone, Latah, Clearwater, Nez Perce, Lewis, Idaho counties. ()

c. ZONE 3 - Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore, Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka counties. ()

d. ZONE 4 - The remaining nineteen (19) counties. ()

03. Classification of Forestlands. In all forest valuation zones, there will be three (3) separate productivity classes of forestland: poor, medium, and good. These broad classes are related in the following manner by definition to the "Meyer Tables" published in "Yield of Even-Aged Stands of Ponderosa Pine" and "Haig Tables" published in "Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type" as both documents are referenced in Rule 003 of these rules. These classes apply to forestland which may or may not be stocked with commercial or young growth timber. ()

a. Poor productivity class is defined as forestland having a mean annual increment, MAI, of one hundred twenty-five (125) board feet per acre per year, based on a seventy-three (73) year rotation. This productivity class includes western white pine site index 35-45 and Ponderosa pine site index 45-80. One hundred twenty-five (125) board feet per acre MAI will be used in the valuation process. ()

b. Medium productivity class is defined as forestland having a mean annual increment, MAI, of two hundred twenty-five (225) board feet per acre per year, based on an sixty-eight (68) year rotation. This productivity class includes western white pine site index 46-60 and Ponderosa pine site index 81-110. Two hundred twenty-five (225) board feet per acre MAI will be used in the valuation process. ()

c. Good productivity class is defined as forestland having a mean annual increment, MAI, of three hundred fifty (350) board feet per acre per year, based on an sixty-three (63) year rotation. This productivity class includes western white pine site index 61 and above and Ponderosa pine site index 111 and above. Three hundred fifty (350) board feet per acre MAI will be used in the valuation process. ()

d. For forest valuation zones 1 and 2, forestland will be stratified into areas of similar productive potential using the habitat typing methodology described in "Forest Habitat Types of Northern Idaho: A Second Approximation," referenced in Rule 003 of these rules. Within these stratified areas, site index trees will be selected and measured that will identify the site index to be used to place the land in one (1) of the three (3) productivity classes listed above. ()

e. For forest valuation zones 3 and 4, the criteria for stratification will be generally the same as that used in zones 1 and 2 based on the habitat typing methodology described in "Forest Habitat Types of Central Idaho," as referenced in Rule 003 of these rules, with the following adjustments made in growth rates for lower moisture levels; ()

i. For poor productivity class, one hundred twenty-five (125) board feet per acre MAI will be used in the valuation process; ()

ii. For medium productivity class, two hundred thirteen (213) board feet per acre MAI will be used in the valuation process; and ()

iii. For good productivity class, three hundred twenty (320) board feet per acre MAI will be used in the ()

valuation process. ()

04. Deficient Areas. Lakes, solid rock bluffs, talus slopes, and continuously flooded swampy areas, larger than five contiguous acres in size which can be identified through remote sensing will be valued at forty percent (40%) of the poor bare land value as defined in Section 63-1706, Idaho Code. These areas are defined as being incapable of growing trees. ()

05. Reclassification of Forestlands. Except as provided in Subsection 962.06 of this rule, no parcel's productivity classification can be changed from the classification as of January 1, 2016, until requirements for landowner notification, inspector qualifications, and document retention have been met. ()

a. Landowner notification. Notice of intent to change classification must be provided in writing to the landowner of record or their designee within two (2) weeks of any determination by the county assessor of intent to change classification. Such notice must be provided no later than the first Monday in November for the change to be in effect during the following year. Notice may be delivered in person or by U.S. mail, or, if agreed to by the assessor and the landowner, by electronic mail. Notice of intent to change classification includes: ()

- i. A statement of intent to change the classification; ()
- ii. A statement of the present classification and the intended new classification; ()
- iii. A statement that the intent notice is not an assessment notice and that the assessment notice will be sent by the first Monday in June in the following year; ()
- iv. A statement that both the taxable value stated on the assessment notice and the classification may be appealed to the county board of equalization as provided in Section 63-501A, Idaho Code; and ()
- v. Contact information indicating assessor's office staff who may be contacted and how to do so. ()

b. Inspector qualifications. The inspector is the person assigned by the county assessor to review property characteristics and complete a timberland classification form provided by the Tax Commission. The inspector must be proficient in each of the following: ()

- i. Navigating forest locations; ()
- ii. Skilled mapping techniques; ()
- iii. Establishment of plot locations; ()
- iv. Plant and tree identification; and ()
- v. Site tree identification and measurements. ()

c. Inspector proficiency. Inspector proficiency must be established by a minimum of twelve (12) months of experience doing fieldwork, including reviewing the characteristics of timberland and: ()

- i. Passing a Tax Commission sponsored class on timberland appraisal and inspection; or ()
- ii. Passing equivalent courses from an accredited college or university; or ()
- iii. Obtaining a degree in forestry or a related field from an accredited institution. ()

d. Documentation and retention. Documentation related to timberland productivity classification will be retained for no less than ten (10) years following classification determination. Documentation will include, but is not limited to: ()

i. Timberland characteristics, on a form provided by the Tax Commission, with sufficient detail to verify the classification, including the calculation of productivity class as set forth in Subsection 962.03 of this rule; ()

ii. The location of any field plots and any site trees using map or Global Positioning System (GPS) coordinates; ()

iii. A map illustrating property boundaries, habitat type based stratifications as provided in Subsection 962.03 of these rules, and plot locations used in the determination of productivity class; ()

iv. Any imagery used to assess the parcel prior to field review; ()

06. Alternate Method to Establish Productivity Classification. Provided the county assessor and forestland owner agree and the data is deemed by the county to be acceptable and accurate, the data used to establish any parcel's productivity classification may be provided by the forestland owner. In this case, inspector qualifications and proficiency provisions of this rule will not apply. ()

a. Data to be considered confidential. When productivity data is provided to the county by the forestland owner, it will be deemed confidential financial information and not subject to public disclosure, as provided in Rule 004 of these rules. ()

b. Inspector certification not required. When the alternate method described in this section is to be used, the county will not be required to have a certified inspector to review property characteristics. ()

c. Acceptable classification. To be considered acceptable, the classification of the timberland so established must result in market value for assessment purposes as defined in Section 63-1705(3), Idaho Code. ()

963. CERTAIN FORESTLANDS TO BE DESIGNATED FOR TAXATION BY OWNER -- LIMITATIONS (RULE 963).
Section 63-1705, 63-1706, Idaho Code

01. Designation of Forest Parcels. A forest landowner may choose to have the total acreage of forestland parcels owned within the state designated under the provisions of either Section 63-1705 or 63-1706, Idaho Code. The forest landowner cannot have parcels in both designations. If the new owner owns no forestland in the state designated under Section 63-1705 or 63-1706, Idaho Code, he may choose the option of forest taxation he desires. Designation will be made on or before December 31st, of the year preceding assessment and will be effective for the following year. Where forest property is held in joint ownership, all co-owners must mutually agree on a property designation under Section 63-1703(a) and (b), Idaho Code. Each co-owner must make a timely designation. Where co-owners are unable to agree on a mutual designation or fail to make a designation, the forestland will be subject to appraisal and assessment as provided in Section 63-1702, Idaho Code. ()

02. Change in Use. Failure to notify the assessor of the change in use when lands have been designated will cause forfeiture of the designation as to the changed acres, and the property will be appraised, assessed and taxed, as provided in Section 63-1702, Idaho Code, from the date of latest designation or renewal. ()

03. Certain Lands With No Deferred Taxes. There are no deferred taxes on lands designated under Section 63-1705, Idaho Code. ()

964. YIELD TAX ON APPLICABLE FOREST PRODUCTS (RULE 964).

01. Calculation. The calculation described below will be used to update the bare forestland value for tax assessment purposes on an annual basis:

$$BLV_z = ([0.5] \times [(T_z - T_n)/T_n] + 1) \times (BLV_y)$$

STEP 1: Subtract T_n from T_z
--

STEP 2:	Divide the Answer in Step 1 by Tn
STEP 3:	Multiply the Answer in Step 2 by 0.5
STEP 4:	Add 1 to the Answer in Step 3
STEP 5:	Multiply BLV _y by the Answer in Step 4
KEY:	
BLV_z	= Bare forestland value for next year
BLV_y	= Bare forestland value for current year
T_z	= Five year average stumpage value (\$/MBF) for the period ending in the current year
T_n	= Five year average stumpage value (\$/MBF) for the period ending one year ago

()

02. Stumpage Value. The stumpage value will be the same as that used in the productivity valuation process by zone. ()

03. Bare Forestland Value. After review of the productivity valuation process by March 1 each year, the Tax Commission will review and adjust, as appropriate, the bare forestland values for the current year. ()

04. Landowner's Report. By June 1, of each year the county treasurer will make a written report to include the forest landowner's name, legal description of forest property owned, and yield taxes paid for the current assessment year. This report will be submitted to the county auditor and a record will be maintained for ten (10) years and not disposed of until the eleventh year. ()

965. (RESERVED)

966. RECAPTURE OF DEFERRED TAXES ON LANDS DESIGNATED UNDER SECTION 63-1706, IDAHO CODE (RULE 966).
Section 63-1703, Idaho Code

01. Ownership Interest/Deferred Taxes. Where forestland is held in joint ownership, a transfer of ownership for purposes of recapturing deferred taxes will occur when any one (1) of the legal entities holding an ownership interest in the subject property will convey, transfer, or otherwise dispose of their ownership interest or portion thereof. Any such transfer of ownership will subject the entire parcel to recapture of deferred taxes, unless the new owner timely redesignates their ownership interest under Section 63-1706, Idaho Code. ()

02. Deferred Tax Responsibility. Deferred taxes will be the responsibility of the selling landowner. Deferred taxes will constitute a lien on the land. ()

03. Change in Use/Deferred Taxes. For forestland designated under Section 63-1706, Idaho Code, but subject to recapture of deferred taxes as provided in Section 63-1703, Idaho Code, because of a change in use with no change in ownership, recapture of deferred taxes will be calculated in the following manner: ()

a. The difference between the current bare land value for the correct class of land in the forest value zone in which the parcel lies and the current market value for assessment purposes of the property during the current year; ()

b. Multiplied by the current levy for the tax code area or areas in which the parcel lies; ()

c. Multiplied by the number of years, including the entire current year, the lands have been subject to designation under Section 63-1706, Idaho Code, not to exceed ten (10) years. Additionally, a credit will be allowed for any yield tax paid up to the amount of the deferred taxes. ()

04. Transfer of Ownership/Deferred Taxes. For forestland designated under Section 63-1706, Idaho

Code, but subject to recapture of deferred taxes as provided in Section 63-1703, Idaho Code, because of a change in ownership or a removal of the designation, recapture of deferred taxes will be calculated in the following manner:

a. The difference between the current bare land value for the correct class of land in the forest value zone in which the parcel lies and the current productivity value for the correct class of land in the forest value zone in which the parcel lies, for the current year;

b. Multiplied by the current levy for the tax code area or areas in which the parcel lies;

c. Multiplied by the number of years, including the entire current year, which the lands have been subject to designation under Section 63-1706, Idaho Code, not to exceed ten (10) years. Additionally, a credit will be allowed for any yield tax paid up to the amount of the deferred taxes.

05. Investment Lands. Investment lands are defined as those in secondary categories 1, 2, 3, 4, 5, and 9, as defined in Rule 510 of these rules.

967. -- 981. (RESERVED)

982. REPORTING NET PROFITS OF MINES (RULE 982).
Sections 63-2801, 63-2802, 63-2803, Idaho Code

01. Amount to be Reported. The amount of money received from the sale of minerals or mined metals during the calendar year immediately preceding the current tax year will be reported by the owner of the mine or mining claim. If there is no sale, but minerals or mined metals are shipped to a smelter or other facility, an amount of money equivalent to that which would have been received from sale of the shipped minerals or mined metals will be reported. Moneys received from rents, commissaries, discounts on purchases, and investments are not to be included. A separate annual net profit statement will be filed by the owner of mines or mining claims, for each mine or mining claim located in any county in Idaho. The statement filed with any county assessor will not include amounts received pursuant to mines or mining claims located outside the county. The owner will complete the statement on forms prescribed by the Tax Commission.

02. Additional Allowable Deductions. In addition to deductions specified in Section 63-2802, Idaho Code, the following expenditures can be subtracted from the amount of money or equivalent to be reported.

a. Expenses for Social Security, worker's compensation, insurance provided by the employer for the benefit of employees at the mine, fire and water protection, first aid and safety devices, mine rescue materials, experimental work reasonably connected with reduction of the ores.

b. Expenses for improvements made during the year immediately preceding the current tax year.

c. Expenses for reclamation or remediation not previously deducted, including payments into a sinking fund mandated by law for reclaiming or remediating the mining site.

03. Non-deductible Items. In addition to expenditures specified as non-deductible pursuant to Section 63-2802, Idaho Code, the following expenditures can not be subtracted from the amount of money to be reported.

a. Federal, state and local taxes and license fees.

b. Depreciation, depletion, royalties, and donations.

c. Insurance except as listed in Subsection 982.02.a.

d. Construction repair, and operation of dwellings, community buildings and recreational facilities.

()

e. Miscellaneous administrative and other expenses not related to labor, machinery or supplies needed for mining, reducing ores, construction of mills and reduction works, transporting ore and extracting metals and minerals from ore. ()

983. -- 987. (RESERVED)

988. QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).

Sections 63-302, 63-313, 63-404, 63-3029B, Idaho Code

01. Definitions. The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. ()

a. Year in which the investment is placed in service. “Year in which the investment is placed in service” means the calendar year the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. ()

b. Operator’s Statement. The “operator’s statement” is the annual statement listing all property subject to assessment by the Tax Commission and prepared under Section 63-404, Idaho Code. ()

c. Personal Property Declaration. A “personal property declaration” is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. ()

d. Qualified Investment. “Qualified investment” means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator’s statement and is designated as exempt from property tax for two (2) years on Form 49E. ()

e. Qualified Investment Exemption. The “qualified investment exemption” (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code. ()

f. Assessor. The “assessor” is the representative of the county assessor’s office or the Tax Commission who is responsible for the administration of the QIE. ()

02. Designation of Property for Which Exemption Is Elected. The owner will designate the property on which the QIE is elected. The owner will make this designation on Form 49E and attach it to a timely filed personal property declaration or, for operating property, the timely filed operator’s statement. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator’s statement, the owner must provide on the personal property declaration or operator’s statement the date the item elected for the QIE was placed in service. ()

03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration. For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration. ()

04. Continuation of Listing. For all property designated for QIE, even though that property is exempt for two (2) years, the owner must list that property on the personal property declaration or operator’s statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code. ()

05. Period of QIE. The QIE will be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho.

()

06. Election Specificity. The QIE election provided by Section 63-3029B, Idaho Code, will be specific to each qualified item listed on the personal property declaration or operator's statement. An item that is a qualified investment, but for which there is no QIE election during the year after the "year in which the investment is placed in service" in Idaho, is not eligible for the QIE. ()

07. Notification by Assessor. ()

a. Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of this rule, the assessor will review the application and determine if the taxpayer qualifies for the property tax exemption under Section 63-3029B, Idaho Code. If the assessor determines that the property tax exemption should be granted, the assessor will notify the taxpayer and, if applicable, send a copy of this form or listing to the Tax Commission. ()

b. Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the five (5) year period beginning with the date the property was placed in service, the assessor will notify the Tax Commission and the taxpayer immediately. The assessor will also provide this notification upon discovery that the owner first claiming the QIE failed to list the item on any personal property declaration or failed to file a personal property declaration in any year during this five (5) year period. This notice will include: ()

i. Owner. Name of the owner receiving the QIE. ()

ii. Property description. A description of the property that received the QIE. ()

iii. New or used. State whether the individual item was purchased new or used. ()

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. ()

v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. ()

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. ()

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. ()

c. Denial of the QIE. Upon review of the taxpayer's application, if the assessor determines that the property tax exemption should not be granted for all or part of the market value of any item or items, then the assessor will deny the exemption for those items. The assessor will notify the taxpayer electing the QIE and will identify the basis for the denial. The assessor's notification cancels the election with respect to those items. Upon receiving this notification, the taxpayer is then free to pursue the income tax credit under Section 63-3029B, Idaho Code, for those items denied the QIE by the assessor. ()

08. Moved Personal Property. In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: ()

a. Is required of taxpayers moving locally assessed property between counties in Idaho during the five (5) year period beginning the date that property was placed in service; ()

i. The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved. ()

ii. The taxpayers must include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E. ()

b. Is not required of taxpayers when the property is Tax Commission assessed non-regulated operating property. ()

09. Notification Regarding Transient Personal Property. For transient personal property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor will send a copy of this notice to the Tax Commission. ()

10. Partial-Year Assessments. Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. ()

11. Limitation on Amount of Exemption. ()

a. New Property. The QIE will be for the full market value for assessment purposes for new property that is a qualifying investment. ()

b. Used Property. The QIE for used property placed in service during a taxable year for income tax purposes will be limited. For each taxpayer, the QIE will be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: ()

i. QIE cost will be determined for each item of used property upon which the QIE is claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars (\$150,000); provided, however, that the QIE cost for all elected used property will not exceed one hundred fifty thousand dollars (\$150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars (\$150,000), QIE cost will reflect the reduction necessary to stay within the one hundred fifty thousand dollar (\$150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719 for information on the selection of items of used property). ()

ii. For each item purchased used, the QIE will be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). ()

c. Examples. In the following examples, all of the property is owned by the same taxpayer and is a qualified investment. ()

i. Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption. In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars (\$130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of January 1, 2006.

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	2004 Market Value	2004 Exempt Value	2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Computer 1	2003	\$20,000	Used	\$20,000	\$12,000	\$12,000	\$0	\$8,000	\$8,000	\$0
Assembly line	2003	\$160,000	Used	\$130,000	\$140,000	\$130,000	\$10,000	\$110,000	\$110,000	\$0

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	2004 Market Value	2004 Exempt Value	2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Computer 2	2003	\$50,000	New	N/A	\$40,000	\$40,000	\$0	\$30,000	\$30,000	\$0
Conveyor belt	2004	\$200,000	Used	\$150,000	N/A	N/A	N/A	\$200,000	\$150,000	\$50,000

()

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its market value.

Example B										
Property Description	Year Placed in Service	Cost	New or Used	QIE Cost	2006 Market Value	2006 Exempt Value	2006 Taxable Value	2007 Market Value	2007 Exempt Value	2007 Taxable Value
Construction Equipment	2005	\$20,000	Used	\$20,000	\$80,000	\$20,000	\$60,000	\$70,000	\$20,000	\$50,000

()

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars (\$300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars (\$300,000) or the (depreciated) market value of this used property. ()

12. Multi-County Taxpayers. ()

a. Except taxpayers electing QIE for property that is Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. ()

b. Except taxpayers electing QIE for property that is Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. ()

c. Any taxpayers electing QIE for property that is Tax Commission assessed non-regulated operating property and purchased new or used must indicate on Form 49E each county where each property is located and attach it to the operator's statement. ()

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. ()

13. Special Provisions for Non-regulated Operating Property. ()

a. For non-regulated operating property, the market value of the QIE is calculated by multiplying the

depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of these rules to the cost approach value determined under Subsection 405.02 of these rules. ()

b. The following special provisions apply for the reduction in market value of non-regulated operating property resulting from QIE being elected. ()

i. Reduction in Idaho value. For non-regulated operating property except situs property, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. ()

ii. Reduction in market value of situs property owned by non-regulated operating property companies. For situs property owned by non-regulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. ()

14. Cross Reference. For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. ()

989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).
Section 63-3029B, Idaho Code

01. In General. If a taxpayer has elected the property tax exemption (also known as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit will be subject to recapture. ()

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer will provide notification of the amount owing and will remit said amount to the Tax Commission by the due date of that taxpayer's income tax return, irrespective of any income tax extensions of the income tax payment, for the income taxable year in which such event occurs. Notification will be accomplished by filing Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer will include with such notification the following: ()

- a.** A description of the item that ceases to qualify, ()
- b.** The county where the item was located, ()
- c.** The date the item was placed in service, ()
- d.** The date the item was no longer qualified for the QIE, ()
- e.** The amount of value exempted from property tax each year, and ()
- f.** The amount of the property tax benefit recapture. ()

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the Tax Commission will issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice will show the calculation of the recaptured property tax benefit. ()

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest will meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. ()

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the

recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer will multiply the exempt value of the property by the applicable average property tax levy determined by the Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation will be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than one (1) year	100%
Equal to one (1) year but less than two (2) years	80%
Equal to two (2) years but less than three (3) years	60%
Equal to three (3) years but less than four (4) years	40%
Equal to four (4) years but less than five (5) years	20%

The taxpayer will report this calculation on Form 49ER and will submit this form and remit the amount calculated to the Tax Commission no later than the date indicated in Section 989.02 of this rule. ()

06. County Average Property Tax Levy -- Locally Assessed Property Located in One (1) County or Non-apportioned Centrally Assessed Property. For locally assessed property located in one (1) county or non-apportioned centrally assessed property, the Tax Commission will compute and report the county average property tax levy according to the following procedure. ()

a. Property Tax Budget Summation - General. Except as provided in Paragraph 989.06.b. of this rule, for each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. ()

b. Property Tax Budget Summation - Special Rules for Counties with Urban Renewal Revenue Allocation Areas. This provision is applicable when taxing districts in the county have funds with levies calculated including all or part of an urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code. ()

i. For any such fund, the prorated portion is determined by multiplying the levy of the fund by the taxable value within the county, including the increment value, used to determine the levy for that fund. ()

ii. For any such fund for which the entire increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

iii. For any such fund for which part of the increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

iv. Provided that some taxing district funds within the county are subject to the levy calculation procedures identified in Subparagraphs 989.06.b.ii. and/or iii. of this rule, for all funds other than those identified in this rule, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

c. Average Property Tax Levy. ()

i. For counties without urban renewal revenue allocation areas, the average property tax levy will be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a. of this rule, by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. ()

ii. For counties with urban renewal revenue allocation areas and funds with levies calculated including all or part of urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code, the average property tax levy will be computed by summing the quotients determined by dividing the sums determined in Subparagraphs 989.06.b.ii., iii., and iv., by the taxable value of the county including the entire increment value, part of the increment value, or none of the increment value, depending on whether all, part, or none of the increment value has been used to determine the levy. ()

d. Notice to Each County Auditor. The Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. ()

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the Tax Commission will determine the average urban property tax levy of the state and will notify each county auditor of said average no later than the first Monday in December each year. ()

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it will include with this remittance a notice identifying the following: ()

a. Owner. Name of the owner receiving the QIE; ()

b. Property Description. A description of the property that received the QIE; ()

c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; ()

d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; ()

e. Tax Code Area Number. The number of the tax code area within which that item was located; and ()

f. Amount Remitted. The amount of money remitted for any item. ()

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, will not be subject to allocation to urban renewal agencies. ()

10. Penalty and Interest. Penalty and interest will be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest will be computed from the due date found in Subsection 989.02 of this rule. ()

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. ()

990. -- 994. (RESERVED)

995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).
Section 63-3638, Idaho Code

01. Most Current Census. Population will be from the most current population census or estimate of incorporated city populations available from "Table 4, Annual Estimates of the Resident Population for Incorporated Places in Idaho" and estimate of county populations from "Table 1, Annual Estimates of the Resident Population for Counties of Idaho" available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. If the Tax Commission is notified that the Bureau of the Census has revised any city or county population estimates, the revised estimates will be used for the distribution of sales tax money. ()

02. Market Value for Assessment Purposes. Market value for assessment purposes means the market value certified to the Tax Commission pursuant to Section 63-510, Idaho Code, and will include homeowner's exemptions and the value of personal property exempt pursuant to Section 63-602KK(2), Idaho Code, as determined for tax year 2013, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(15), Idaho Code, for the calendar year immediately preceding the current fiscal year. ()

03. Current Fiscal Year. For the purposes of this section, current fiscal year means the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year will begin with the distribution made in October, following collection of sales taxes in July, August, and September. ()

04. Incorporated City. Incorporated city will, for the current fiscal year, have a duly elected mayor and city council. ()

05. Valuation Estimates. Valuation estimates for distribution of revenue sharing monies will be updated at least annually. Updated estimates will be used beginning with the October distribution. ()

06. Determination Date and Eligibility. ()

a. General eligibility. Except as provided in Paragraph 995.06.b. of this rule, the eligibility of each city for revenue sharing monies pursuant to Section 63-3638(10)(a), Idaho Code, will be determined as of July 1 of the current year. Cities formed after January 1, 2001, will also be entitled to a share of the money pursuant to the provisions of Section 63-3638(10)(c), Idaho Code. ()

b. Ineligibility as a result of non-compliance. Otherwise eligible taxing districts that are found to be out of compliance with the requirements of Section 67-450B, Idaho Code, or Section 67-450E, Idaho Code, will be ineligible for distributions provided under Section 63-3638(10), Idaho Code, commencing with the next scheduled quarterly distribution following the Tax Commission's receipt of notification of non-compliance and continuing until the distribution following the Tax Commission's receipt of notification of compliance. At that time the Tax Commission will add to the current quarterly distribution any amount previously withheld under these provisions. ()

07. Quarterly Certification. Except if shares are required to be withheld pursuant to Sections 67-450B and 67-450E, Idaho Code, the Tax Commission will certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(10)(c) and 63-3638(10)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(10)(a) and 63-3638(10)(b), Idaho Code. Each county clerk will calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the Tax Commission. ()

a. City and County Base Shares. For cities and counties, the initial base share will be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share will be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share. ()

b. Special Purpose Taxing District Base Shares. For special purpose taxing districts the initial base share will be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares will be proportionally reduced to reflect decreases in the amount of sales tax available to be

distributed. ()

c. Excess Shares. Excess shares will be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(10)(c) or 63-3638(10)(d), Idaho Code. These amounts will not be subject to redistribution provisions of Section 40-801, Idaho Code. ()

d. Shares Pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code. Shares to be distributed pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code, will be termed "revenue sharing." Such shares will be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(10)(b)(i), Idaho Code, will be considered an annual amount and will be divided into four (4) equal shares. ()

e. Amounts authorized to be paid to counties for redistribution to taxing districts will be withheld if necessary to comply with the requirements of Sections 67-450B and 67-450E, Idaho Code. The Tax Commission will identify the district for which amounts are being withheld and the amount being withheld. The county should notify the district accordingly and notify them that they will receive the withheld funds following a determination by the legislative services office that they are in compliance with the provisions of these statutes. Withheld funds will be distributed by the Tax Commission no later than the next quarterly sales tax distribution due date following receipt by the Tax Commission of a determination by the Legislative Services Office that a previously non-compliant taxing district is in compliance. ()

f. Amounts authorized to be paid to an urban renewal agency pursuant to Section 63-3638(13), Idaho Code, will be withheld if the agency has not complied with the reporting requirements of Section 50-2913, Idaho Code. The Tax Commission will notify the urban renewal agency of the amount being withheld and notify the urban renewal agency that the withheld funds will be distributed by the Tax Commission no later than the next quarterly sales tax distribution due date after the urban renewal agency has complied with the reporting requirements of Section 50-2913, Idaho Code. ()

08. Notification of Value. The county auditor will notify the Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. ()

09. Corrections. ()

a. When distributions have been made erroneously, corrections will be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections will be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions for the last quarter of the current fiscal year will be corrected as soon as practicable in distributions made for the following fiscal year. ()

b. The Tax Commission will notify affected county clerks when the Tax Commission becomes aware of an error in the distribution of the base or excess shares. ()

c. The Tax Commission will notify affected cities or county clerks when the Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. ()

996. -- 999. (RESERVED)

35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105(2), 63-2427, 40-312 and 41-4909, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the Idaho Fuels Tax Act, provisions of the Motor Vehicle Registration Act, and the Transfer Fee provisions of the Idaho Clean Water Trust Fund Act. ()

001. TITLE AND SCOPE (RULE 001).

01. Title. These rules are titled IDAPA 35.01.05, “Idaho Motor Fuels Tax Administrative Rules.” ()

02. Scope. These rules are construed to reach the full jurisdictional extent of the state of Idaho’s authority for: ()

a. Motor Fuels Tax. The imposition of a motor fuel tax on each gallon of motor fuel received and on the use of or other consumption of motor fuel in this state. This also includes the administration of the International Fuel Tax Agreement (IFTA). ()

b. Transfer Fee. The imposition of a transfer fee upon each gallon of petroleum or petroleum products received and subject to the transfer fee as authorized by Chapter 49, Title 41, Idaho Code. ()

c. Registration Records. The imposition of records requirements for International Registration Plan (IRP) and Idaho Full Fee registration audits authorized by Chapter 4, Title 49, Idaho Code. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

Sections 63-2434, 63-2442A, 63-2470, 41-4909, 49-439, and 63-3045 through 63-3049, Idaho Code
This chapter allows administrative relief as provided under Sections 63-2434, 63-2442A, 63-2470, 41-4909, 49-439, and 63-3045 through 63-3049, Idaho Code, and pursuant to rules adopted by the Tax Commission found in the Tax Commission’s administration and enforcement rules relating to income taxation, IDAPA 35.02.01. ()

003. INCORPORATION BY REFERENCE (RULE 003).

Sections 63-2434, 63-2442A, 41-4909, 49-439, Idaho Code

01. Income Tax Administration and Enforcement Rules. These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” ()

02. IFTA. These rules incorporate the IFTA governing documents: the IFTA Articles of Agreement (revised January 1, 2017), the IFTA Procedures Manual (revised January 1, 2017), and the IFTA Audit Manual (revised January 1, 2017). IFTA is an international agreement between jurisdictions to encourage use of the highway system by uniformly administering fuels use tax laws. The IFTA governing documents are equally binding on all IFTA member jurisdictions and licensees. Motor fuels users licensed or required to be licensed to operate under an Idaho IFTA license must comply with all applicable rules contained in these rules. These documents can be found on the IFTA website at <http://www.iftach.org>. ()

03. IRP. These rules incorporate the IRP governing documents: The IRP Plan (revised July 1, 2016) and IRP Audit Procedures Manual (revised January 1, 2016). IRP is an international registration reciprocity agreement. The documents are included to aid the Tax Commission in complying with IRP registration application audits authorized in Chapter 4, Title 49, Idaho Code. These documents can be found on the IRP website at <http://www.irponline.org>. ()

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Section 63-2401, Idaho Code

The definitions provided by statute, including the definitions in Section 63-2401, Idaho Code, apply to these rules. Additionally, the following definitions apply. ()

01. Commercial Motor Boat. A commercial motor boat, as defined in Section 63-2401, Idaho Code, includes a motor boat used in a business that rents boats to others who use the boats for pleasure. ()

02. Indian-Owned Retail Outlet. An Indian-owned retail outlet is: ()

- a. Located within the boundaries of a federally recognized Indian reservation; and ()
- b. Owned and operated by: ()
- i. The Coeur d'Alene, Kootenai, Nez Perce, Shoshone/Bannock, or Shoshone/Paiute tribe; or ()
- ii. An enterprise owned by one (1) of the tribes listed above; or ()
- iii. An enrolled member of one (1) of the listed tribes on whose reservation the retail outlet is located. ()

03. Pay, Paid, Payable or Payment. When used in reference to any amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. Lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in lawful money except any check not honored by the bank upon which it is drawn will not constitute payment. Additionally, the Tax Commission has the authority to refuse to accept any check drawn upon the account of a taxpayer who has previously tendered any check that was dishonored by the bank upon which it was drawn. All amounts due the state must be paid by electronic funds transfer whenever the total amount of tax due plus any related fee, interest, penalty or other additional amount is one hundred thousand dollars (\$100,000) or more, according to rules promulgated by the Idaho State Board of Examiners. ()

011. -- 109. (RESERVED)

110. CALCULATION OF MOTOR FUELS TAX ON GASEOUS SPECIAL FUELS (RULE 110).
 Section 63-2424, Idaho Code

01. Gaseous Special Fuel. A gaseous special fuel is a special fuel that is a gas at sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute. ()

02. Selling Gaseous Special Fuel. A gaseous special fuel may be sold at volumes or weights other than those listed in this section. Distributors and consumers paying tax or claiming refunds must use the volumes and weights required by the Tax Commission when reporting. Ta ()

03. Computing Gaseous Special Fuel Tax Equivalents. Computation is made by multiplying the percentage of gasoline gallon energy equivalent times the current gasoline tax rate for each type of gaseous special fuel.

Motor Fuel	BTUs per Gallon or Gallon Equivalent	Equivalent Volume or Weight/Mass	Percentage of Gasoline Gallon Energy Equivalent
Gasoline	127,000	1 gallon	100%
Propane	92,000	4.25 lbs. or 1 gallon	72.44%
Compressed Natural gas (CNG)	127,000 per GGE	5.66 lbs.	100%
Liquefied Natural Gas (LNG)	138,400 per DGE	6.06 lbs.	108.98%
Hydrogen	127,000 per GGE	1 kg.	100%

()

111. -- 129. (RESERVED)

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

Sections 63-2406, 63-2407, 63-2408, 41-4909, Idaho Code

01. Monthly Reports. Every licensed distributor will file with the Tax Commission a monthly tax report, in gross gallons, with supporting detailed schedules on forms and in a manner prescribed by the Tax Commission. The distributor must keep detailed inventory records. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor will include a listing of each person from inside and outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports must contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report will include such information as the Tax Commission may require. ()

02. Exemption from Licensing and Monthly Reporting. See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. ()

03. Machine Tabulated Data. Machine tabulated data is accepted in lieu of detailed schedules on Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the Tax Commission with a copy of the format and must be granted written authorization to use that format. ()

04. Timely Reporting. Any motor fuel and other petroleum product shipments that are: ()

a. Reported on a timely supplemental report is subject to interest but are not subject to penalty. ()

b. Not reported on a timely monthly or supplemental report is subject to interest and may be subject to penalty. ()

05. Motor Fuels Receipts. All gasoline, natural gasoline, gasoline blend stocks, ethanol, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 132 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. ()

06. Motor Fuels and Other Petroleum Products Presumed to be Distributed. Unless the contrary is established, it is presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee is allowed for accidental losses of motor fuels or other petroleum products. ()

07. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: ()

a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and ()

b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or ()

c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or ()

d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. ()

e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. ()

131. REQUIREMENT TO FILE MOTOR FUELS DISTRIBUTOR REPORTS ELECTRONICALLY (RULE 131).

Section 63-2406, Idaho Code

01. Electronic Filing Requirement. A motor fuels distributor who reports twenty-five (25) or more receipts or disbursements of motor fuels on its monthly distributor report is required to file the distributor report electronically. ()

02. Not Reporting Electronically as Required. A motor fuels distributor who is required to file its distributor report electronically but does not file the report electronically is treated as if the distributor did not file the monthly report. ()

03. Waiver from Requirement to File Report Electronically. A motor fuels distributor can request a waiver from the requirement to file motor fuel distributor reports electronically. The distributor making the request for waiver must show that the cost to comply with this rule is unreasonable. The Tax Commission will review each request for waiver and issue a determination. ()

132. LICENSED GASEOUS SPECIAL FUELS DISTRIBUTOR'S REPORTS (RULE 132).

Section 63-2424, Idaho Code

01. Monthly Reports. Every licensed gaseous special fuels distributor (distributor) will file with the Tax Commission a monthly tax report, using equivalents from Rule 110 of these rules, with supporting detailed schedules on forms and in a manner prescribed by the Tax Commission. Such reports must contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report includes such information as the Tax Commission may require. ()

02. Report Due and Payment Required. The report is due on or before the last day of the month following the month to which the report relates together with the payment of any tax, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. ()

03. Not Paying Tax. Any distributor required to pay the tax imposed by Section 63-2424, Idaho Code, who does not pay such tax is liable to the Tax Commission for the amount of tax not paid plus any applicable penalty or interest. The Tax Commission may collect such amounts in the manner provided in Section 63-2434, Idaho Code. ()

04. Receipt of Gaseous Fuels. The motor fuels tax is not imposed on gaseous special fuels when the fuels are received, as defined in Section 63-2403, Idaho Code. Propane and natural gas are presumed to be tax-exempt fuels unless delivered into the main supply tank of a licensed, or required to be licensed, motor vehicle. ()

05. Documentation of Exempt Sales of Gaseous Special Fuels Delivered into Motor Vehicles. Gaseous special fuels delivered into the fuel supply tank of a licensed, or required to be licensed, motor vehicle are taxable except for: ()

a. Government. Gaseous special fuels used by vehicles owned or leased, and operated by the federal government, or by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the motor fuels tax on gaseous special fuels. In this case, the distributor must record the name of the governmental entity, the license or identification number of the vehicle, and the type of vehicle on the sales document. ()

b. Manned and Unmanned Stations. A manned station must have a representative at the point of sale to visually inspect the vehicle in order to make exempt sales of gaseous special fuels. Exempt sales of gaseous special fuels from an unmanned station are allowed when each sale is recorded by other visual means. When a distributor cannot meet the previous two requirements, it must request approval from the Tax Commission before making exempt sales of gaseous special fuels. ()

133. -- 134. (RESERVED)

135. QUALIFIED CONSUMERS (RULE 135).
Section 63-2427A, Idaho Code

01. Point of Taxation and Receipt Defined. The state of Idaho imposes an excise tax on all motor fuel, except dyed diesel, and the transfer fee on all petroleum and petroleum products received in Idaho. See Rule 510 of these rules for the definition of petroleum and petroleum products. Motor fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the motor fuel when the fuel arrives in Idaho. Motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks. For example: fifty-five (55) gallon barrels, above ground tanks, stilt tanks, underground tanks, tank wagons, old delivery trucks, old tanker trucks, slip tanks in pickups, and any other storage tank used to store the motor fuel. The excise tax and transfer fee due on the motor fuel received in Idaho during a month are normally reported on a monthly Idaho Motor Fuels Distributor Report. ()

02. Alternative to Monthly Reporting for Qualified Consumers. As an alternative to obtaining an Idaho motor fuel distributor license and filing monthly reports, a qualified consumer may file an annual report to remit the motor fuel tax and transfer fee due to the state of Idaho or to receive a refund of excess tax or transfer fee paid. ()

a. A qualified consumer is not required to pay the transfer fee on the biodiesel they produce. ()

03. Qualifications. To be a qualified consumer under this rule, a person must: ()

a. Use the produced biodiesel or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and ()

b. Import into Idaho one-hundred thousand (100,000) gallons or less of motor fuel in a calendar year; or ()

c. Produce in Idaho five thousand (5,000) gallons or less of biodiesel in a calendar year. ()

04. Documentation of Export. To claim an export of motor fuel or other petroleum products a qualified consumer must have tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the jurisdiction into which the fuel was claimed to have been exported. ()

05. Limitations. ()

a. A qualified consumer may not claim an export from Idaho for fuel in the supply tank of a motor vehicle or aircraft. ()

b. A licensed Idaho fuel distributor may not file this report. ()

136. (RESERVED)

137. INSTATE PIPELINE TERMINAL, PRODUCTION TERMINAL, AND STORAGE REPORTS (RULE 137).
Section 63-2437, Idaho Code

01. Monthly Reports. Every instate pipeline terminal operator and production terminal operator will

file with the Tax Commission a monthly tax report, in gross gallons, with supporting detailed schedules on forms and in a manner prescribed by the Tax Commission. The pipeline terminal operator and production terminal operator must keep detailed inventory records. The pipeline terminal operator and production terminal operator will report the quantity of motor fuels and other petroleum products received during the month including a listing of each person from inside or outside Idaho supplying motor fuels and other petroleum products to the pipeline terminal or production terminal. Such reports must contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report will include such information as the Tax Commission may require. ()

02. Machine Tabulated Data. Machine tabulated data is accepted in lieu of detailed schedules on Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the terminal operator must make a written request to the Tax Commission with a copy of the format and must be granted written authorization to use that format. ()

138. -- 140. (RESERVED)

141. FUEL DISTRIBUTOR CREDIT AND REFUND CLAIMS (RULE 141).
Sections 63-2410, 63-2423, Idaho Code

01. Fuel Distributor Credit and Refund Claims. Fuel credit and refund claims must be made on a distributor's fuel tax report unless authorized otherwise by this chapter. A licensed distributor can claim credits or refunds by filing original or amended returns. Any distributor may use the Line Flush Allowance. All claims must establish both of the following: ()

- a.** The basis for the credit or refund claim, and ()
- b.** The amount of the credit or refund. ()

02. Line Flush Allowance. Undyed, tax-paid diesel is contaminated with red dye when a distributor delivers dyed diesel then flushes the line with undyed diesel. The contaminated undyed diesel will be put into the delivery truck's dyed diesel fuel tank and sold as untaxed, dyed diesel. A distributor will claim a fuel tax refund using the Form 75, Idaho Fuels Use Report, and Line Flush Allowance worksheet. ()

03. Methods to Determine the Line Flush Allowance. The distributor can claim a refund based on the actual gallons used to flush the line or a standard allowance. Check the box on the worksheet to indicate the method used to calculate nontaxable gallons. Use the following procedure for method chosen: ()

- a.** Standard allowance. Multiply by five (5) gallons by the number of flushes using logs prepared by the delivery truck driver including the truck number, date, and number of flushes; or ()
- b.** Actual gallons. The actual gallons used to flush the lines. Delivery tickets or totalizer log readings for each flush including the truck number, date, and gallons used to flush the line. ()

142. -- 149. (RESERVED)

150. FUEL SALE DOCUMENTATION REQUIRED (RULE 150).
Section 63-2429, Idaho Code

01. Retail Sales Invoices for Delivered, Bulk Plant, and Station Sales. Any distributor who sells motor fuels and other petroleum products in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for on a monthly basis the invoices may be issued to the purchaser at the time of billing. All sales invoices (including a credit card receipt used as a sales invoice) for motor fuels and other petroleum products sold at retail stations, bulk plants, or delivered to the customer's location must contain the following: ()

- a.** A preprinted identification number, except when invoices are automatically assigned a unique identification number by a computer or similar machine when issued; ()

- b. Name and address of the distributor; ()
 - c. Name of the purchaser; ()
 - d. Date of sale or delivery; ()
 - e. Type of fuel; ()
 - f. Gallons invoiced - reported as required in Section 130 of these rules; ()
 - g. Price per gallon and total amount charged. When taxable motor fuels products are sold, at least one (1) of the following must be used to establish that the Idaho State fuels tax has been charged: ()
 - i. The amount of Idaho State fuels tax; ()
 - ii. The rate of Idaho State fuels tax; or ()
 - iii. A statement that the Idaho State fuels tax is included in the price. ()
 - h. Delivered sales invoices must also contain the purchaser's address along with the origin and destination of the motor fuels and other petroleum products. ()
 - i. The sales invoice will contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. ()
- 02. Correcting Sales Invoice Errors.** When an original invoice is issued containing incorrect information, it may be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the transaction being corrected. If a second sales invoice is issued, it will show the date and serial number of the original invoice and that the second invoice is in replacement or correction. ()
- 03. Disallowing Tax-Paid Credit.** Not including all the above documentation will result in an invalid sales invoice for a tax-paid fuel claim by the distributor's customer. ()
- 04. Documentation Requirements for Dyed Diesel Fuel.** The state of Idaho is following the Internal Revenue Service requirements for sales of dyed diesel fuel. The Internal Revenue Code requires that a notice stating "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" must be: ()
- a. Provided by the terminal operator to any person who receives dyed diesel fuel at a terminal rack of that operator; and ()
 - b. Provided by any seller of dyed diesel fuel to the buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a posted retail pump; and ()
 - c. Posted by a seller on any retail pump where the dyed diesel fuel is sold for use by the buyer. ()
 - d. The documentation notice found in this rule must be provided at the time of removal or sale and must appear on shipping papers, bills of lading, and sales invoices accompanying the sale or removal of the fuel. Any person who does not provide or post the required notice is presumed to know that the fuel is used for a taxable use and is subject to penalties imposed by the Internal Revenue Service. ()

151. -- 169. (RESERVED)

170. INFORMATION ON DYED & UNDYED DIESEL FUEL (RULE 170).
Section 63-2425, Idaho Code

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the Tax Commission for a refund of the special fuels taxes included in the purchase price of undyed diesel used for heating a dwelling or building. The distributor may assist the consumer claiming a refund of the special fuels tax from the Tax Commission by: ()

a. Properly documenting information on the sales invoice; and ()

b. Providing the customer with a Form 75. ()

02. Red-Dyed Diesel. It is illegal to use red-dyed diesel in the main supply tank of a licensed, or required to be licensed, motor vehicle in this state unless the type of user is listed below. Penalties for illegal use of red-dyed diesel in a motor vehicle are found in Section 63-2460, Idaho Code. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed diesel for use in their vehicles. Red-dyed diesel may be used: ()

a. By state and local governments (political subdivisions of the state) for their exclusive use; ()

b. In the engine of a train; ()

c. In a school bus, owned or leased and operated by a political subdivision of the state of Idaho, while the bus is engaged in the transportation of students and school employees; ()

d. In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; ()

e. In a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country and is used in the operator's trade or business or for the production of income; ()

f. In a highway vehicle owned by the United States that is not used on a highway; ()

g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). ()

171. MOTOR FUELS EXEMPTION FROM SALES TAX (RULE 171).

Sections 63-2431, 63-3622C, Idaho Code

Any sale of motor fuels by any fuel distributor that is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If such purchases are later included in credits or refunds for motor fuels tax paid and not subject to taxes imposed by Title 63, Chapter 24, Idaho Code, and no other exemption applies, sales and use taxes is applicable. If dyed fuel products are sold without the motor fuels tax, the sale is subject to the Idaho sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of dyed fuel that do not include the motor fuels tax are exempt from Idaho sales tax only if the seller has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the dyed fuel product delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. ()

172. -- 184. (RESERVED)

185. AUTHORITY TO GIVE THE CONSENT TO JURISDICTION OF IDAHO COURTS (RULE 185).

Section 63-2427A, Idaho Code

01. Authorized Signature on Application. All Idaho Fuel Distributor License Applications must be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant. ()

02. Authority to Waive Sovereign Immunity. If the applicant is a state, local or tribal governmental

entity, the application must be accompanied by a separate authorization by the governing authority of the entity waiving sovereign immunity that the entity may otherwise assert against any action to enforce Idaho motor fuels tax laws in state court and setting forth the authority of the individual who signs the application to bind the applicant.

()

03. Irrevocable Submission and Waiver of Sovereign Immunity. The application constitutes an irrevocable submission to the jurisdiction of Idaho state courts, and the waiver of any sovereign immunity that may otherwise be asserted, as to all disputes related to the enforcement of Title 63, Chapter 24 of the Idaho Code.

()

186. -- 229. (RESERVED)

230. MOTOR FUELS SUBJECT TO USE TAX -- REPORTING (RULE 230).

Section 63-2421, Idaho Code

Any person using tax-exempt motor fuels in a licensed motor vehicle, not subject to Rule 400 of these rules, upon highways in Idaho, will annually report to the Tax Commission the amount of motor fuels tax due.

()

01. Reporting. A person who wishes to pay their fuel taxes due more frequently may file on forms prescribed by the Tax Commission for any time period that is not less than one (1) month, but not more than one (1) year. The report may be made together with the claimant's Idaho income tax return, if it is required. The amount of fuels tax due on motor fuels may be off-set against any refund due from other motor fuels taxes or income taxes.

()

02. Lack of Records to Compute Fuel Consumption Rate. When a motor fuels consumer does not keep sufficiently detailed records to determine motor fuels consumed by its motor vehicles, the consumption rates found in Subsection 290.05 of these rules are presumed to be correct.

()

03. Fuel Records. If the motor fuels consumer does not keep sufficiently detailed records to determine taxable gallons, all tax-exempt motor fuels purchased is subject to the fuels tax unless the number of gallons placed into the supply tank of the licensed or required to be licensed motor vehicle can be determined.

()

231. -- 249. (RESERVED)

250. REFUND CLAIMS -- REPORTING (RULE 250).

Sections 63-2410, 63-2423, Idaho Code

01. Requirements of a Valid Refund Claim. Before the Tax Commission can credit or refund motor fuels taxes, the taxpayer making the claim must establish both of the following:

()

a. The basis for the credit or refund claim, and

()

b. The amount of the credit or refund.

()

02. Refund May Be Claimed Only by Final Consumer. Refunds of motor fuels taxes may be claimed on forms prescribed by the Commission by the person who purchased and used the motor fuels upon which the tax has been paid and for which a refund may be claimed. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or shareholders.

()

03. Refund Applied to Taxes Due. Any refund due to a consumer is applied first to any liability due under any law administered by the Tax Commission, including any liability under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has not filed any tax return required to be filed with the Tax Commission. Any balance of the refund exceeding taxes due will be paid as a refund to the entity filing the return.

()

251. -- 269. (RESERVED)

270. REFUND CLAIMS – GENERAL AND BULK DOCUMENTATION (RULE 270).

Sections 63-2410, 63-2421, 63-2423, Idaho Code

01. Refunds to Consumers. Tax-paid fuel used in a nontaxable manner according to Sections 63-2410 and 63-2423, Idaho Code, qualifies for a fuel tax refund. Refund claims and required worksheets must be made on forms provided or approved by the Tax Commission. ()

02. Records Retention Requirements. All claimants must keep records for the greater of either: ()

a. Three (3) years from the due date, including extensions, of the income tax return; ()

b. The time during which the taxpayer's income tax return is subject to adjustment by either the Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return; ()

c. Four (4) years, if an IFTA licensee. ()

03. Records Required – Generally. A claimant must have fuel purchase records and records showing fuel was placed into the supply tank of vehicles or equipment using the fuel in a nontaxable manner. Fuel purchase records must contain the information required by Rule 150 of these rules. Fuel purchase records must be reissued if altered or corrected. ()

04. Records Required – Retail Fuel Purchases. When claiming a refund of tax for fuel purchased from a retail outlet, a receipt is required. The vehicles or piece of equipment using the fuel must be recorded on the receipt. If claiming refunds for fuel used in more than one vehicle or piece of equipment, make sure all the vehicles and equipment are identified on each receipt. When placing fuel into containers for use in vehicles, pieces of equipment, or commercial motorboats, identify into which the fuel is placed on the receipt. No other records are required if the fuel from the container isn't used in licensed or required to be licensed motor vehicles. ()

05. Records Required – Bulk Fuel Purchases. When claiming a fuel tax refund on fuel delivered in bulk, the claimant must provide the following documentation: ()

a. Seller Invoices. ()

b. Withdrawal Logs. ()

i. Complete withdrawal logs must give the date, the vehicle or piece of equipment, and the amount of fuel withdrawn. ()

ii. Withdrawal logs aren't required for claimants with two (2) or more bulk storage tanks at the same location with Idaho tax-paid fuel of the same type for taxable and nontaxable uses. Claimants must identify each storage tank for taxable or nontaxable use. The seller must mark the invoices at the time of delivery and identify the storage tanks into which the fuel was delivered. ()

c. Bulk Fuel Inventory Reconciliations. Reconciliations must include beginning inventory, purchases, withdrawals, calculated ending inventory, and actual ending inventory determined by a physical reading. ()

06. Alternate Method for Bulk Tanks – Authorized Percentage. A claimant can request an authorized percentage if using Idaho tax-paid fuel from one (1) bulk tank in both a taxable and nontaxable manner. IFTA licensees and owners of multiple bulk storage tanks containing tax-paid and tax-exempt fuels of the same type at the same location can't use an authorized percentage. The claimant must submit a completed authorized percentage request form before using any percentage to claim a refund. The request must itemize all taxable and nontaxable uses by vehicle and piece of equipment based on previous experience or anticipated use. Records to support an authorized percentage must be kept and presented upon request. Equipment lists must be provided and supported by: ()

- a. Equipment purchase records; ()
- b. Sales or rental receipts; and ()
- c. Depreciation schedules. ()

07. Untaxed Motor Fuel. Untaxed motor fuel cannot be used in licensed or required to be licensed motor vehicles unless authorized in the Fuels Tax Act or these rules. Under the audit and enforcement provisions of Sections 63-2410 and 63-2434, Idaho Code, all fuel tax refund claims are subject to audit by the Tax Commission and no part of these rules may be construed to imply that an audit may not be performed. Tax-paid motor fuel is not exempt from taxes imposed by the Idaho Sales Tax Act when the motor fuel tax is refunded. ()

08. Indian-Owned Retail Outlet. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of Sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. ()

271. -- 289. (RESERVED)

290. MOTOR VEHICLES REFUND CLAIMS – NONTAXABLE MILES (RULE 290).
Section 63-2423, Idaho Code

01. Refunds to Consumers – Nontaxable Miles. Tax-paid special fuels used as described in Section 63-2423, Idaho Code, qualifies for a fuels tax refund. Refund claims and required worksheets must be made on forms provided or approved by the Tax Commission. The records retention and fuel record requirements in Subsections 270.02 through 270.05 of these rules also apply to this section. ()

02. Nontaxable Miles Defined. Nontaxable miles are miles driven on roads: ()

- a. Not open to the public; or ()
- b. Not maintained by a governmental entity; or ()
- c. Located on private property maintained by the property owner; or ()
- d. Under construction and not open to the public; or ()

e. Constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. Miles traveled on these roads are nontaxable when the contractor or subcontractor is required to pay the cost of maintaining these roads by contract or permit. ()

03. Records Required – Mileage Records. Mileage records are required to claim a refund of tax when using special fuels on nontaxable roads. Claimants operating under the authority of the IFTA or IRP are required to follow the recordkeeping requirements of IFTA and IRP in addition to the requirements of this section. Idaho Full Fee registrants must follow the requirements of Rule 422 of these rules and this section. ()

04. Records Required – Actual Nontaxable Miles. Nontaxable miles must be documented for each trip using odometer, hubometer, or GPS readings. ()

05. Alternate Methods. A claimant may use an alternate method to determine nontaxable miles or use a presumed miles per gallon (MPG) to determine fuel use unless they are an IFTA licensee or IRP registrant in any participating jurisdiction. Claimants may estimate using one of the methods below. ()

a. **Estimating Nontaxable Miles.** Nontaxable miles may be estimated by using maps, contracts, or a Tax Commission approved trip analysis. Upon request, the claimant must provide the documents supporting the

estimation. Maps other than the Official Idaho Highway map miles are estimates. ()

b. Estimating Nontaxable Gallons. Nontaxable gallons may be estimated using presumed MPG's. Upon request, the claimant must provide the tax-paid fuel purchase records supporting the total gallons claimed. ()

i. Presumed MPG's by Weight. The following are presumed MPG's by gross vehicle weight (GVW) or registered GVW:

Over 40,000 GVW	4.0 MPG
Over 26,000 GVW to 40,000 GVW	5.5 MPG
Over 12,000 GVW to 26,000 GVW	7.0 MPG
12,000 GVW or less	10.0 MPG

()

ii. Presumed MPG's by Operation. The following are presumed MPG's for vehicles over 40,000 GVW or registered GVW used in certain industries:

Logging	4.3 MPG
Agricultural	4.5 MPG
Sand, gravel & rock hauling	4.0 MPG
Construction	4.4 MPG

()

291. (RESERVED)

292. REFUND CLAIMS – POWER TAKE-OFF (PTO) AND AUXILIARY ENGINES (RULE 292).

Sections 63-2410, 63-2423, Idaho Code

01. Refund to Consumers — PTO and Auxiliary Engines. Tax-paid fuel used in PTO and auxiliary engines qualifies for a fuels tax refund under Sections 63-2410 and 63-2423, Idaho Code. PTO refunds are only allowed for special fuels. Auxiliary engine refunds are allowed for gasoline or special fuels. Refund claims and required worksheets must be made on forms provided or approved by the Tax Commission. The records retention and fuel record requirements in Subsections 270.02 through 270.05 of these rules also apply to this section. ()

02. PTO and Auxiliary Engines Defined. A PTO uses fuel from the main supply tank to operate the main engine for a purpose other than operating or propelling the vehicle on the road. An auxiliary engine uses fuel from the vehicle's main supply tank to operate an engine other than the vehicle's main engine. ()

03. Records Required – Actual Consumption Refunds. Actual fuel consumption for PTO and auxiliary engines may be claimed when the PTO or auxiliary engines are equipped with an electronic monitoring device. The monitoring device must provide the date, time of use, and gallons metered. The Tax Commission may request verification that the electronic monitoring device is reporting consumption correctly. ()

04. Alternate Methods – Standard Allowances. The following are standard allowances adopted by the Tax Commission. An IFTA licensee isn't allowed to use alternate methods to determine nontaxable fuel use. Claimants may estimate using unit quantities, percentages, or the nonstandard allowance method. ()

a. Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
Concrete Pumping	0.142857 gallons	x	Yards pumped

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- b. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage trucks	25%	x	Gallons consumed

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05. Nonstandard Allowances. A claimant must request a nonstandard allowance from the Tax Commission if they want to use an allowance different from those listed in this section. A claimant must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. The Tax Commission may request additional information or documentation as needed in order to make a determination on the request.

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293. -- 299. (RESERVED)

300. ADMINISTRATION, RULES AND DELEGATION OF AUTHORITY (RULE 300).

Section 63-2442, Idaho Code

Transportation Department Personnel as Deputies of the Tax Commission. Pursuant to the authority of Sections 63-2434 and 63-2442, Idaho Code, those individuals employed by the Idaho Transportation Department in the operation of stationary or mobile Ports of Entry are designated as deputies of the Tax Commission for exercising the powers necessary to enforce the provisions of the special fuels tax laws. Such authority includes exercise of the powers described in Rule 400 of these rules.

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301. -- 309. (RESERVED)

310. EXEMPTION FROM REQUIREMENT FOR BONDS.

Section 63-2428, Idaho Code

01. Exemption to Bond Requirements for Licensed Distributors. Bonds are required of all licensed distributors unless the distributor is found to be financially responsible. A licensed distributor seeking exemption from the bonding requirement must apply for the exemption by filing a written petition with the Tax Commission. The petition must contain information relating to the requirements of Section 63-2428, Idaho Code, for establishing financial solvency and responsibility. Together with the petition, the distributor must submit any information required in the following Subsections 310.01.a. through 310.01.e.

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a. If all or any part of the unencumbered property offered to show financial solvency is real property, the petition must include both a title report from an independent title company reporting on the state of the title of the

real property as of a time not more than fifteen (15) days before the filing of the petition and a copy of the most recent valuation notice issued by the county assessor for ad valorem property tax purposes. ()

b. If all or any part of the unencumbered property is licensed motor vehicles, the petition must include copies of the titles of the vehicles and evidence of the value of the vehicles from a source independent from the distributor. ()

c. If all or any part of the unencumbered property is personal property other than motor vehicles, the petition must include a description of the property, evidence of ownership of the property, an independent appraisal of the property, and evidence that the property is unencumbered. Copies of all documents relating to all of the distributor's current and long-term liabilities, including contingent liabilities, lawsuits or potential lawsuits to which the distributor is or may become a party, are required to establish that no security interests or other encumbrances exist. ()

d. The petitioner must arrange, at the petitioner's expense, for an established, independent commercial credit rating company to submit directly to the Tax Commission a current and complete credit report about the licensed distributor; or, the distributor must include with the petition its most recent financial statements, including a current income statement, balance sheet, and statement of cash flows. If the petitioner is a publicly held company, the financial statements must be accompanied by an opinion issued by an independent certified public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. If the petitioner is a privately held company, the financial statements must be reviewed by a certified public accountant or licensed public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. ()

e. The Tax Commission may require the distributor to supplement its petition with such further information as the Tax Commission, in its discretion, finds necessary to determine financial responsibility. If incomplete or substitute submissions are received by the Tax Commission, the information submitted is reviewed on a case-by-case basis to determine whether an exemption from the bonding requirement is granted. ()

02. Conditions for Termination of Exemption. If granted, the exemption from the bonding requirement will terminate: ()

a. One (1) year after the date on which it was granted. ()

b. Ninety (90) days after the occurrence of any delinquency in motor fuels tax unless the delinquency has been paid within that time period. ()

c. Upon the occurrence of any encumbrance of any of the property upon which the finding of financial responsibility was based. ()

d. Upon the occurrence of any change in the business activity of the distributor that would cause the amount of bond required to be increased to an amount greater than the value of the distributor's unencumbered assets. ()

e. Upon the occurrence of any event prejudicing the distributor's solvency or financial responsibility. ()

03. Bond Requirement upon Termination of Exemption. Immediately upon any termination of the exemption from the requirement for a bond the distributor must supply the required bond according to Section 63-2428, Idaho Code. ()

04. Pending Application Does Not Excuse the Bond Requirement. Having an application pending for exemption from the requirement for a bond does not excuse the bond. If a bond exemption is due to expire, the distributor must submit a new petition applying for a continuation of the exemption no later than ninety (90) days before the day the exemption is due to expire to prevent a lapse in the exemption. The petition must meet all of the requirements of this rule. ()

05. Conditions for Renewal of Bond Exemption. The following must be submitted to renew a bond exemption: ()

- a.** A written request for renewal of waiver; ()
- b.** The information required in Subsections 310.01.a. through 310.01.e. of this rule. ()

311. IFTA LICENSE BOND (RULE 311).
Sections 63-2442A, 63-2470, Idaho Code

01. General. The Tax Commission may require an IFTA licensee to post a bond following the requirements of the IFTA Agreement in order to maintain their license. A bond may be required when he files returns or remits taxes, separately or in combination, after the due date at least three times within a three year period. When a bond is required, the licensee must post the bond within thirty (30) days from the date of the request. When no bond is posted within the thirty (30) days, the license is automatically revoked and it must be surrendered to the Tax Commission. An assessment may be made for any unreported tax liability based on actual records or an estimate. ()

02. Reinstating Revoked Licenses. An applicant may be required to post a bond when he has previously had his IFTA license revoked or is related to a person who has previously had their IFTA license revoked. An applicant is related to a person who has previously had his IFTA license revoked when: ()

a. The applicant is owned at least twenty-five percent (25%) by a person or persons who has previously had their IFTA license revoked. ()

b. The applicant is operated or controlled by a person or persons who has previously had their IFTA license revoked. Operation and control includes, but is not limited to, an officer or director or other person authorized by the applicant to engage in the business or commercial activity of the applicant. ()

03. Amount and Type of Bond. The amount of the bond is one thousand dollars (\$1,000) or twice the estimated tax liability for the licensee's quarterly tax reporting period, whichever is greater, without regard to actual or anticipated tax-paid credits. Any type of bond allowed by the IFTA Agreement or these rules may be secured. The bond amount is reviewed annually, but may be reviewed at any time, thereafter. The licensee's returns and records may be reviewed to determine if the bond amount is raised, lowered, or remain unchanged. ()

04. Bond Waiver Request. The licensee may request a waiver of bond requirement within thirty (30) days from the approval of the license renewal request. The licensee must be a quarterly filer. The licensee must have submitted the quarterly returns and paid the tax due by the due date for one calendar year. An annual filer may not request a bond waiver. ()

05. Denial of Bond Waiver Request and Appeal of Denial. The Tax Commission may deny a bond waiver request when it determines that waiving the bond requirement puts the financial interests of IFTA jurisdictions in jeopardy. The licensee must follow the appeal procedure in Section 63-2470, Idaho Code, to appeal the denial of a bond waiver request. ()

312. -- 319. (RESERVED)

320. RECORDS RETENTION REQUIREMENTS (RULE 320).
Section 63-2429, Idaho Code

01. Records Required. Any person importing, manufacturing, refining, dealing in, transporting, storing or selling any motor fuels in this state will keep such records, receipts and invoices as will show all purchases, sales, receipts, or deliveries of motor fuels in this state. Such records is maintained for at least three (3) years. ()

02. Motor Fuels Subject to Use Tax. Any person who has purchased tax-exempt motor fuel and subsequently uses the fuel in a taxable manner, must maintain enough records to establish the tax due. ()

03. Original Invoice Retention. The original invoices required by Rule 270 of these rules, relating to refunds of motor fuels tax paid on certain fuel used off-road, must be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the Tax Commission or by voluntary action of the taxpayer. ()

321. -- 399. (RESERVED)

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING (RULE 400).
Sections 49-432, 63-2401, 63-2438 through 63-2440, 63-2442A, Idaho Code

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels as defined in Section 63-2401, Idaho Code, on the highways of this state without having obtained one (1) of the following: ()

- a.** A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. ()
- b.** A temporary fuel tax permit from the Idaho Transportation Department. ()
- c.** An IFTA license. ()

02. Federal or In-State Governmental Vehicles. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. ()

03. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. ()

04. Temporary Fuel Tax Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, must secure a temporary fuel tax permit from the Idaho Transportation Department in the manner provided and required by that department. ()

05. Not Obtaining an IFTA License, or Temporary Fuel Tax Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license, or an Idaho temporary fuel tax permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Tax Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Section 63-2434, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but not displaying, either an IFTA license or a temporary fuel tax permit. ()

401. -- 419. (RESERVED)

420. DOCUMENTATION FOR IFTA LICENSEE REPORTING (RULE 420).
Sections 63-2439, Idaho Code

01. Records Required for Idaho IFTA Licensee. Records are required to verify the accuracy of any tax report or worksheet filed with the Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a temporary permit must retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. ()

02. Fuel Records. In order for the IFTA licensee to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but is not limited to, the following: ()

- a. The date of each receipt of fuel; ()
- b. The name and address of the person from whom purchased or received; ()
- c. The number of gallons received; ()
- d. The type of fuel; ()
- e. The specific vehicle into which the fuel was placed; and ()
- f. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records. ()

03. Mileage Records. All IFTA licensees must maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records must contain, but not be limited to: ()

- a. Total trip miles, including vicinity miles; ()
- b. Miles traveled for taxable and nontaxable use; ()
- c. Mileage totaled by jurisdiction in which the IFTA vehicle operated; ()
- d. Starting and ending dates of trips; ()
- e. Trip origin and destination; ()
- f. Hubometer or odometer readings from the beginning and ending of each trip; ()
- g. Complete routes of travel, that includes interim stops such as pick-up and delivery locations; and ()
- h. Vehicle license number or unit number. ()

04. Additional Records Requirements. Other records may be requested, such as: ()

- a. Bills of lading or manifest documents; ()
- b. Vehicle dispatch ledgers; ()
- c. Accounts payable and receivable; ()
- d. Lease agreements; ()
- e. Driver pay records; ()
- f. Driver logs; ()
- g. Fuel use trip permits; and ()
- h. Other documents used in preparing fuel tax reports. ()

05. Summaries. Individual trips must be accumulated into monthly summaries in total and by jurisdiction. These summaries must be used as the basis for the miles submitted on the IFTA quarterly or annual reports. ()

06. Computer Support. Computer summaries must be supported by trip sheets or logs verifying mileage traveled. ()

07. Mileage Information. Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. ()

08. Records Retention. IFTA licensees must retain records at least four (4) years. ()

09. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction is used to resolve the point-to-point mileage differences. ()

421. DOCUMENTATION FOR IDAHO REGISTRANTS (RULE 421).
Section 49-439, Idaho Code

Records Required For IRP. Registrants must keep records to verify the accuracy of any IRP application submitted to the Idaho Transportation Department. Registrants must keep the records required by Rule 420 of these rules for all IRP registered vehicles. Also, registrants must keep individual vehicle records by registered fleet for each application reporting period of July 1st through June 30th. ()

422. DOCUMENTATION FOR IDAHO FULL FEE REGISTRANTS (RULE 422).
Section 49-439, Idaho Code

01. Records Required For Idaho Full Fee Registrations. Registrants must keep records to verify the accuracy of any Idaho Full Fee registration application submitted to the Idaho Transportation Department. No records are required for full fee vehicles registered at less than sixty-two thousand (62,000) lbs. gvwt or those registered at the maximum tier, of over fifty thousand (50,000) miles per reporting period. Registrants must keep records by individual vehicle for each reporting period of July 1st through June 30th. Examples of records include, but are not limited to: ()

a. Distance Measuring Devices. Odometer, hubometer, GPS or perpetual life-to-date readings. Records must include the date the reading was recorded and the reading. When changing devices, the change must be properly documented. ()

b. Daily Trip Logs. Logs include the date of travel, origin and destination of the trip, and number of miles traveled. Logs may be supported by load tickets, billing invoices, or other original source documents that can verify miles traveled. ()

c. Number of Trip/Round Trip Miles. When making numerous short trips from the same origin to the same destination, records include the origin, destination, and round-trip miles. Computations must be supported by scale tickets, load tickets, a route map, or a Tax Commission approved trip analysis. ()

d. Fuel Purchases. Retail fuel purchases are fuel invoices with the date, location, quantity, and type of fuel purchased. Bulk fuel records must be sufficient to prove the accuracy of the fuel use. Fuel purchase records must show the usage per unit. The records must document how the average miles-per-gallon (MPG) was calculated. ()

02. Credit for Off-Road Miles and Documentation Required. Credit for off-road miles may be given for roads not maintained by a government entity or roads built or maintained by the registrant pursuant to a contract, according to Section 290 of these rules. These include roads on private property, roads under construction but not open to the public, and may include designated Forest Service roads. Off-road miles must be documented by using odometer readings, maps, contracts, GPS readings, or a Tax Commission approved trip analysis. ()

03. IFTA Licensees with Full Fee Registration. An IFTA licensee with full fee registration must maintain records required by IFTA. ()

423. -- 499. (RESERVED)

500. IDAHO CLEAN WATER TRUST FUND TRANSFER FEE (RULE 500).

Section 41-4909, Idaho Code

The Transfer Fee. The fee imposed by Section 41-4909, Idaho Code, is The Idaho Clean Water Trust Fund is called the Transfer Fee. ()

501. TRANSFER FEE REINSTATED (RULE 501).

Section 41-4909, Idaho Code

The Transfer Fee was suspended as of October 1, 1999. The Transfer Fee was reinstated on September 1, 2007. ()

502. -- 509. (RESERVED)

510. APPLICATION AND REPORTING OF THE TRANSFER FEE (RULE 510).

Section 41-4909, Idaho Code

01. Application. ()

a. The Transfer Fee applies to the first receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product received. The fee is paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. Only licensed Idaho fuel distributors may receive refunds or credits of the transfer fee. The refunds or credits must be claimed on the distributor report required in Section 63-2406, Idaho Code, according to Rule 180. ()

b. The legal incidence of the fee is on the first distributor which receives any petroleum or petroleum product. This distributor is required to report and pay the transfer fee to the Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. ()

02. Receipt of Petroleum Products. Receipt of petroleum or petroleum products is determined according to Section 63-2403, Idaho Code. Receipt is determined by the movement of petroleum or petroleum products from permanent storage facility (terminal) or crossing the border of this state. Storage of petroleum or petroleum products is incidental to the movement of the petroleum or petroleum products. ()

03. Exemption to Application of the Transfer Fee. The Transfer Fee does not apply to petroleum or petroleum products that are: ()

a. Returned to the refinery or pipeline terminal. ()

b. Exported from this state. No fuel is considered exported, unless the distributor can prove the export by documentation required by Rule 130 of these rules. ()

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. ()

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. ()

04. Casualty Loss and Two Percent (2%) Allowance Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. Deductions allowed to motor fuel distributors in Section 63-2407, Idaho Code, for casualty loss and the two percent (2%) allowance are not deductions applicable to the Transfer Fee. ()

05. Petroleum and Petroleum Products. The products subject to the Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. Ethanol (E00), natural gasoline, and biodiesel (B00) are also defined as petroleum and petroleum products that are subject to the Transfer Fee. ()

06. Exclusion of Petroleum and Petroleum Products on Which the Fee Has Previously Been Paid. Used oil as defined by 40 CFR Part 279 (July 1, 2000) is presumed to be comprised of petroleum or petroleum products on which the transfer fee has previously been paid when generated in Idaho. The distributor will not report used oil generated in Idaho on the distributor report nor pay or receive a credit of the transfer fee on used oil generated in Idaho. When used oil is not generated in Idaho it is presumed to be subject to the transfer fee. The distributor must report and pay the transfer fee unless an exemption or exclusion applies. ()

07. Motor Fuel Distributor License and Limited Distributor License. Any person holding a motor fuel distributor license issued by the Commission under Chapter 24, Title 63, Idaho Code, is also licensed for the Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a motor fuel distributor license applies to the Commission for a limited distributor license. The limited distributor license is only for reporting the Transfer Fee. ()

08. Reporting Requirements. ()

a. A motor fuel distributor will report and pay the Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Transfer Fee is included in the report in which the distributor is required to report the tax on the same fuel. ()

b. Persons holding a limited distributor license will file a monthly report with the Commission on forms prescribed by the Commission on or before the last day of the month following the month to which the report relates. ()

c. The Transfer Fee must be reported according to Rule 130 of these rules. ()

09. Payment. ()

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. ()

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, is allocated between the motor fuels tax and the Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. ()

511. -- 999. (RESERVED)

35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 67-4718, and 67-4917B, Idaho Code, the Commission has promulgated rules implementing the provisions of the Idaho Code relating to hotel/motel room charges. These rules do not apply to sales taxes imposed by resort cities, unless such taxes are administered by the Commission. ()

001. TITLE AND SCOPE (RULE 001).

Sections 63-3612, 67-4711, 67-4718, 67-4902, 67-4917B & C, 63-1801 through 63-1804, Idaho Code

01. Title. These rules will be titled IDAPA 35.01.06, “Hotel/Motel Room and Campground Sales Tax Administrative Rules.” ()

02. Scope. These rules are construed to reach the full jurisdictional extent of the state of Idaho’s authority for accommodations. The imposition of a tax for providing a place to sleep or occupy. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

01. Administrative Relief. This chapter allows administrative relief as provided in Sections 63-3626, 63-3631, 63-3633, 63-3634, and 63-3049, Idaho Code. ()

02. Cross Reference. ()

a. See IDAPA 35.01.02.121, “Idaho Sales and Use Tax Administrative Rules.” ()

b. See IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” ()

003. LODGING OPERATORS AND SHORT-TERM RENTAL MARKETPLACES (RULE 003).

Sections, 63-1801 through 63-1804, 63-3612, 63-4711, 67-4718, 67-4917B, Idaho Code

01. In General. These rules apply to the Short-term Rental and Vacation Rental Act, Section 63-1801 through 63-1804, Idaho Code. ()

02. Applicable Taxes. Any state or local government taxes imposed according to Section 63-1804, Idaho Code, will be collected, reported, paid, and administered according to these rules or as further explained by the Commission’s rules in IDAPA 35.01.02, “Idaho Sales and Use Tax Administrative Rules.” ()

03. Registration. Registration with the Commission will be in the same manner and in the same form as is required for obtaining a seller’s permit for state sales tax. However, a short-term rental marketplace that has not facilitated a lodging transaction in Idaho has forty-five (45) days from the completion of their first lodging transaction in Idaho to register to collect room sales tax. ()

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

01. Campground. Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. ()

02. Hotel or Motel. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. ()

a. Providing rooms for consideration includes rooms rented for personal occupancy and rooms rented for meeting, convention, or other commercial purposes. ()

b. The following rentals are taxable, unless exempted under the provisions of Rule 016 of these rules. ()

- i. Condominiums or townhouses ()
- ii. Rooms that a public or private educational institution rents ()
- iii. Rooms that hospitals, nursing homes, or similar institutions rent to nonpatients. ()

011. ACCOMMODATIONS TAX (RULE 011).

Sections 50-1046, 63-3612, 67-4711, 67-4718, 67-4902, 67-4917B & C, 63-1801 through 63-1804, Idaho Code

01. In General. These rules apply to: ()

a. Room Sales Tax. The room sales tax includes Travel and Convention Tax and Auditorium or Community Center District Tax when those taxes are administered by the Tax Commission. In these rules, they are referred to collectively as the room sales tax: ()

i. Travel and Convention Tax. The tax imposed by Section 67-4718, Idaho Code, is a gross receipts type sales tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds as defined in these rules. ()

ii. Auditorium or Community Center District Tax. The tax imposed by Section 67-4917B, Idaho Code, is a retail sales tax levied upon the user or occupant of a hotel/motel room collected by the hotel or motel from the occupant or user and remitted to the Commission. ()

b. Sales Tax for Accommodations. These rules explain the application of the state sales tax on accommodations. See also IDAPA 35.01.02.028, "Idaho Sales and Use Tax Administrative Rules." ()

012. DISTRICT BOUNDARIES (RULE 012).

Maps showing the district boundaries for each of the auditorium or community center districts administered by the Commission can be found on our website and are available upon request. ()

013. REGISTRATION (RULE 013).

Registration with the Commission will be in the same manner and in the same form as is required for obtaining a seller's permit for state sales tax. ()

014. ROOM OR CAMPGROUND CHARGE DEFINED (RULE 014).

01. Room or Campground Charge Definition. As used in these rules, the charge for providing rooms or campground spaces is to the total paid, whether in money or otherwise, for the rental of the room or space. This includes amounts charged for temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed. In the case of campgrounds any charges for water, electrical or sewer hookups are part of the charge for the use of the space and are included in the amount subject to tax. ()

02. Not Included. Separately stated charges that are not part of the rental of the room or campground space. Examples include separately stated charges for telephone, food, beverage or laundry charges. ()

015. SEPARATE STATEMENT OF TAX (RULE 015).

01. Amount of Tax Charged. The total tax charged for lodging accommodations needs to be separately stated from all other charges on the customers receipt and can appear on the receipt as either; ()

a. Separate Statement. A separate line item for each of the applicable taxes. ()

b. Combined Statement. A single line item that includes all applicable taxes. ()

02. Fractional Parts of One Cent. If the amount of tax computed in accordance with this rule is a fractional part of one cent (\$.01), the amount will be rounded to the nearest full cent. ()

016. EXEMPTIONS (RULE 016).

Sections, 63-3612(g), 63-3624, 63-3622O, 67-4718, 67-4917B & C, 63-1804, Idaho Code.

01. Exemptions. Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax. ()

02. Exempt Entities. Rooms or campground spaces furnished to governmental entities, educational institutions, or hospitals are exempt from the taxes if and only if the charge for the room or campground space occupancy is billed directly to and paid directly by the governmental entity, educational institution, or hospital. ()

a. “Governmental entity” includes the federal government and any of its instrumentalities, the state of Idaho and any of its agencies or any city, county or taxing district of the state of Idaho. Governmental entity does not include states other than Idaho or their political subdivisions. ()

b. “Educational institution” means any nonprofit colleges, universities, primary, and secondary schools in which systematic instruction in the usual branches of learning is given. The exemption does not include educational institutions that operate for profit or schools primarily teaching special accomplishments, such as business or cosmetology. ()

c. “Hospital” means a nonprofit institution licensed as a hospital by any state. This exemption does not include hospitals that operate for profit, nursing homes, or similar institutions. ()

d. “Billed directly to” means a contractual agreement between the facility operator and the governmental entity, educational institution, or hospital whereby the charge for the room or campground space is directed to and is the responsibility of the governmental agency or institution. “Billed directly to” also includes credit card charges billed to an account opened by an exempt agency, educational institution, or hospital. ()

e. “Paid directly by” means a remittance tendered directly by the governmental entity, educational institution, or hospital to the facility operator. It does not include a payment by the governmental entity or institution to an employee or agent for reimbursement of expenses incurred during business travel. However, “paid directly by” does include payments made by an exempt entity to a financial institution for credit card charges made on a charge account in the name of the exempt entity with a credit card issued to the entity itself and not to any individual or employee. ()

f. Credit cards issued to employees of governmental agencies are NOT considered to be billed directly to and paid directly by the governmental entity when the employee is responsible for making payment to the credit card company. ()

03. Continuous Occupancy Exemptions. All hotel/motel room sales and campground space rentals are presumed to be short term unless evidence can be provided documenting continuous occupancy. Continuous occupancy means maintaining residency under the terms of a lease or similar agreement for a continuous period of time by the same individual or individuals. The continuous occupancy exemption does not apply when a room or campground space is furnished to a business enterprise that rotates numerous employees as occupants of the room or space with no one (1) employee remaining continuously for the minimum number of days required to meet the continuous stay requirements. ()

a. Hotels and Motels. The room charges are exempt from the following taxes when continuous residency is maintained in a hotel or motel by the same individual or individuals for a period that exceeds thirty (30) days: ()

i. Sales and Use Tax; ()

ii. Travel and Convention Tax; and ()

iii. Auditorium or Community Center District Tax if the hotel or motel is located within the boundaries ()

of the auditorium or community center district. ()

b. Campgrounds. The rental of a campground space is exempt from the following taxes when continuous residency is maintained by the same individual or individuals in a campground space for a period that exceeds thirty (30) days: ()

i. Sales and Use Tax; ()

ii. Travel and Convention Tax; and ()

iii. Auditorium or Community Center District Tax does not apply to campground spaces. See Subsection 016.05 of this rule. ()

c. This can be documented by a lease or other documentation that shows the period the occupancy is maintained. A guest registration card verifiable by a billing document is acceptable documentation. See Rule 017 of these rules for documentation requirements. ()

04. Rooms Rented for Purposes Other Than Sleeping. Travel and Convention tax applies only to rooms rented to an individual as a place to sleep. The tax does not apply to rooms rented for other purposes, such as for meetings. However, both the state sales tax and the Auditorium or Community Center District tax apply to rooms rented by a hotel or motel for purposes other than sleeping. Rooms supplied with beds are presumed to be rented for the purpose of sleeping unless the contrary is established by the operator. Rooms, other than dormitory rooms, rented by an educational institution for purposes other than sleeping, are not taxable as a sale of lodging; however, it is possible that renting such a room may be taxable as a fee for the privilege of using a facility for a recreational purpose. ()

05. Campgrounds Exempted. The Auditorium District or Community Center tax does not apply to campground charges. The state sales tax and the travel and convention tax apply to the charge for campground spaces. Sales of spaces in campgrounds owned or operated by the state of Idaho, its agencies or political subdivisions are subject to the state sales tax but not the travel and convention tax. ()

06. Foreign Diplomats. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card 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. Vendors document an exempt charge to a foreign diplomat by: ()

a. Retaining a photocopy of the front and back of the federal tax exemption card; or ()

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. ()

07. Direct Pay Authority. A taxpayer granted direct pay authority as provided by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 112 may not use this authority for hotel/motel room or campground space charges. State sales tax, Travel and Convention tax, and, when applicable, Auditorium or Community Center District tax is charged by the hotel, motel, or campground and paid to the hotel, motel, or campground by the direct pay authority permittee. ()

017. RECORDS REQUIRED (RULE 017).

Sections 63-3622, 63-3624, 67-4711, 67-4718, 67-4917C, Idaho Code

Any person that provides accommodations subject to the accommodations tax will maintain the records required in IDAPA 35.01.02.111, and the records and exemption certificates required in IDAPA 35.01.06.016 necessary to document exemptions from the accommodations tax. These records are to be maintained for a period of four (4) years and are subject to audit by the Commission or, Auditorium and Community Center Districts organized under chapter 49, title 67, Idaho Code. ()

018. RETURNS (RULE 018).

01. Filing Returns. Each hotel, motel, campground, lodging operator, and short-term rental marketplace providing taxable accommodations files with the Commission on forms prescribed by the Commission returns showing the amount of tax required to be paid to the Commission and such other information as the Commission requires. The return, together with the remittance shown to be due thereon, is to be received by the Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All taxable sales made to the user or occupant are to be reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. ()

019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (RULE 019).

Sections 63-3629, 63-3634, Idaho Code

01. Remittance of Taxes. In the event that taxes required to be collected and remitted by a hotel, motel, campground, lodging operator, and short-term rental marketplace are not remitted to the Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the Commission, the Commission will issue a Notice of Deficiency Determination pursuant to the provisions of Section 63-3629, Idaho Code. A hotel, motel, campground, lodging operator, and short-term rental marketplace to which such a Notice of Deficiency Determination has been issued may file a written protest requesting a redetermination of the deficiency pursuant to the provisions of IDAPA 35.02.01.320 - 328, "Tax Administration and Enforcement Administrative Rules." ()

02. Penalties. In the event that any deficiency in reporting or remitting taxes by a hotel, motel, campground, lodging operator, and short-term rental marketplace is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, campground, lodging operator, and short-term rental marketplace required to file a return with the Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act applies to the room sales tax. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 410. ()

03. Cross Reference. See Rule 003 of these rules, Administrative Appeals. ()

020. DISTRIBUTION (RULE 020).

Sections 67-4710 through 67-4718, 67-4917C, Idaho Code

01. Travel and Convention Tax. Amounts collected by the Commission for the state Travel and Convention tax will be paid distributed according to Section 67-4718, Idaho Code. ()

02. Auditorium or Community Center District Tax. The amounts collected by the Commission for any Auditorium or Community Center District will be distributed by the Commission to the Auditorium or Community Center District according to Section 67-4917C, Idaho Code. Funds to be distributed according to Section 67-4917C(2)(c), Idaho Code will be distributed no later than one month following receipt by the Commission of the revenues from such district. ()

021. SALES TAX RULES APPLY UNLESS OTHERWISE PROVIDED (RULE 021).

The rules promulgated by the Commission relating to the enforcement and collection of the Idaho sales tax applies to the room sales tax unless the provisions of Sections 67-4710 through 67-4719, Idaho Code, inclusive or Sections 67-4917A, 67-4917B or 67-4917C, Idaho Code, or these rules are expressly contrary to the Sales Tax Rules. ()

022. -- 999. (RESERVED)

35.01.08 – MINE LICENSE TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Section 63-105, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Mine License Tax Act. The rules relating to the administration and enforcement of mine license taxes, as well as other taxes, are promulgated as IDAPA 35.02.01. ()

001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 35.01.08.000, et seq., Idaho State Tax Commission Rules, IDAPA 35.01.08, "Mine License Tax Administrative Rules." They are construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a license tax. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Section 47-1205, Idaho Code

01. These Rules. The term these rules refers to IDAPA 35.01.08, relating to Idaho mine license tax. ()

02. Valuable Mineral. The term "valuable mineral," for purposes of the Idaho Mine License Tax, is defined to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to Section 613 of the Internal Revenue Code. This includes, but is not limited to, calcium carbonates, garnet, granite, pumice, quartzite, scoria, shale, slate, and stone (including dimension and ornamental stone). However, sand and gravel are not included in this definition. ()

011. -- 014. (RESERVED)

015. REFERENCE TO INCOME TAX RULES (RULE 015).

Section 47-1205, Idaho Code. All income tax rules promulgated by the Tax Commission that relate to sections of the Idaho Code incorporated by reference in the Mine License Tax Act apply to the mine license tax. ()

016. -- 019. (RESERVED)

020. ADVANCE ROYALTIES (RULE 020).

Section 47-1201, Idaho Code. Payments received from mining properties in Idaho from which no minerals or ores were extracted, sold, or used during the taxable year shall not be subject to the mine license tax. Provided, however, the tax arising from payments of advance royalties shall be deferred until the year during which the ore to which the advance royalty relates is actually extracted. ()

021. -- 029. (RESERVED)

030. NET VALUE OF ORE TO BE USED AS MEASURE OF TAX -- HOW DETERMINED (RULE 030).

Section 47-1202, Idaho Code. ()

01. Election. The taxpayer may elect to use one (1) of the methods prescribed in Section 47-1202, Idaho Code, for the measurement of the mine license tax. This election must be made in writing and attached to the first mine license tax return filed. If no timely written election is made, the taxpayer shall be presumed to have elected to compute the mine license tax in accordance with the method described in Section 47-1202(a), Idaho Code. Once an election is made, the taxpayer may not change the method of computing his tax unless he receives written permission from the Tax Commission prior to the due date of the return. ()

a. This election is not available to taxpayers whose only taxable mining activity is receiving royalties. Such taxpayers must determine their mine license tax liability by use of the method described in Section 47-1202(a), Idaho Code. ()

b. Taxpayers whose mining activity includes both the receiving of royalties and the extracting of ores

must separately determine that portion of their mine license tax liability arising from the royalty received by using the method described in Section 47-1202(a), Idaho Code. However, the taxpayer may elect to determine that portion of their mine license tax liability arising from their extraction of ores by use of either method for which a proper election has been made. The separate determination may not be netted together or offset against each other. ()

02. Method Under Section 47-1202(a). For each taxpayer using the method described in Section 47-1202(a), Idaho Code, the net value of ores mined shall be the amount of taxable income from the property as defined by Section 613, Internal Revenue Code, and Treasury Regulation 1.613-5 less the deduction for depletion expense on the property that was allowed in the taxpayer's federal income tax return. For taxpayers receiving royalties, gross royalties shall be reduced by the deduction for depletion expense on the royalty that was allowed in the taxpayer's federal income tax return. ()

03. Method Under Section 47-1202(b). For each taxpayer using the method described in Section 47-1202(b), Idaho Code, the net value of ores mined shall be the result of the computations in Subsections 030.03.a. through 030.03.c. ()

a. Gross value of the ores shall be equal to that determined by the U.S. Department of Interior during the same taxable year for purposes of identifying the amount of mineral royalties to be paid for the privilege of mining public lands. This value shall apply regardless of whether the ore is extracted from public, tribal, or private land. If the taxpayer is mining properties for which a royalty must be paid, the taxpayer must attach to the mine license tax return a copy of the value determination made by the U.S. Department of the Interior. ()

b. From the gross value determined in Subsection 030.03.a., the taxpayer shall deduct direct mining costs attributable to the Idaho production of the ores and Idaho transportation costs to the point at which they are valued by the U.S. Department of the Interior. ()

c. From the amount in Subsection 030.03.b., the taxpayer shall also deduct a portion of the depletion expense attributable to the property that was allowed as a deduction in the taxpayer's federal income tax return for the same taxable year. The deductible portion shall be determined by multiplying the depletion expense allowed on the federal income tax return by the ratio of the gross value of ores for mine license tax purposes to the gross value of ores for federal percentage depletion purposes. For purposes of this computation, all references to gross value and depletion expense shall be limited to those arising from mining conducted in Idaho. ()

031. -- 034. (RESERVED)

035. MINE LICENSE TAX RATE (RULE 035).
Section 47-1201, Idaho Code. ()

01. Tax Rate Prior to July 1, 2001. The mine license tax shall be two percent (2%) of the net value of the royalties received or the ores mined or extracted prior to July 1, 2001. ()

02. Tax Rate After June 30, 2001. The mine license tax shall be one percent (1%) of the net value of the royalties received or the ores mined or extracted after June 30, 2001. ()

03. Application of Tax Rate Change. If a taxpayer's taxable year includes days before and after July 1, 2001, the taxpayer shall separately compute the net value of royalties received and the ores mined or extracted as if the taxable year were two (2) separate tax periods. For the period prior to July 1, 2001, the mine license tax rate of two percent (2%) shall apply. For the period after June 30, 2001, the mine license tax rate of one percent (1%) shall apply. The two (2) tax amounts shall then be added together to arrive at the total mine license tax for that taxable year. ()

036. -- 039. (RESERVED)

040. MINE LICENSE TAX RETURNS (RULE 040).

Section 47-1203, Idaho Code. In addition to the requirements of a valid return provided in Rule 150 of the Tax Commission Administration and Enforcement Rules, a mine license tax return shall include a schedule listing the name, address, and employer identification number or social security number, of each recipient of royalties paid by

the taxpayer filing the return. The royalties shall be separately stated for each mining operation. Each mine license tax return shall also include a copy of the depletion expense computation applicable to Idaho mining properties that was included in the taxpayer's federal income tax return. ()

041. -- 999. (RESERVED)

35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 23-1051, 23-1323, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Beer Act and the Idaho County Option Kitchen and Table Wine Act (the Acts). ()

001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 35.01.09, “Idaho Beer and Wine Taxes Administrative Rules” are to be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on: ()

a. All barrels or fractional amounts of beer sold or disposed of by a wholesaler and also used or consumed in Idaho. ()

b. All gallons of wine sold or disposed of by a distributor and also used or consumed in Idaho. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

Sections 23-1050A, 23-1322A, Idaho Code

These rules only apply to the imposition and collection of beer and wine taxes. This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. ()

003. INCORPORATION BY REFERENCE (RULE 003).

Sections 23-1050A, 23-1322A, Idaho Code

01. **Tax Commission Administration and Enforcement Rules.** These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” ()

02. **Declaratory Rulings.** Declaratory Rulings may be made by the Tax Commission under the provisions of Section 67-5255, Idaho Code, and Tax Commission Administration and Enforcement Rule 110. ()

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Sections 23-1001, 23-1303, Idaho Code

Definitions provided by statute, including the definitions in Sections 23-1001 and 23-1303, Idaho Code, apply to these rules. The following definitions apply for the purpose of these rules. ()

01. **Disposition.** A disposition is any decrease of beer or wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. ()

02. **Taxpayer.** A taxpayer is a person liable to report and pay the beer tax or wine tax according to the Acts and these rules. ()

03. **Wine Direct Shipper.** A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. ()

011. BEER AND WINE SALES SUBJECT TO TAX (RULE 011).

Sections 23-1001, 23-1003, 23-1006, 23-1008, 23-1303, 23-1309A, 23-1314, 23-1319, Idaho Code

01. **In General.** Sections 23-1008 and 23-1319, Idaho Code, impose an excise tax on beer sales by beer wholesalers and wine sales by wine distributors for use or consumption in Idaho. ()

a. Every disposition of beer by a wholesaler or wine by a distributor to a retailer or consumer constitutes a sale for resale or use. Beer wholesalers or wine distributors are liable for the payment of taxes on the sales. Any person making sales or dispositions of beer or wine, whether licensed or not, is liable for the taxes. ()

b. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code, as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code, on all shipments of wine to Idaho. ()

c. Any brewer, brewery, producer, or manufacturer of beer within Idaho will be considered a beer dealer within the meaning of the definitions provided in Section 23-2001(d), Idaho Code. However, to ensure payment of tax on beer, any entity holding a brewery license will be considered a wholesaler to the extent of any

disposition from the brewery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the brewery's premises. ()

d. Any vintner, winery, producer, or manufacturer of wine within Idaho will be considered a wine importer within the meaning of the definitions provided in Section 23-1303(1)(e), Idaho Code. However, to ensure payment of tax on wine, any entity holding a winery license will be considered a distributor to the extent of any disposition from the winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. ()

e. Ales, strong beer, new beer, or any other alcoholic beverages containing more than five percent (5%) alcohol by weight are taxed at the wine tax rate. ()

f. Premixed cocktails with an alcoholic content of fourteen percent (14%) or less by volume are taxed at the wine tax rate. ()

g. **Illegal Sales or Dispositions.** In addition to the remedies of Sections 23-1055 and 23-1309, Idaho Code, the Tax Commission may assess taxes against persons making illegal sales of beer or wine who otherwise would be liable for payment of taxes. ()

02. Supplementing Inventory. If a brewery or winery supplements inventory, adequate records are required to support any tax paid. The Tax Commission will presume no tax is paid on beer or wine in the inventory of a brewery or winery without evidence of the payment of tax. Wineries are not supplementing their inventory when purchasing wine or grape juice from other wineries to blend and produce wine. ()

03. All Sales Presumed Taxable. Every sale or disposition from inventory is presumed to be a taxable sale, unless the sale or disposition is exempt from tax by the Acts or these rules. ()

012. EXEMPTIONS (RULE 012).
Sections 23-1048, 23-1051, 23-1319, 23-1323, Idaho Code

01. Burden of Proof. The burden of proving any exemption, deduction, credit, or refund allowed by the Acts and these rules is upon the person claiming it. ()

02. Wholesale Exports. Every resale of beer or wine by a beer wholesaler, brewery, wine distributor, or winery for the purpose of and resulting in an export of beer or wine from this state for resale outside this state is exempt from beer or wine tax. ()

03. Sales By Wine Direct Shippers Outside This State. When an Idaho wine direct shipper is licensed as a wine direct shipper in another state, they are licensed to sell wine to residents of the other state. Sales of wine by the Idaho wine direct shipper, using another state's wine direct shipper license, to a resident of that state and delivered to a location in that state are exempt from Idaho wine tax. ()

04. Sales to Purchasers on Military Reservations. Sales to authorized purchasers on military reservations for the purpose of and resulting in sales or consumption on the reservation are exempt from beer or wine tax. ()

05. Sales to Idaho State Liquor Dispensary. Sales of beer or wine to the Idaho State Liquor Dispensary are exempt from beer or wine tax. ()

06. Dispositions From One Distributor or Wholesaler to Another. Any disposition of beer or wine by transfer or sale or any other means from one (1) distributor or wholesaler to another is exempt from beer or wine tax. ()

013. BREAKAGE OR SPOILAGE (RULE 013).
Sections 23-1051, 23-1319, Idaho Code

01. Percentage Method. When a beer or wine container is damaged, contents spoiled, or is otherwise

unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. ()

a. The Tax Commission may revoke the use of the percentage method for any taxpayer at any time. The Tax Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Tax Commission. ()

b. Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Tax Commission. ()

02. Reporting Destruction or Spoilage. Taxpayers will report the destruction or spoilage in the manner and form required by the Tax Commission when claiming breakage or spoilage exceeding the maximum percentages allowed or the Tax Commission revokes the percentage method. ()

03. Deduction for Breakage or Spoilage. A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. ()

014. FINANCIAL SECURITY (RULE 014).
Sections 23-1049, 23-1320, Idaho Code

01. Financial Security for Payment of Tax. Any person required to pay tax under the Acts must have security on file with the Tax Commission unless excused or waived by the Tax Commission. The security is to be payable to the Tax Commission in the form and an amount acceptable to the Tax Commission. The security is conditioned upon payment of all taxes imposed on beer or wine by this state for which the person is liable, including any penalty and interest. ()

02. Types of Security. A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. ()

03. Security for a New Taxpayer. When a new taxpayer applies for a tax account the security required is one thousand dollars (\$1,000) unless one of the following conditions applies: ()

a. If a beer or wine tax reporting history is available from a previous ownership, the security required may be based on the most recent twelve (12) month filing history of the prior ownership. ()

b. If an out-of-state wine direct shipper is applying for an initial account, they may request a bond waiver. ()

c. If the taxpayer can establish a lesser amount should apply based on the average monthly amount payable according to Section 23-1049, Idaho Code. ()

04. Petition to Waive Security Requirement. The taxpayer must petition the Tax Commission for waiver of the security requirement. ()

a. The Tax Commission may release a taxpayer from the security requirement if the taxpayer has filed all required tax returns including supplemental schedules and paid the tax due on time for the preceding twenty-four (24) months. ()

b. When the taxpayer petitions the Tax Commission, the taxpayer's account will be examined within sixty (60) days, if necessary. The Tax Commission will notify the taxpayer of its decision within ninety (90) days from the date the taxpayer's petition was received. The notification will include the Tax Commission's decision and reasons for the decision. ()

c. If at any time after the release of a security requirement the taxpayer is late filing returns or paying

tax, the Commission may immediately revoke the waiver and demand the taxpayer post security. ()

d. If a petition for release of security is denied or a demand for posting of security is made, the Tax Commission will notify the taxpayer by certified mail. The notice will include the reasons for the Tax Commission's decision. The taxpayer has thirty (30) days from the date of the notice to request, in writing, a redetermination of the Tax Commission's decision. ()

e. Not posting security upon demand is a violation of these rules and may be immediately reported to the Director of the Idaho State Police, along with a request to suspend or revoke the taxpayer's license or permit. ()

015. BEER OR WINE TAX ACCOUNTS (RULE 015).
Sections 23-1051, 23-1323, Idaho Code

01. Tax Accounts. Before engaging in business, taxpayers need to have a beer tax or wine tax account from the Tax Commission to report and pay tax. As evidence of the tax account, a tax permit is issued. The terms tax account and tax permit are used interchangeably in this section. No fee is required for a tax account. ()

02. Tax Accounts Are Non-transferable. Where there is a change of ownership, it is the responsibility of the tax account holder to cancel the tax account by giving written notice to the Tax Commission. ()

a. Notice requirements include the date of closure or last date of operation, date of sale or lease, and the name of the new owner or lessee. ()

b. If the new owner or lessee uses the previous owner's tax account, the registered tax holder may be responsible for all tax, penalty, and interest incurred during that time period. ()

03. Tax Account Cancellation. The Tax Commission may cancel an inactive tax account. A tax account is considered inactive when returns are filed with no reportable beer or wine activity for twelve (12) consecutive months. The Tax Commission will provide notice of cancellation to the last known address of the tax account holder. ()

016. BEER OR WINE TAX RETURNS (RULE 016).
Sections 23-1047, 23-1051, 23-1322, 23-1323, Idaho Code

01. Reporting Periods. Returns are due on or before the 15th day of the month following the end of the reporting period, or the next business day when the due date is a Saturday, Sunday, or legal holiday. All returns must be filed monthly unless the Tax Commission approves an alternate reporting period. ()

a. Request to File Quarterly or Semiannually. Taxpayers owing six hundred dollars (\$600) or less per quarter with a timely filing and payment history may request a quarterly or semiannual reporting period. ()

b. Request to File Annually. Wine direct shippers, taxpayers with seasonal activities, and other taxpayers with minimal activity may request an annual reporting period. ()

c. Final Return. A taxpayer will mark cancel on the last return filed. Tax, penalty, and interest will apply if the taxpayer continues business activity after filing a final return and canceling the tax account. ()

02. Prescribed Forms. All sales or other dispositions of beer or wine in Idaho must be reported on forms provided or approved by the Tax Commission. ()

03. Inventory Reporting. Taxpayers are to report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods and forms provided or approved by the Tax Commission. ()

04. Requirements of a Valid Return. A valid return includes the tax return, all supplemental schedules, and worksheets with information to compute the tax liability. The return must meet the requirements of

these rules and the information must be legible. ()

017. (RESERVED)

018. PENALTY AND INTEREST (RULE 018).

Sections 23-1050A, 23-1322A, Idaho Code

If a taxpayer files returns or pays taxes late, penalty and interest apply. Penalty is authorized by Section 63-3046, Idaho Code. Interest is authorized by Section 63-3045, Idaho Code. ()

019. RECORDS REQUIRED (RULE 019).

Sections, 23-1006, 23-1051, 23-1314, 23-1323, Idaho Code

01. In General. Every person liable for the payment of taxes on beer or wine must keep and preserve the following records: ()

a. A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. ()

b. A record of the amount of all merchandise purchased, including all bills of lading, invoices, sales receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. ()

c. Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ()

d. True and complete physical counts of the beer and wine inventory taken at the end of each reporting period. ()

e. True and complete records of breakage and spoilage claimed as a deduction from inventory. ()

f. Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order so they can be balanced with the corresponding return. ()

02. Record Retention. These records are to be kept for a minimum of four (4) years. If a taxpayer appeals an assessment, all records are to be kept until final disposition of the appeal. ()

03. Location and Condition of Records. All records and files are to be kept clean, legible, and free from deterioration on the premises of the business. ()

020. -- 999. (RESERVED)

35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAXES ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 63-2501, 63-2553, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Cigarette and Tobacco Products Taxes Acts. ()

001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 35.01.10, "Idaho Cigarette and Tobacco Products Taxes Administrative Rules." These rules are construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on all cigarette and tobacco products sold, used, consumed, handled or distributed within this state. ()

002. ADMINISTRATIVE APPEALS (RULE 002).

Sections 63-2516, 63-2563, Idaho Code

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. ()

003. INCORPORATION BY REFERENCE (RULE 003).

Sections 63-2516, 63-2563, Idaho Code

These rules incorporate the sections of IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." ()

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

Sections 63-2502, 63-2528, 63-2551, Idaho Code

Definitions provided by statute, including the definitions in Sections 63-2502, 63-2528, and 63-2551, Idaho Code, apply to these rules. Additionally, the following definitions apply for the purposes of these rules. ()

01. Distributor. The term distributor, as defined by Section 63-2551, Idaho Code, includes persons who receive tobacco within this state for purposes of blending and/or repackaging. ()

02. Manufacturer. The term manufacturer means a person who manufactures and sells cigarettes. The term manufacturer, as defined by Section 63-2551, Idaho Code, does not include persons who receive tobacco within this state for purposes of blending and/or repackaging. ()

03. Person. The term "person" includes any individual, firm, partnership, LLC, venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit. ()

011. DISTRIBUTION OF FREE OR BELOW COST TOBACCO PRODUCTS (RULE 011).

01. Distribution of Free or Below Cost Tobacco Products. The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. ()

012. PERMITS (RULE 012).

Section 63-2503, Idaho Code

Every wholesaler of cigarettes is required to obtain a cigarette wholesaler's permit from the Tax Commission and post a bond as required by Rule 017 of these rules before engaging in business. The wholesaler must apply for the permit on the form prescribed by the Tax Commission, accompanied by a fee of fifty dollars (\$50). Application forms may be obtained by contacting the Tax Commission. The permit holder will at all times conspicuously display the permit at their place of business. ()

01. Permit Is Nonassignable. A cigarette wholesaler's permit is nonassignable. Upon any change of ownership, it is the responsibility of the permit holder to immediately give written notification to the Tax Commission. ()

a. The notice will set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. The permit holder must return the permit or send a written statement that the permit has been destroyed. ()

b. If this information is not furnished to the Tax Commission and the new owner or lessee continues

operation of the business on the previous owner's cigarette wholesaler's permit without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. ()

02. Seller's Permit. Every retailer of cigarettes must obtain an Idaho seller's permit from the Tax Commission before engaging in business as required by Section 63-3620, Idaho Code. When a wholesaler sells stamped cigarettes to a retailer of cigarettes, they must obtain from the retailer a Sales Tax Resale or Exemption Certificate, Form ST-101. ()

013. SHIPMENTS IN INTERSTATE COMMERCE (RULE 013).

Section 63-2505, Idaho Code

Sales of cigarettes in the course of interstate commerce for purposes of Section 63-2505, Idaho Code, include only those sales where title is transferred outside the state of Idaho, or on U.S. military reservations, or on Indian reservations. ()

01. Types of Conveyances. Shipments of cigarettes to U.S. military reservations or Indian reservations must be made by conveyance used in the normal operation of the wholesaler's business, or by common carrier hired by the wholesaler. ()

a. In the case of shipment by common carrier, a copy of the bill of lading must be kept on file at the wholesaler's place of business for three (3) years. ()

b. In the case of shipments by the wholesaler's conveyance, an itemized receipt must be obtained by the wholesaler bearing the signature of the receiver's representative and the wholesaler's employee making such delivery. Receipts must be serially numbered. ()

02. Records of Unstamped Deliveries. In addition, all deliveries made outside the state and all deliveries made to U.S. military reservations or Indian reservations, and which are delivered without state tax stamps of another state must be listed in a chronological log by delivery date and customer. The log must contain the following information: delivery date, number of cigarettes delivered, and an itemized receipt number, as described in Subsection 013.01.b. of this rule. ()

014. SHIPMENTS DELIVERED ON INDIAN RESERVATIONS (RULE 014).

01. Shipments Without Idaho Stamps. Cigarette wholesalers may deliver cigarettes which do not have Idaho stamps affixed to Idaho Indian reservations when: ()

a. The purchaser is an enrolled member of an Idaho Indian tribe. ()

b. The purchaser is a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe. ()

c. The purchaser is a business enterprise wholly owned and operated by an Idaho Indian tribe. ()

02. Reservation Means Lands Which Are: ()

a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; or established by formal decision of the Executive Branch of the United States or; ()

b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 014.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. ()

03. Sales of Cigarettes to Non-Indians Within Reservation Boundaries. Sales of cigarettes by wholesalers to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation must have Idaho cigarette stamps affixed. ()

04. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell cigarettes upon which Idaho cigarette stamps have not been affixed. ()

015. STAMPS-SOURCE, AMOUNT, AND LIMITATIONS (RULE 015).
Sections 63-2510, 63-2510A, Idaho Code

01. Obtaining Stamps. Cigarette stamps may only be obtained from the Boise office of the Tax Commission. ()

02. Unused Stamp Inventory. Wholesalers may not hold an inventory of unused Idaho cigarette stamps, the face value of which exceeds the amount of their bond. Where no bond is required, wholesalers may not hold an inventory of unused Idaho cigarette stamps, the face value of which exceeds two (2) times the wholesaler's average monthly tax liability. ()

03. Filing and Paying Timely. Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Tax Commission to a wholesaler until clear and convincing evidence is received by the Tax Commission that the return has been filed or the tax has been paid. ()

04. Physical Security. Wholesalers are responsible for the face value of all stamps received from the Tax Commission. Wholesalers must provide physical security for the stamps in their possession. ()

016. WHOLESALER'S CREDIT CLAIMS FOR UNMARKETABLE STAMPS (RULE 016).

01. Destroyed Stamps. On and after July 1, 1989, stamps destroyed by the manufacturer as a result of the return of stale or otherwise unmarketable cigarettes may be redeemed by the wholesaler for credit against future tax due if: ()

a. The manufacturer provides an affidavit to the Tax Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received. ()

b. The wholesaler provides to the Tax Commission a returned goods receipt obtained from the manufacturer's representative verifying the number of packages, the package type, and the date the cigarettes were returned and a bill of lading traceable to the returned goods receipt. The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached. ()

02. Stale and Unmarketable Cigarettes. When stamps are to be destroyed by a wholesaler as a result of stale or otherwise unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if: ()

a. The wholesaler notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed. ()

b. The Tax Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. ()

03. Unused, Unfit or Damaged Stamps. Stamps that are unused, unfit, or damaged may be returned to the Tax Commission by the wholesaler for credit. ()

04. Manufacturers Removed From Directory. It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by

following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. ()

05. Credits and Refund. All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. ()

017. SECURITY FOR TAX REQUIRED (RULE 017).
Sections 63-2510A, Idaho Code

01. Security for Payment of Taxes. Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, will always have in effect and on file with the Tax Commission security for payment of the excise tax. The security will be in the form and amount acceptable to the Tax Commission, will be payable to the Tax Commission, and will be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler will be liable, including any penalty and interest. ()

a. The amount of the security will be the greater of two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received. ()

b. If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the Tax Commission accordingly, or pay a deposit to the Tax Commission for future taxes due which exceed the limitations. ()

c. Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the Tax Commission. ()

02. Reviewing Security on File. The Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability. ()

03. New Wholesaler Application. When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows: ()

a. If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler will furnish security based on the most recent twelve (12) month history of the prior ownership. ()

b. If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler will furnish security in the amount of an estimated two (2) month tax liability of the new business, or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received, whichever is greater. The estimate will be prepared by the new wholesaler and will be subject to review and approval by the Tax Commission. ()

04. Types of Security. A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. ()

05. Taxpayer Petition for Release from Security Requirements. A security will be required in all instances unless the Tax Commission, upon petition by the taxpayer, determines that a security is not required. ()

a. The following conditions must be met before the Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis

for a period of not less than twelve (12) months. ()

b. Upon written petition from the taxpayer, the Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine their books and records within sixty (60) days. The Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. ()

c. If a petition for release of security is denied, notice will be mailed to the taxpayer by certified mail. The notice will include the reasons for the Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, they must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. ()

06. Failure to File Timely After Release from Security. If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. ()

a. The demand will be in writing and will be personally served on the taxpayer or mailed to him by certified mail. ()

b. If the taxpayer wishes to petition for redetermination of the demand, they must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. ()

c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions will be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. ()

018. CIGARETTE TAX RETURN (RULE 018).
Section 63-2510, Idaho Code

01. Cigarette Tax Return. All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. ()

02. Filing Returns. The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. ()

03. Due Date. The return will be filed by the wholesaler on or before the twentieth day of the month immediately following the month to which the return applies. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. ()

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. ()

a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. ()

b. All cigarette tax returns or other documents filed by the taxpayer must include their cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. ()

c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. ()

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. ()

05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return will be in violation of this regulation and will be required to appear before the Tax Commission to show cause as to why their permit should not be revoked. See Section 63-2503, Idaho Code. ()

06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. ()

07. Wholesale Sales of Stamped Cigarettes. Every wholesaler who imports unstamped cigarettes into this state must file a return, however; a cigarette wholesaler who buys only stamped cigarettes for resale is not required to file a return. ()

019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

01. Shipments to Retailers/Distributors. In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. ()

02. Nontaxed Tobacco Purchases from Outside the State. Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. ()

03. Determining Wholesale Sales Price. Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. ()

a. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for shipping, handling, transportation, and delivery may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Tax Commission may adjust it. ()

b. An out-of-state distributor with nexus in the state of Idaho must use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. If an out-of-state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. ()

i. Example 1. An out-of-state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesale sales price will be the price at which it sells to the Idaho distributor, retailer or end user. ()

ii. Example 2: An out-of-state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under this subsection, where the wholesale sales price is unknown, the wholesale sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The “purchase price of the product” is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor. ()

iii. Example 3: An out-of-state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC Section 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesale sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then this subsection requires the wholesale sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. ()

020. TOBACCO TAX RETURN (RULE 020).

01. Tobacco Tax Return. All tobacco distributors who make wholesale purchases are required to file a tobacco products tax return. ()

02. Timing of Filing Return. The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. ()

03. Due Date of Return. The return will be filed by the distributor on or before the twentieth (20th) day of the month immediately following the month to which the return applies. If the twentieth (20th) day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or a legal holiday. ()

04. Requirements of a Valid Return. A tax return or other document required to be filed in accordance with Section 63-2552, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer’s failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3046 and 63-3075, Idaho Code, and related rules. ()

a. The tobacco products tax return form must be completed and copies of all pertinent supporting documentation must be attached. The results of supporting documentation must be carried forward to applicable lines on the tobacco products return form. ()

b. All tobacco products tax returns or other documents filed by the taxpayer must include their tobacco products tax permit number and Federal Taxpayer Identification Number in the space provided. ()

c. A tobacco products tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. ()

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required, it must be on the proper form, as prescribed by the Tax Commission; it must contain a

computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. ()

021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

01. Sales for Eventual Resale. When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the duty to pay the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. ()

02. First Receiver. The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on their tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. ()

03. Subsequent Receiver. Any subsequent receiver will not be required to pay the tax as long as they maintains records showing that the first receiver has paid the tax. ()

022. EXEMPTIONS (RULE 022).

01. Credit for Taxes Paid. Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are: ()

a. Sold and delivered to retailers or distributors at locations outside the state of Idaho; ()

b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; ()

c. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. ()

02. Documentation. Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe they should keep a copy of the purchaser's tribal identification card in their files. If they are selling to a tribally owned entity, they should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe. ()

03. Indian Reservations. Indian reservation means lands which are: ()

a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or ()

b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.03.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. ()

04. Non-Indian Enterprises. Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. ()

05. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. ()

023. CREDIT FOR RETURNED TOBACCO PRODUCTS (RULE 023).

01. Credit Allowed. When tobacco products have been returned to the manufacturer, credit will be allowed against future tax only if: ()

a. The distributor has an itemized credit memorandum or credit invoice from the manufacturer; and ()

b. The distributor has a bill of lading or manufacturer's credit receipt which can be traced to the credit memorandum and which verifies the amount shipped to the manufacturer. ()

02. Notice of Returned Tobacco Products. The Tax Commission reserves the right to require the distributor to notify the Tax Commission in writing at least five (5) working days prior to shipment of any tobacco products returned to the manufacturer. If required, the notice must include a complete description of the item returned, the quantity to be returned, and the wholesale sales price of the item, and the date items will be shipped. ()

03. Verifying Shipments. The Tax Commission reserves the right to verify the shipment of all tobacco products returned to the manufacturer and further reserves the right to delay the shipment until such time as a mutual appointment can be arranged for verifying such shipment. ()

024. CREDIT FOR DESTRUCTION OF TOBACCO PRODUCTS (RULE 024).

01. Destroyed Tobacco. When tobacco products are to be destroyed by a distributor, credit will be allowed against future tax only if: ()

a. The distributor notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the items to be destroyed, the quantity of each item, the wholesale sales price of each item and the time and manner the items will be destroyed; and ()

b. The distributor has a verifiable credit memorandum from the manufacturer. ()

02. Observing Destruction. The Tax Commission reserves the right to observe the destruction of all tobacco products and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. ()

025. -- 999. (RESERVED)

IDAPA 35 – IDAHO STATE TAX COMMISSION
35.01.07 – KILOWATT HOUR TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0107-2101 (NEW CHAPTER)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is 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 a pending rule. The action is authorized pursuant to Sections 63-105, 23-1051, and 23-1319, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The previous rule chapter was repealed in accordance with Executive Order 21-01. This new chapter was written to exclude redundant information and some information was moved to guidance documents on our website.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 6, 2021 Idaho Administrative Bulletin, [Volume 21-10, pages 68-70](#).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cynthia Adrian at (208) 332-6691.

DATED this 22nd day of November, 2021.

Cynthia Adrian
Income Tax Research Specialist
Idaho State Tax Commission
Taxpayer Resources Unit, Tax Research
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
cynthia.adrian@tax.idaho.gov
(208) 334-6691

THE FOLLOWING NOTICE 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 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, October 21, 2021 @ 10:30 a.m. (MT)

**State Tax Commission
Coral Conference Room
11321 W. Chinden Blvd., Bldg. 2
Boise, Idaho 83714**

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

We deleted sections that restated statute and sections or text that could be communicated on our website instead.

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 as a result of 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 5, 2021 Idaho Administrative Bulletin, [Vol. 21-5, page 26](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending rule.

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 using the contact information below.

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 27, 2021.

DATED this October 6th, 2021.

THE FOLLOWING IS THE TEXT OF PENDING DOCKET NO. 35-0107-2101

35.01.07 – KILOWATT HOUR TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY.

In accordance with Sections 63-105 and 63-2701, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Kilowatt Hour Tax Act. The rules relating to the administration and enforcement of kilowatt hour taxes, as well as other taxes, are promulgated as IDAPA 35.02.01. ()

001. SCOPE.

These rules are construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on producers of electricity from hydroelectric generation. ()

002. ADMINISTRATIVE APPEALS.

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Idaho Customer. Idaho customer means a customer who has a point of delivery for the transfer of power and energy that is located in Idaho. This includes wholesale power transactions with customers or wheeling agents that have a delivery point located in Idaho. ()

02. Point of Delivery. Point of delivery means the point at which a change in ownership of electrical facilities occurs between the filing party and the wholesale customers or wheeling agents for the transfer of power and energy. ()

03. Wheeling Agent. Wheeling agent means an entity that receives kilowatt hours from a source or sources of supply and makes power or energy available at another point on its system for a delivering entity or a third party. ()

011. -- 019. (RESERVED)

020. ELECTRICAL PRODUCERS SUBJECT TO TAX.

Section 63-2701, Idaho Code

The tax does not apply to power generated by facilities owned and operated by a municipal corporation organized pursuant to the laws of Idaho. Municipal corporations are not required to file kilowatt hour tax returns or to pay tax. As used in these rules, the term municipal corporation does not include a producer, as defined in Section 63-2701, Idaho Code, who produces electricity pursuant to a contract with a governmental entity. ()

021. -- 029. (RESERVED)

030. KILOWATT HOUR TAX RETURNS.

Section 63-2701, Idaho Code

01. Monthly Returns. All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Tax Commission no later than the last day of the month following the month to which the return relates. ()

02. Quarterly Returns. Producers whose previous year's annual tax liability was equal to or less than fifteen thousand dollars (\$15,000) may, at the discretion of the Tax Commission, be allowed to file a quarterly return with the Tax Commission no later than the last day of the month following the end of the calendar quarter to which the return relates. When a filing cycle is changed, the change will take effect on January 1 of the following year. ()

03. Previous Year's Annual Tax Liability. If the previous year's annual tax liability is not available, the estimated current year's liability may be used. ()

031. -- 044. (RESERVED)

045. EXEMPTIONS.
Section 63-2705, Idaho Code

01. Wheeled Energy. ()

a. If the taxpayer is a wheeling agent for another entity, the wheeled energy may not be included in the calculation of the exemptions. ()

b. Example. Assume that Company A sells kilowatt hours to Company B and delivers this energy to Company C for wheeling and delivery to Company B at an Idaho delivery point. Company C, as a wheeling agent, would not include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales. Company A would include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales if the transfer between Companies A and C was at a delivery point in Idaho. ()

046. -- 999. (RESERVED)

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-2101 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is 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 a pending rule. The action is authorized pursuant to Sections 63-105, 23-1051, and 23-1319, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The previous rule chapter was repealed in accordance with Executive Order 21-01. This new chapter was written to exclude redundant information and some information was moved to guidance documents on our website.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 6, 2021 Idaho Administrative Bulletin, [Volume 21-10, pages 71-85](#).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cynthia Adrian at (208) 332-6691.

DATED this 22nd day of November, 2021.

Cynthia Adrian
Income Tax Research Specialist
Idaho State Tax Commission
Taxpayer Resources Unit, Tax Research
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
cynthia.adrian@tax.idaho.gov
(208) 334-6691

THE FOLLOWING NOTICE 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 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, October 21, 2021 @ 10:30 a.m. (MT)

**State Tax Commission
Coral Conference Room
11321 W. Chinden Blvd., Bldg. 2
Boise, Idaho 83714**

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

We deleted sections that restated statute, unnecessary examples, and sections, or text, that could be communicated on our website instead.

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 as a result of 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 5, 2021 Idaho Administrative Bulletin, [Vol. 21-5, page 27](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending rule.

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 using the contact information below.

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 27, 2021.

DATED this October 6th, 2021.

THE FOLLOWING IS THE TEXT OF PENDING DOCKET NO. 35-0201-2101

35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

000. LEGAL AUTHORITY.

Section 63-3039, Idaho Code. ()

01. In General. In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission has authority to promulgate rules implementing the provisions of the Idaho Income Tax Act. ()

02. Related Taxes. This chapter contains rules relating to provisions of the Idaho Income Tax Act, Title 63, Chapter 30, Idaho Code, that are incorporated by reference into statutes relating to other taxes. These include: ()

- a. Sales and Use Taxes, Title 63, Chapter 36, Idaho Code; ()
- b. Motor Fuels Taxes, Title 63, Chapter 24, Idaho Code; ()
- c. Petroleum Transfer Fee, Title 41, Chapter 49, Idaho Code; ()
- d. Cigarette and Tobacco Products Taxes, Title 63, Chapter 25, Idaho Code; ()
- e. Beer Taxes, Title 23, Chapter 10, Idaho Code; ()
- f. Wine Taxes, Title 23, Chapter 13, Idaho Code; ()
- g. Mine License Taxes, Title 47, Chapter 12, Idaho Code; ()
- h. Kilowatt Hour Taxes, Title 63, Chapter 27, Idaho Code; ()
- i. Oil and Gas Taxes, Title 47, Chapter 3, Idaho Code. ()

001. SCOPE.

Section 63-3039, Idaho Code. ()

01. Effective Date. To the extent allowed by statute, rules in this chapter are applied on their effective date to all taxable years open for determining tax liability. ()

02. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. ()

03. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. ()

002. ADMINISTRATIVE APPEALS.

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

Section 63-3003, Idaho Code. ()

01. Date of Filing or Payment. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission. ()

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. ()

a. As used herein, lawful money of the United States means; ()

i. Currency or coin of the United States at face value; and ()

ii. Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. ()

b. The words pay, paid, payable, or payment do not include: ()

i. Submission to the Tax Commission of a check or draft that is subsequently dishonored by the institution on which it is drawn. ()

ii. Submission to the Tax Commission of a check or draft drawn on a foreign bank or other financial institution in regard to which any processing fees may be incurred by the state of Idaho. ()

011. -- 109. (RESERVED)

110. DECLARATORY RULINGS.

Sections 67-5232, 67-5255, Idaho Code. ()

01. Findings Pursuant to Section 67-5206, Idaho Code. ()

a. The Tax Commission finds that the Attorney General's Administrative Rules on declaratory rulings found at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 400 through 402 do not adequately address the needs of taxpayers seeking a declaratory ruling on applications of the tax law. The Attorney General's Administrative Rules do not: ()

i. Protect taxpayer confidentiality; ()

ii. Define the taxpayer's right to rely on the ruling; or ()

iii. Identify the circumstances justifying the denial or withdrawal of a ruling. ()

b. Accordingly, this rule will govern declaratory rulings issued by the Tax Commission. ()

02. Filing a Petition. ()

a. Any person, group, or other association may file a written petition with the Tax Commission asking for an interpretation or determination as to the applicability of a statute, rule, or order issued by the Tax Commission to the party filing the petition. To obtain the determination the petitioner's tax liability must be directly affected by the determination or the petitioner must demonstrate a direct financial interest in the determination sought. ()

b. A petition must be submitted to the Tax Commission in writing and contain an express statement that it is intended to be a petition for a declaratory ruling pursuant to this rule or the Administrative Procedure Act. ()

03. Tax Commission's Response to Petition. After receiving a petition, the Tax Commission shall: ()

- a. Issue a written declaratory ruling; ()
- b. Require the petitioner to submit additional facts, evidence, or information as the Tax Commission deems necessary to make a declaratory ruling; or ()
- c. Decline to make a declaratory ruling. The Tax Commission shall decline to make a declaratory ruling in the following circumstances: ()
 - i. The identity of the taxpayer is not disclosed; ()
 - ii. The request fails to include sufficient facts, evidence, or other information on which a declaratory ruling may be based; ()
 - iii. The issue on which a declaratory ruling is sought is the subject of pending litigation or administrative appeal; ()
 - iv. The petitioner is not a person directly affected by a resolution of the issue presented; or ()
 - v. It appears there are other good or compelling reasons why a declaratory ruling should not be made. ()

04. Factual Circumstances. A declaratory ruling applies only to the factual circumstances as submitted by the petitioner and applies only to the petitioner seeking the declaratory ruling. The declaratory ruling may not be relied on by a person not named as a petitioner. The declaratory ruling is void if the facts changed significantly, all relevant facts were not disclosed at the time of the petition, or the facts were not accurately represented to the Tax Commission. If the statutory provisions or administrative rules affecting the declaratory ruling are amended by the legislature or the Tax Commission, the declaratory ruling is void as of the date of the amendment to the statute or rule. ()

05. Withdrawal of Ruling. If after issuing a declaratory ruling the Tax Commission believes the declaratory ruling is erroneous, it may withdraw the declaratory ruling by giving written notice to the petitioner at his last known address. If the petitioner has relied on the declaratory ruling in good faith, the Tax Commission may not assess any tax liability accruing between the dates the declaratory ruling was issued and its withdrawal. ()

06. Confidentiality. Declaratory rulings by the Tax Commission are information subject to the confidentiality requirements of Sections 63-3076 and 63-3077, Idaho Code and Rule 700 of these rules. Factual, financial, or other information relating to a taxpayer is not public record and may not be disclosed to any person except as provided by Sections 63-3076 and 63-3077, Idaho Code, or as authorized by the taxpayer. ()

07. Appeals. Sections 67-5270 through 67-5279, Idaho Code, govern the judicial review of declaratory rulings. ()

111. -- 130. (RESERVED)

131. UNACCEPTABLE PAYMENTS.
Section 63-3034, Idaho Code. ()

01. Checks and Drafts Previously Dishonored. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the institution on which it was drawn. ()

02. Checks and Drafts From Foreign Institutions. The Tax Commission may reject a check or draft drawn on a foreign bank or other foreign financial institution. ()

03. Checks and Drafts That Result in Processing Fees. The Tax Commission may reject a check or draft that, if accepted, may result in the state of Idaho incurring a processing fee. ()

132. -- 139. (RESERVED)

140. APPLICATION OF PARTIAL PAYMENT.

Sections 63-4001, 63-4007, Idaho Code.

()

If bad check charges, penalties, or interest accrue as a result of any deficiency in tax, partial payments shall apply in the following order: to bad check charges, interest, tax, and penalty.

()

141. -- 149. (RESERVED)

150. REQUIREMENTS OF A VALID TAX RETURN.

Section 63-3076(5), Idaho Code

01. In General. All tax returns filed with the Tax Commission shall be complete and include attached copies of all pertinent schedules or computations.

()

02. Supporting Computations and Schedules. The results of supporting computations shall be carried forward to applicable lines on the tax forms. A statement referencing an attached schedule is not acceptable if the taxpayer does not enter the necessary information from the attachments on the tax form. For purposes of this subsection, a return shall be deemed valid if the Tax Commission does not reject the return by mailing it back to the taxpayer.

()

03. Information to Compute Tax. A return that does not provide sufficient financial information to compute a tax liability is not a valid tax return.

()

04. Accuracy and Required Information. A return need not be totally accurate to be a valid return. However, for the return to be valid it must:

()

a. Be identified as a return;

()

b. Be filed using the proper form prescribed by the Tax Commission;

()

c. Include the taxpayer's social security number, federal employer identification number, or Internal Revenue Service processing number;

()

d. Include the taxpayer's name and address;

()

e. Include the taxpayer's Idaho permit or license number, if applicable;

()

f. Identify the reporting or tax period;

()

g. Contain a computation of the tax liability and sufficient supporting information to show how the taxpayer reached that result; and

()

h. Reflect the taxpayer's honest and genuine effort to satisfy the requirements of the law. For purposes of determining if these requirements are met, documents that contain the following are clearly insufficient:

()

i. Broad unspecified constitutional claims;

()

ii. Unsupported statements that claim no Idaho activity or income exists; and

()

iii. Language that demonstrates a protest against the tax law or its administration.

()

05. Signing of Returns. Paper Returns. The taxpayer or an authorized officer or representative shall manually sign the tax return. Both spouses shall sign a joint return. If a taxpayer is deceased or cannot sign his name, a duly authorized person, such as a surviving spouse, executor, administrator or person holding power of attorney may sign the return, indicating his status or relationship. If a taxpayer signs with an X, a witness shall attest his mark.

The signature of the taxpayer constitutes a written declaration of the return's accuracy. ()

06. Reproduced and Substitute Forms. Any reproduced or substitute form or schedule must meet the requirements of the Tax Commission's original form. ()

a. Specific instructions for substitute forms are available on request from the Tax Commission. The use of substitute forms requires prior approval of the Tax Commission. The Tax Commission may reject nonapproved forms. ()

b. Reproduced forms and photocopies of official Tax Commission forms are acceptable if the weight and size of the paper are comparable to that used in the official forms. These forms and schedules must be sufficiently legible so they may be reproduced. ()

151. -- 152. (RESERVED)

153. TAX PREPARERS -- ALTERNATIVE METHODS OF SIGNING INCOME TAX RETURNS.

A tax preparer, as defined in Section 48-603B, Idaho Code, may sign an Idaho income tax return in a manner allowed by Internal Revenue Service Notice 2004-54. The requirements for using the alternative methods under Internal Revenue Service Notice 2004-54 must be followed for Idaho income tax purposes if this method of signing a return is used for the Idaho return. Use of the alternative signature for the tax preparer does not alter the requirement for the taxpayer or authorized officer or representative to sign the return as provided in Rule 150 of these rules or to follow the requirements of Section 48-603B, Idaho Code. Section 63-3002, Idaho Code (IRS Notice 2004-54) ()

154. (RESERVED)

155. TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY.

Sections 63-115, 63-3039, 74-107, Idaho Code. ()

01. Acknowledgment of Data Transmissions. Persons filing returns by electronic data stream may be sent an acknowledgment of receipt of a successfully transmitted return. An acknowledgment means only that the Tax Commission received the return. An acknowledgment is not a finding by the Tax Commission about the correctness of the return. If any transmission is received in an unintelligible, unreadable, or corrupted form and the Tax Commission cannot identify the taxpayer, no acknowledgment will be sent. ()

02. Methods Allowed for Filing Motor Fuels Tax Returns Electronically. The following methods are acceptable methods for filing motor fuels tax returns electronically. ()

a. Secured methods. Encrypted e-mail secured through public or private key encrypting. ()

b. Unsecured methods. Non-encrypted e-mail. ()

03. Risks of Disclosure. By filing a return electronically, the taxpayer agrees to the risks of disclosure in submitting information electronically. A taxpayer or third party may not hold the Tax Commission responsible for any loss, liability, damage, whether direct, indirect or consequential, personal injury, or expenses of any nature whatsoever that may be suffered by the taxpayer or any third party as a result of or which may be attributable, directly or indirectly, from transmitting the taxpayer's information to the Tax Commission. ()

156. -- 199. (RESERVED)

200. EXAMINATION OF RECORDS: RECORDKEEPING AND PRODUCTION REQUIREMENTS.

Sections 63-3042, 63-3043, Idaho Code. ()

A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. Required records must be made available on request by the Tax Commission or its authorized representatives. ()

201. -- 299. (RESERVED)

300. ASSESSMENT OF TAX.

Sections 63-3045, 63-3045A, Idaho Code.

()

01. The Record of Assessment. The record of assessment shall be the Notice and Demand for payment of taxes that also functions as the required notice for the distraint and sale of a taxpayer's personal property pursuant to Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, and 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice and Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return.

()

02. Admission to Understatement of Tax. A taxpayer may admit to an understatement of tax at any time. An admission is not considered a compromise of tax, and does not affect the statutory period of limitations for an audit or additional assessment or for a claim for refund filed by the taxpayer.

()

301. -- 309. (RESERVED)

310. INTEREST RATES.

Sections 63-3045, 63-3073, Idaho Code

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 are listed at <https://tax.idaho.gov/interest>. 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.

()

311. -- 319. (RESERVED)

320. NOTICE OF DEFICIENCY: FILING A PROTEST.

Section 63-3045, Idaho Code

01. Perfected Protest. The protest must contain the information in Paragraphs a. through d. of this rule to be perfected. A protest meets the requirements of Paragraphs c. and d. of this rule if the allegations of fact or contentions of law, viewed in the light most favorable to the taxpayer, raise factual or legal issues that, if correct, would entitle the taxpayer to relief.

()

- a.** Name, address and pertinent identification number; ()
- b.** The period to which the deficiency relates; ()
- c.** The specific item or items in the Notice of Deficiency to which the taxpayer objects; and ()
- d.** The factual or legal basis for the objections made. ()

321. -- 324. (RESERVED)

325. NOTICE OF DEFICIENCY: PROTEST PROCEDURES.

Sections 63-3045, 63-3045B, Idaho Code

01. Hearings. The taxpayer may be accompanied by more than one person, however, the Tax Commission may limit the number of people accompanying the taxpayer. If a protestant fails to comply with a summons or subpoena or fails to appear for the informal conference, the Tax Commission may issue a decision without further hearing.

()

02. Request for a Final Decision. A request for a final decision must be in a letter addressed to the employee or agent of the Tax Commission from whom the acknowledgment of the protest was received or to the individual subsequently assigned to resolve the protest. The request must be the sole subject of the letter and must clearly identify the taxpayer and the Notice of Deficiency.

()

03. Simultaneous Request for a Final Decision and a Hearing. If the taxpayer makes a simultaneous request for both a final decision and a hearing, the Tax Commission shall treat this as a request for a hearing. The one hundred eighty (180) day period begins when the hearing concludes. ()

04. Issues. Redetermination of any tax or refund due is not limited to the specific issue or issues protested for the taxable year, unless limited by Section 63-3068(f), Idaho Code. ()

05. Amended Return After Audit. An amended return will be accepted for a taxable year for which a protest is pending only in the following circumstances: ()

a. The taxpayer demonstrates that the changes on the amended return are unrelated to issues examined in the audit; ()

b. The changes are the result of federal audit adjustments; or ()

c. The amended return is submitted as part of the procedure for resolving the protest. ()

06. Failure to Schedule a Hearing. The Tax Commission may issue a decision after forty-two (42) days from the date the notification of right to request a hearing is mailed to the taxpayer; if ()

a. The taxpayer does not request a hearing; ()

b. The taxpayer requests a hearing but does not schedule a date for the hearing; or ()

c. A hearing is scheduled but later cancelled by the taxpayer and the taxpayer does not reschedule. ()

326. (RESERVED)

327. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: RESTRICTIONS, EXCEPTIONS, AND PERMITTED COMMUNICATIONS.
Section 63-3045, Idaho Code

01. In General. Section 63-3045, Idaho Code, does not adopt the formal ex parte restrictions on communications that would apply in a judicial proceeding or under Section 67-5253, Idaho Code. ()

02. Exceptions. The limitation on communications does not apply to communications with or by: ()

a. A Commissioner of the State Tax Commission; ()

b. An employee of a State Tax Commission outside of the originating division; ()

c. An employee of the Idaho office of Attorney General; ()

d. An employee of another state agency that the State Tax Commission has entered into an exchange agreement with; ()

e. An employee of the Internal Revenue Service; or ()

f. An employee of the Multi State Tax Commission. ()

328. OPPORTUNITY TO PARTICIPATE: NOTICE TO PETITIONER.
Section 63-3045, Idaho Code

01. Notification and Participation. If an appeals officer believes a discussion with staff from the originating division is warranted to review matters restricted by Subsection 327.02 of these rules, an appeals officer

shall provide petitioner reasonable notice of the time and date of any discussion. Such notice may be provided to the petitioner by telephone, mail or electronic form and pursuant to Section 63-4003, Idaho Code. An appeals officer shall make a reasonable effort to accommodate the petitioner's schedule but will not unduly delay the discussion. The petitioner may participate by telephone or in-person at the State Tax Commission office in Boise, Idaho, and any discussion will be held during normal business hours. ()

02. Additional Petitioner Participation Information. Any discussion held under this rule that includes petitioner participation is not an informal hearing under Rule 325 of these rules and does not start the one hundred and eighty (180) day period for issuing a final decision. ()

329. -- 399. (RESERVED)

400. PENALTIES: GENERAL RULES.
Sections 63-3033, 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. ()

02. 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, tax due on such return, and the amount on which the extension penalty is applied shall mean amounts computed as follows: ()

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. ()

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. ()

03. 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. ()

401. -- 409. (RESERVED)

410. NEGLIGENCE PENALTIES.
Section 63-3046(a), Idaho Code. ()

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. ()

02. Imposition of Penalty. A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Situations that justify the penalty include but aren't limited to the following: ()

a. Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. ()

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. ()

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. ()

- d. Taxpayer fails to offer any explanation for understating taxes. ()
- e. Unreported taxable income is a material amount as compared with the reported income. ()
- f. Taxpayer exhibits a careless disregard of his tax obligations. ()
- g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. ()
- h. Failure to make the required estimated payment when requesting an extension of time for filing a return. ()
- i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules. ()
- j. Taxpayer fails to file an Idaho amended return within sixty (60) days after filing a federal amended return. ()
- k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. ()
- l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. ()

03. Negligence Penalty for Sales and Use Tax Deficiencies. For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.02.b. or material amount in Subsection 410.02.e., might include the following: ()

- a. The ratio of untaxed sales that should have been taxed to total taxable sales; ()
- b. The ratio of untaxed sales that should have been taxed to total sales; ()
- c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; or ()
- d. Other computations bearing on negligence. ()

04. Waiver of Negligence Penalty. The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One (1) factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. ()

05. Circumstances Precluding Waiver of Penalty. The following circumstances do not constitute sufficient cause to waive the penalty: ()

- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; ()
- b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or ()
- c. Inability to pay the tax. ()

411. -- 419. (RESERVED)

420. FRAUD PENALTIES.

Section 63-3046(b), Idaho Code. ()

Assessment of the fraud penalty precludes assessment of the negligence penalty on the deficiency. ()

421. -- 429. (RESERVED)

430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING.

Sections 63-3033, 63-3046, Idaho Code. ()

01. In General. Due date means the date prescribed for filing without regard to extensions. ()

02. Insufficient Postage. The proper amount of prepaid postage is required on returns mailed to the Tax Commission. If a tax return is returned to the sender due to insufficient postage, it may result in the return becoming delinquent and subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code. ()

03. Month Defined. If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction of it, during which the failure to file continues constitutes a month. If the due date is not the last day of the calendar month, the period that ends with the same date of the next month constitutes a month. If the succeeding month has no corresponding date, the last day of the month is substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment constitutes a full month. ()

431. -- 499. (RESERVED)

500. SETTLEMENTS.

Sections 63-3047, 63-3048, Idaho Code. ()

01. Grounds for Settlement. The Tax Commission may settle any taxes, penalties, or interest of a case if one (1) or more of the following circumstances exist: ()

a. Disputed liability, ()

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. ()

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. ()

b. Doubt as to collectibility; ()

i. Doubt as to collectibility exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. ()

ii. An offer to settle based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. ()

c. Economic hardship of the taxpayer. ()

i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the

inability to pay reasonable basic living expenses. ()

ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances. ()

d. Promotion of effective tax administration. ()

i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. ()

ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. ()

02. Agreement Final. A settlement agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer will be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. ()

03. Form of Settlement. The taxpayer must submit an offer to settle in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission will promptly notify the taxpayer. ()

04. Withdrawal of Offer. A taxpayer may withdraw his offer to settle at any time prior to its acceptance by the Tax Commission. ()

501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS.
Section 63-3048, Idaho Code. ()

01. Amount in Issue. The amount in issue is defined as the Notice of Deficiency amount, plus or minus any adjustments previously communicated in writing to the taxpayer, minus the proposed settlement amount. For purposes of the amount in issue, interest will be updated to the date of the offer. ()

02. Written Summary. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. Such files may not be disclosed or inspected under the public records law. ()

03. Final Review When the Offer to Settle is Based on Inability to Pay. If the taxpayer's offer is based on inability to pay, a representative of the Collection Division will be provided a copy of the Written Summary and given an opportunity to participate in the final review. The representative attending the final review on behalf of the Collection Division will be the division administrator or the designee. ()

502. -- 699. (RESERVED)

700. DISCLOSURE OF INFORMATION: SCOPE.
Sections 63-3076, 63-3077, Idaho Code. ()

01. Examples. The following are examples of information not considered return information for

purposes of Rules 700 through 709 of these rules: ()

a. Decisions published pursuant to Section 63-3045B, Idaho Code; ()

b. Data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. ()

701. (RESERVED)

702. DISCLOSURE OF INFORMATION: THIRD PARTIES.

Sections 63-3076 and 63-3077, Idaho Code. ()

01. In General. The Tax Commission may not disclose returns or return information about a taxpayer to any person other than that taxpayer or an authorized representative of the taxpayer except as provided by statute or rule. ()

02. Written Authorization to Disclose Information. ()

a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. ()

b. The written authorization must contain: ()

i. The taxpayer's name, address and social security number, employer identification number, or other identifying number that relates to the returns or return information to be disclosed; ()

ii. The name and address of the person to whom disclosure is authorized; ()

iii. Language indicating the taxpayer's consent to disclosure of information; ()

iv. The tax period or periods for which disclosure may be made; and ()

v. The signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an entity other than an individual, the signature of an authorized employee or officer of the taxpayer. ()

c. A written complaint or inquiry by a taxpayer to an elected official of the executive or legislative branches of state or federal government relating to the Tax Commission's actions or positions relating to that taxpayer is an authorization for the Tax Commission to disclose information relevant to the complaint or inquiry to the official, or the official's delegate. ()

03. Audits or Investigations. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person to collect or ascertain any tax liability, to determine the correctness of a return or return information, or for any other purpose relating to the Tax Commission's duties of administering or enforcing Idaho tax laws. Disclosures necessary to these inquiries are authorized. ()

04. Testimony in Judicial or Administrative Proceedings. If a Tax Commissioner, Tax Commission employee or agent is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify without written authorization from the taxpayer, and may object to his appearance on the basis of this rule and Section 63-3076, Idaho Code. Information requested in a subpoena issued by a United States Grand Jury shall be provided. ()

703. DISCLOSURE OF INFORMATION: GENERAL PUBLIC.

Sections 63-3076, 63-3077, Idaho Code. ()

01. Public Information. The Tax Commission may disclose information about a taxpayer that is public information. This includes information introduced as evidence in any court, before the Board of Tax Appeals, through the filing of liens, or through publication other than by the Tax Commission. ()

02. Correction of Information. The Tax Commission, after notifying the taxpayer, may disclose information necessary to correct misleading statements or misrepresentations publicized by the taxpayer or his agents or employees regarding his liability to the state of Idaho, his conduct in relation to the Tax Commission, or proceedings, audits or investigations of the taxpayer by the Tax Commission. ()

704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS.
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, 63-3077G, 63-3077H, 63-3634A, 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. ()

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. ()

03. Exchange of Information. Information may be exchanged between the Tax Commission and: ()

- a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; ()
- b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; ()
- c.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; ()
- d.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; ()
- e.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; ()

705. DISCLOSURE OF INFORMATION -- IDENTITY THEFT.
Section 63-3077F, Idaho Code.

01. Written Information Request. The Tax Commission may disclose the name and address to the victim upon receipt of a valid written information request. ()

- a.** The written request must contain: ()
 - i.** The victim's name, address, and social security number or other tax identification number; ()
 - ii.** The tax year affected; ()
 - iii.** The signature of the victim or legal representative; ()
 - iv.** Copies of the victim's driver's license and social security card or passport, if applicable. ()
 - v.** If the victim is a minor, a copy of the birth certificate along with the driver's license or passport of the parent or legal guardian. ()

vi. If the victim is deceased, a copy of the legal document authorizing the executor of the estate along with the executor's driver's license or passport. ()

706. -- 799. (RESERVED)

800. DEFINITIONS FOR PURPOSES OF THE TAXPAYERS' BILL OF RIGHTS.

Title 63, Chapter 40, Idaho Code. ()

01. Collection and Enforcement. The terms collection and enforcement include only post-assessment processes. ()

02. Publication. Publication means communicating to the general public. Publication does not include internal communication or communication with other governmental agencies as provided for by statute. ()

03. Written Notification of Representation. A taxpayer's written notification that he will be represented by another person must include the information required for a valid power of attorney. If the notification is not valid, the revenue officer shall communicate with the taxpayer. The revenue officer should exercise reasonable care in determining whether a power of attorney exists. ()

801. -- 999. (RESERVED)