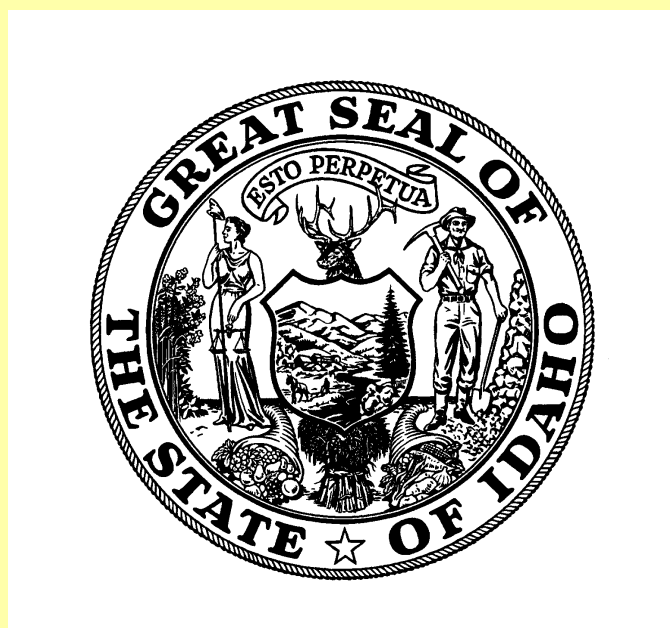


# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

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



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2015*

**HOUSE REVENUE & TAXATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**2015 Legislative Session**

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## IDAPA 35 - STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 389 through 391](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 6th Day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 560 is being amended consistent with language from the MTC (Multistate Tax Commission). The current

version of this rule is an enactment of the model regulation drafted by the MTC in 1973. In 2010, the MTC revised the model regulation language to remove the phrase about “unusual fact situations (which ordinarily will be unique and non-recurring).” This newer version of the rule follows the reasoning found in the Idaho Supreme Court’s holding in the Union Pacific case, 139 Idaho 572 (2004). Enacting this revised version of the rule provides interpretation and application of Section 63-3027(s), Idaho Code, that is consistent with the Idaho Supreme Court’s interpretation and application of the statute.

Rule 750 is being amended to provide additional guidance regarding the carryover period for the broadband tax credit. As a result of taxpayer inquiry, this version of the rule clarifies the broadband equipment tax credit and its allowable 14 year carryover period.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, page 71](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1401

**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. ~~Section 63-3027(s), Idaho Code, may be invoked only when unusual fact situations that ordinarily are unique and nonrecurring produce incongruous results pursuant to~~ where the apportionment and allocation provisions contained in Section 63-3027, Idaho Code, produce incongruous results. (3-20-97)( )

**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: (3-20-97)

**a.** Separate accounting; (3-20-97)

- b. The exclusion of one (1) or more of the factors; (3-20-97)
- c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or (3-20-97)
- d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. (3-20-97)

**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 ~~shall~~ will be applied uniformly. See Rule 580 of these rules for the list of the special industries. ~~(3-20-97)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (4-6-05)

**02. Limitations.** The broadband equipment investment credit allowable in any taxable year ~~shall~~ will be limited as follows: ~~(3-15-02)~~( )

**a.** The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars (\$750,000); or (3-15-02)

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. (3-15-02)

**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. (3-15-02)

**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. (3-15-02)

**d.** Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

**03. Carryovers.** (3-15-02)

**a.** The carryover period for the broadband equipment investment credit is fourteen (14) years. (3-15-02)

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. (3-15-02)

**04. Taxpayers Entitled to the Credit.** Rule 711 of these rules ~~shall~~ will apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules ~~shall~~ will be those limitations as provided in Section 63-3029I, Idaho Code. ~~(4-6-05)~~( )

**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. (3-15-02)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 392 through 395](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 6th Day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
--

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 268 is being promulgated to provide guidance on the order in which a nonresident or part-year resident can

deduct suspended losses.

Rule 275 is being amended to include an example showing how a nonresident partner of a multistate investment partnership calculates the amount of taxable income from the partnership that is included in Idaho taxable income.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 93**.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1402

**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). ( )

~~268.~~—269. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.** (4-11-06)

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. (2-27-12)

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. (2-27-12)

**02. Qualified Investment Partnership.** An entity is a qualified investment partnership only if it meets both of the following criteria: (2-27-12)

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. (4-2-08)

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. (2-27-12)

**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. (2-27-12)

**04. Examples.** (2-27-12)

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. (2-27-12)

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. (2-27-12)

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. (2-27-12)

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. ( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 396 through 404](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 6th Day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
--

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 075 is being amended to add the tax brackets for calendar year 2014 and remove the information for

calendar year 2009 so only five years of historical data is retained in the rule.

Rule 190 is being amended consistent with 2014 House Bill 595a to increase the maximum amount deductible for the Idaho Medical Savings Account to \$10,000 single/\$20,000 married filing joint.

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

Rule 771 is being amended to add tax year 2014 and the applicable grocery credit amounts to the table.

Rule 872 is being amended to change language from split-monthly to semimonthly.

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1403**

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

Section 63-3024, Idaho Code.

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

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

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

**b.** The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head

of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

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

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

~~**a.** For taxable years beginning in 2009:~~

<b>IF IDAHO TAXABLE INCOME IS</b>		<b>IDAHO TAX</b>		
<b>At least</b>	<b>But less than</b>	<b>Is</b>	<b>Plus</b>	
\$1	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642
\$3,963	\$5,284	\$122.84	+	5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+	6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+	7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+	7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+	7.8% of the amount over \$26,418

*Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.*

(4-7-11)

~~**b.a.** For taxable years beginning in 2010:~~

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

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

(4-7-11)

~~**b.b.** For taxable years beginning in 2011:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,338	\$0	+	1.6% of taxable income
\$1,338	\$2,676	\$21.41	+	3.6% of the amount over \$1,338
\$2,676	\$4,014	\$69.58	+	4.1% of the amount over \$2,676
\$4,014	\$5,352	\$124.44	+	5.1% of the amount over \$4,014
\$5,352	\$6,690	\$192.68	+	6.1% of the amount over \$5,352
\$6,690	\$10,035	\$274.30	+	7.1% of the amount over \$6,690
\$10,035	\$26,760	\$511.80	+	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	+	7.8% of the amount over \$26,760

Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.

(2-27-12)

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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,380	\$0	+	1.6% of taxable income
\$1,380	\$2,760	\$22.08	+	3.6% of the amount over \$1,380
\$2,760	\$4,140	\$71.76	+	4.1% of the amount over \$2,760
\$4,140	\$5,520	\$128.34	+	5.1% of the amount over \$4,140
\$5,520	\$6,900	\$198.72	+	6.1% of the amount over \$5,520
\$6,900	\$10,350	\$282.90	+	7.1% of the amount over \$6,900
\$10,350 or more		\$527.85	+	7.4% of the amount over \$10,350

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.

(4-4-13)

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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.				

(3-20-14)

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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
<u>At least</u>	<u>But less than</u>	<u>Is</u>		<u>Plus</u>
<u>\$1</u>	<u>\$1,429</u>	<u>\$0</u>	<u>±</u>	<u>1.6% of taxable income</u>
<u>\$1,429</u>	<u>\$2,858</u>	<u>\$22.86</u>	<u>±</u>	<u>3.6% of the amount over \$1,429</u>
<u>\$2,858</u>	<u>\$4,287</u>	<u>\$74.30</u>	<u>±</u>	<u>4.1% of the amount over \$2,858</u>
<u>\$4,287</u>	<u>\$5,716</u>	<u>\$132.89</u>	<u>±</u>	<u>5.1% of the amount over \$4,287</u>
<u>\$5,716</u>	<u>\$7,145</u>	<u>\$205.77</u>	<u>±</u>	<u>6.1% of the amount over \$5,716</u>
<u>\$7,145</u>	<u>\$10,718</u>	<u>\$292.94</u>	<u>±</u>	<u>7.1% of the amount over \$7,145</u>
<u>\$10,718 or more</u>		<u>\$546.59</u>	<u>±</u>	<u>7.4% of the amount over \$10,718</u>
<u>Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.</u>				

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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: (5-3-03)

- a. The name of the account; (5-3-03)
- b. The title of the account; (5-3-03)
- c. The description of the account; or (5-3-03)
- d. The designation of the account. (5-3-03)

**02. Withdrawal to Reimburse the Account Holder.** (4-5-00)

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. (4-5-00)

**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). (7-1-98)

**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. (3-20-97)

**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, shall will be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. (4-5-00)( )

**05. Death of a Spouse.** If an Idaho medical savings account is established for married individuals as a joint account, no contributions shall 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 shall will be attributed to each account holder. If the amounts are less than the maximum contribution of two thousand dollars (\$2,000) amount, the surviving account holder may make contributions so that his total contributions for the year total two thousand dollars (\$2,000) 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. (5-3-03)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).**  
Section 63-3026A(3), Idaho Code.

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

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

**03. Pass-Through Items.** Whether a pass-through item of income or loss is business or nonbusiness



income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

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

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

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars (\$250,000). (~~3-20-14~~)( )

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

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

(3-20-14)( )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.** (4-6-05)

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. (3-20-14)

b. ~~Split-M~~Semimonthly Filers. (4-6-05)( )

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 ~~split-semi~~monthly withholding periods. The first ~~split-semi~~monthly 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. (3-20-14)( )

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

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. (3-20-14)

**02. Filing of Annual Reconciliation Returns.** (4-6-05)

**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: (3-20-14)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

**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. (3-20-14)

**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. (3-20-14)

**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. (4-6-05)

**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. (3-20-14)

**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. (3-20-14)

**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. (3-20-14)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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, 63-3039, 63-3624(a) and 63-3635, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 405 through 410](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact McLean Russell (208) 334-7531.

DATED this 19th Day of November, 2014.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, Idaho 83722-0410  
(208) 334-7531

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
--

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 027. Computer Equipment, Software, and Data Services - In response to House Bill 598 passed during the 2014 legislative session, the rule is being amended to clarify that software accessed remotely (i.e. cloud-based software) is not tangible personal property. In addition, software delivered electronically or by the load and leave method will no longer be tangible personal property. Finally, the rule clarifies that digital books, games, music, and movies are tangible personal property regardless of how they are transferred to the user.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, pages 70 and 71.**

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th day of August, 2014.

### LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1401

**027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).**

Section 63-3616, Idaho Code

**01.** ~~Hardware and Computers Defined~~ **Definitions.** For purposes of this rule, the following terms will have the following meanings: (3-6-00)( )

**a.** ~~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.~~ **Canned Software.** Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. (3-6-00)( )

**b.** ~~Computers are.~~ **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. (3-6-00)( )

**02.** ~~Computer Software, Storage Media and Transfer Media Defined.~~ (3-6-00)

**a.** ~~Computer Software.~~ Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or

~~achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location.~~ (3-6-00)

**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. ( )

**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. ( )

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

**i.** A computer program; ( )

**ii.** Any part of a computer program; ( )

**iii.** Any sequence of instructions that operates automatic data processing equipment; or ( )

**iv.** Information stored in an electronic medium. ( )

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

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

**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." ( )

**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. ( )

**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 and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, optical media discs, diskettes, magnetic tape data storage, cards, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)( )

**032.** 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. (3-6-00)( )

**043.** Canned Software. ~~The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, 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 the identical software more than once. Software may qualify as custom software for the~~

~~original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. 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.~~ (3-6-00)(\_\_\_\_)

a. ~~Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. 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.~~ (3-6-00)(\_\_\_\_)

b. ~~Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 through 027.08 of this rule.~~ (3-6-00)(\_\_\_\_)

c. ~~When a sale of canned software is taxable, F~~ tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)(\_\_\_\_)

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

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

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax ~~if the software to which the contract applies is subject to tax. Tax applies~~ whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (3-30-07)(\_\_\_\_)

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

i. Then only the portion of the contract fee representing upgrades ~~or enhancements~~ is subject to sales tax if the fee for any maintenance agreement support services is separately stated ~~and the upgrades are delivered on storage media;~~ (3-30-07)(\_\_\_\_)

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades ~~or enhancements~~ ~~and the upgrades are delivered on storage media~~, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (3-30-07)(\_\_\_\_)

iii. If the maintenance contract only provides ~~canned computer software~~ upgrades ~~or enhancements delivered on storage media~~, and no maintenance agreement support services, then the entire sales price of the contract is taxable; (3-30-07)(\_\_\_\_)

iv. If the maintenance contract only provides support services, and the customer is not entitled to or



does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

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

**06. Digital Products.** Digital music, digital books, and digital videos are tangible personal property regardless of the delivery or access method. Sales, leases, and rentals of these digital products are taxable. Whether the user has the right to stream or download these digital products, the sale, lease, or rental of these digital products is taxable. ( )

a. Other than digital music, digital books, or digital videos, 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. Special rules apply to digital games. See Subsection 027.08 of this rule. ( )

**07. Digital Subscriptions.** Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions granting access to a database of digital music, digital books, or digital videos are taxable regardless of the method of access or delivery. ( )

a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable. ( )

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

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

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

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

b. Example: A company sells mailing lists which are ~~stored on a computer disk~~ transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)( )

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

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

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

**10. Online or Remote Data Storage. Charges to store data on storage media owned and controlled by another party is a nontaxable service.** ( )

**~~07~~11. Training Services.** Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

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

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

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

**~~08~~12. Custom Software.** The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

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

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

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

**~~09~~13. Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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, 63-3039, 63-3624(a) and 63-3635, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 411 through 413](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact McLean Russell (208) 334-7531.

DATED this 10th Day of November, 2014.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, Idaho 83722-0410  
(208) 334-7531

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

**Rule 022. Drop Shipments** - Though nothing has changed in how drop shipment transactions are taxed, the proposed changes should make it clearer to manufacturers, retailers, and customers what their responsibilities are

related to sales or use tax.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 72 and 73](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th day of August, 2014.

#### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1402

#### 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 purchaser. 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 purchaser 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 ~~holds~~ 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. (7-1-99)( )

**02. ~~Privity of Parties to the Contract~~ Privity of Parties to the Contract.** The Idaho sales tax is imposed upon sales transactions. Since there is ~~not privity of contract~~ sales transaction between the Manufacturer and the Customer, the Manufacturer will not be required to collect and remit sales tax ~~on the purchase by~~ from the Customer. (7-1-99)( )

**03. Sales Tax Responsibilities of the Permitted Manufacturer.** If ~~F~~ the Manufacturer ~~can have~~ 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. (7-1-99)( )

a. If the Retailer ~~holds~~ 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 must charge 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 must then charge the Customer Idaho sales tax and remit the tax to the Idaho State Tax Commission together with a proper return. (7-1-99)( )

**b.** If the Retailer ~~does not hold~~ 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 Idaho State Tax 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. (7-1-99)( )

**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 must then charge the Customer Idaho sales tax and remit the tax to the state tax 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:

	<b>Retailer (Permitted)</b>	<b>Retailer (No Permit Required)</b>	<b>Customer</b>
<b>Manufacturer (Permitted)</b>	<u>Obtain ST-101 or Collect Tax</u>	<u>Obtain Letter of No Nexus or Collect Tax</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>
<b>Manufacturer (No Permit Required)</b>	<u>Do Not Collect Tax</u>	<u>Do Not Collect Tax</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>

( )

**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:

	<b>Manufacturer (Permitted)</b>	<b>Manufacturer (No Permit Required)</b>	<b>Customer</b>
<b>Retailer (Permitted)</b>	<u>Provide Valid Resale Certificate</u>	<u>None</u>	<u>Collect Tax from Customer</u>
<b>Retailer (No Permit Required)</b>	<u>Give Letter of No Nexus</u>	<u>None</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>

( )

**046. 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.  
(3-15-02)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and are being adopted as originally proposed. The complete text of the proposed rules were published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 414 through 427](#).

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than fifty thousand dollars (\$50,000) during the fiscal year: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning these pending rules, contact McLean Russell (208) 334-7531.

DATED this 10th Day of November, 2014.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, Idaho 83722-0410  
(208) 334-7531

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 012. Contractors Improving Real Property - Subsection 013 is being amended to clarify what is covered by the out-of-state contract exemption and what is not. The statutory basis for the exemption is in Section 63-3622B,

Idaho Code.

Rule 024. Rentals or Leases of Tangible Personal Property - Subsections 012.a and 012.b are being amended to achieve the original intent of only one lease type applying to a particular lease contract.

Rule 102. Logging - Subsection 07 is being amended to clarify that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

Rule 128. Certificates for Resale and Other Exemption Claims - The rule is being amended to require exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations. The forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed and the Tax Commission will have the information needed to verify the exemption claim.

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

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

The positive fiscal impact of the change to Rule 102 is an additional \$50,000 to the state general fund on an annual basis.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 126 and 127](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1403**

**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. (7-1-93)

**a.** 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. (7-1-93)

**b.** 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. (7-1-93)

**c.** 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. (3-4-10)

**02. Contract.** A contract to improve real property may be in any of the following forms. (7-1-93)

**a.** Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. (7-1-93)

**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. (7-1-93)

**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. (7-1-93)

**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. (7-1-93)

**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. (3-4-10)

**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. (7-1-93)

**04. Real Property.** See Rules 010 and 067 of these rules. (3-15-02)

**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. (7-1-93)

**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 must pay the sales or use tax on their purchase of equipment, tools, and supplies. They must 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. (7-1-93)

**07. Fuels.** A contractor must pay tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. (7-1-93)

**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 must pay 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. (7-1-93)

**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: (7-1-93)

**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 amount subject to tax is the cost of material to the contractor who fabricated the goods. (7-1-93)

**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. (7-1-93)

**10. Materials Provided by Project Owner.** (7-1-93)

**a.** If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay 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. (7-1-93)

**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 subject to use tax. 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. (7-1-93)

**c.** A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to 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. (7-1-93)

**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. (6-23-94)

**12. Land Leveling.** (4-7-11)

**a.** Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they are subject to tax on equipment, material, and supplies purchased for land leveling. (7-1-93)

**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 subject to tax; 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. (4-7-11)

**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. (4-7-11)

**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 also applies to a contractor improving real property on certain projects in Washington if where he will not owe a sales or use tax for his activity there on materials incorporated into realty, even though a sales or use tax may be owed by a third party. Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors. 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 ~~with a sales~~ where use tax applies to materials incorporated into realty, such as Nevada, ~~Utah~~, or Wyoming. (3-15-02)( )

- 14. Cross-References.** (7-1-93)
- a.** Road and paving contractors, see Rule 013 of these rules. (3-15-02)
- b.** Contractor/retailers, see Rule 014 of these rules. (3-15-02)
- c.** Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).**

**01. In General.** The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

**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 and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect 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 him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a fair market rental value for the period during which he used his own equipment. (4-4-13)

**03. Fully Operated Equipment Rentals.** (7-1-93)

**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. (7-1-93)

**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. (4-4-13)

**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 subject to sales or use tax 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. (7-1-99)

**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 subject to sales or use tax and its price must be stated separately from the price of the service provided by the operator. (4-4-13)

**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. (4-4-13)

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 lease subject to sales tax. (7-1-93)

**04. Mixed Use of Rental Equipment.** (7-1-93)

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. (4-4-13)

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. 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. (7-1-93)

**05. Operator Required to Be Paid by Customer.** In some cases, an equipment owner supplies equipment along with an operator but a ~~union~~ 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 must be clearly stated on the face of the invoice or other billing document. The State Tax 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. (7-1-99)( )

**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. (4-4-13)

**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 subject to sales tax. 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. (7-1-93)

**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 must furnish the owner with a properly completed and signed exemption certificate. See Rule 128 of these rules. (3-15-02)

**09. Rental Payments Applied to Future Sales.** Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

**10. Personal Property Tax.** A lessor may require reimbursement from the lessee for the personal property tax the lessor must pay 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. (5-8-09)

**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. (7-1-93)

**12. Lease-Purchase and Lease with Option to Purchase.** (7-1-93)

**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 terms 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. (7-1-93)

**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 must collect sales tax from the lessee at the time ~~the rental~~ each lease payment is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/ buyer on the full remaining purchase price, ~~the residual~~, when the option is exercised. (7-1-93)( )

**13. Cross-References.** (7-1-93)

**a.** See Rule 025 of these rules on real property rental. (7-1-99)

**b.** See Rule 037 of these rules on aircraft and flying services. (7-1-99)

**c.** See Rule 038 of these rules on flying clubs. (7-1-99)

**d.** See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)

**e.** See Rule 049 of these rules on warranties and service agreements. (7-1-99)

**f.** See Rule 073 of these rules on transient equipment. (7-1-99)

**g.** See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. LOGGING (RULE 102).**

Sections 63-3605A & 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. (7-1-93)

**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. (4-6-05)

**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. (7-1-93)

**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. (7-1-93)

**05. Logging Exemption.** Generally, the logging exemption includes equipment and supplies used or

consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a. Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)
- b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

**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: (7-1-93)

- 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. (7-1-93)
- 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. (7-1-93)
- 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. (7-1-93)
- d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (4-11-06)

**07. Not Included in Logging Exemption.** Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

- 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. (7-1-93)
- 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.~~ (7-1-93)( )
- c. Reforestation equipment and supplies, ~~except when part of the operation of a tree farm.~~ (7-1-93)( )
- d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)
- 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. (7-1-93)
- 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. (7-1-93)

**g.** Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

**h.** 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. (4-6-05)

**i.** 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. (7-1-93)

**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. (4-6-05)

**a.** Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

**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. (7-1-93)

**09. Timber Production. Activities and equipment excluded from the logging exemption in Section 63-3622JJ, Idaho Code, such as slash disposal, brush piling, or clearing, and reforestation equipment and supplies may qualify under the production exemption in Section 63-3622D, Idaho Code. See also Rule 079 of these rules.**

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees ~~and~~ **Employees of Other Qualified Exempt Organizations** Using **a Qualifying** Credit Card Payment, Form ST-104-HM, ~~applies must be used~~ when a credit card company will directly bill to and be paid by a federal, Idaho State, ~~or~~ local government agency, **or other qualifying** employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency **or other qualifying** employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. ~~(3-6-00)~~( )

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department



of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

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

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

**h.** Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

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

**j.** Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

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

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

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

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of

its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

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

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

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

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

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

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

**e.** Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining

to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

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

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

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

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

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

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

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

**g.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

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

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that

is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

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

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

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

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

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

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

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1404

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rules and are being adopted as originally proposed. The complete text of the proposed rules were published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 428 through 436](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning these pending rules, contact McLean Russell (208) 334-7531.

DATED this 10th Day of November, 2014.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, Idaho 83722-0410  
(208) 334-7531

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-2427, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

Rule 010. DEFINITIONS - The definition for 'contractor improving real property' in subsection 04 is being

amended to update obsolete terms by using the term 'speculative builder' in place of 'speculation contractor' and 'spec contractor.'

Rule 105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS - The rule is being updated to clarify that a single payment may be made to cover liabilities from multiple tax types.

Rule 107. VEHICLES AND VESSELS - This rule is being updated to reflect legislative changes related to the use tax exemption for new residents and military personnel and ensure that the rule in general aligns more closely with the statutory exemption.

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th day of August 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1404

#### 010. DEFINITIONS (RULE 010).

01. **Admissions.** The term admissions includes the right or privilege to enter into a place including seats and tables reserved or otherwise and other similar accommodations and charges made therefor. (7-1-93)

02. **Aircraft.** The term aircraft means any contrivance now known or hereafter invented, used, or designed, for navigation of or flight in the air. (7-1-93)

03. **Cash Discount.** The term cash discount means a discount offered by a retailer to a purchaser as an inducement for prompt payment. (7-1-93)

04. **Contractor Improving Real Property.** A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or ~~speculation contractor~~, ~~speculative contractor~~ **builder**, who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property. (7-1-93)(    )

05. **Fleet.** The term fleet shall mean one (1) or more vehicles registered under the International

- Registration Plan or a similar proportional registration system. (4-2-08)
- 06. Hand Tool.** A hand tool is an instrument used or worked by hand. (7-1-93)
- 07. Logging.** The term logging includes the harvesting of forest trees for resale by cutting, skidding, loading, thinning, or decking, regardless of whether the forest trees are owned by the person doing the harvesting. The term logging does not include harvesting timber for firewood. (7-1-93)
- 08. Manufactured Home/Mobile Home.** The term manufactured home, previously known as a mobile home, means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this section except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5401, et seq. (7-1-93)
- 09. Manufacturer's Discount Coupon.** The term manufacturer's discount coupon means a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer. (7-1-93)
- 10. Manufacturer's Rebates.** The term 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. (7-1-93)
- 11. Mining.** The term "mining" means the extraction from the earth of minerals including coal, phosphate, sodium, molybdenum, asbestos, gold, silver, lead, zinc, copper, antimony, building stone, pumice, scoria, clay, diatomaceous earth, sand, gravel, quartz, limestone, and marble, and includes the further processing of such mineral. The term "mining" does not include the extraction from the earth of geothermal resources nor does it include the extraction of soil. (6-23-94)
- 12. Modular Building.** The term modular building, previously known as a prefabricated building, means any building or building component, other than a manufactured home as defined, above, which is constructed according to standards contained in the International Building Code, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, and is designed to be affixed to real property. (4-2-08)
- 13. 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. (7-1-93)
- 14. Orthopedic Appliances.** The term orthopedic appliance shall include 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. (7-1-93)
- 15. Prescription or Work Order.** The terms prescription or work order shall mean an order issued to, or on behalf of, a specific individual by a practitioner licensed by the state under Title 54, Idaho Code, to prescribe such items. (7-1-93)
- 16. Real Property.** The term real property means land and improvements or fixtures to the land. (7-1-93)
- 17. Tax Rate.** 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. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).**

**01. Time and Imposition of Tax. (7-1-93)**

**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 shall report 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 actually 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. (7-1-93)

**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 Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

**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. (7-1-93)

**02. Returns. (7-1-93)**

**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. (7-1-93)

**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. (5-8-09)

**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. (7-1-93)

**d. Variable Filing.** If the Tax 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 Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. (4-6-05)

**e. Change in Filing Frequency.** If the Tax 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. (5-8-09)

**f. Final Report.** Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he 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 must enclose his 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. (7-1-93)

**03. Valid Return.** A tax return or other document required to be filed in accordance with Section 63-



3623, 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 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. (7-1-93)

**a.** The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

**b.** All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided. (7-1-93)

**c.** A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

**d.** Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

**04. Perpetual Extensions of Time to File Revoked.** Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule. (7-1-93)

**05. Use of Estimates Extension of Time Returns.** (7-1-93)

**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 must attach 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. (7-1-93)

**b.** If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be 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 must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (4-6-05)

**c.** The estimated tax remitted must 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. (7-1-93)

**d.** Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission. (7-1-93)

**06. Forms Required.** (~~7-1-93~~)

~~**a. Separate Payments.** 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 must accompany the return. If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission.~~ 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. (~~7-1-93~~)( )

**ba.** Retailers Must Report Own Use and Nontaxed Transactions. All retailers must 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 subject to tax. (7-1-93)

**eb.** 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. (7-1-93)

**07. Payment of Tax.** (7-1-93)

**a.** Payment to Accompany Return. The return filed in accordance with this rule must 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 Idaho State Tax Commission. (7-1-93)

**b.** Payment of One Hundred Thousand Dollars (\$100,000) or Greater. All taxes due to the state must 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. (7-1-93)

**c.** Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, 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 purchaser 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 must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser 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. (3-20-04)

**08. 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 shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

- c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)
- d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)
- i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)
- ii. The title may be marked as a gift and signed by the donor. (3-4-10)
- 03. Nonresidents.** (3-30-07)
- a. A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)
- b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)
- c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)
- 04. New Residents.** A new resident of Idaho ~~or military personnel temporarily assigned to Idaho and their spouses~~ does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign ~~a Three Month Exemption Claim~~ Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (~~3-29-12~~)(    )
- a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)
- b. ~~Exclusion from the tax applies only to vehicles and aircraft owned by an individual.~~ A privately personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an ~~private~~ individual or individuals. (~~3-4-10~~)(    )
- 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 motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (~~3-29-12~~) ( )

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

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

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the ~~five~~ six hundred dollars (\$~~500~~ 600) tax due Idaho. The assessor will collect ~~two~~ three hundred dollars (~~\$200~~ \$300) tax. (~~4-2-08~~) ( )

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

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

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

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

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

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

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

- b.** This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)
- c.** Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)
- 08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)
- 09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)
- 10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)
- a.** Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles 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, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)
- ii.** The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)
- b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)
- c.** This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)
- d.** For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator. (3-4-10)
- e.** For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)
- i.** Sold together with a motor; or (5-3-03)
- ii.** Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)
- f.** For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either "trailer" or "utility trailer" found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term "trailer" includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

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

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

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

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 94 through 102.**

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

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

DATED this 10th Day of November, 2014.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742  
[Alan.dornfest@tax.idaho.gov](mailto:Alan.dornfest@tax.idaho.gov)

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2014.

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

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

Property Tax Rule 120 is being amended to define the subject matter of complaints and provides a timeline for

hearing the complaint.

Property Tax Rule 609 is being amended provide that the assessor may remove that property's homestead 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.

Property Tax Rule 988 is being amended to delete the reference to an annual affidavit which has been deleted from Idaho Code Section 63-602KK by house bill 441a.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, pages 75 and 76.**

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2014.

DATED this 30th day of June, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1401

#### 120. INVESTIGATION OF WRITTEN COMPLAINTS (RULE 120).

Section 63-105A, Idaho Code.

01. **Definitions.** ~~To investigate written complaints, the following terms are defined.~~ (7-1-99)( )

a. **Complaint.** Complaint means a signed, written statement submitted to the tax commission request ing that this agency for the State Tax Commission to investigate any actions by public 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. (7-1-99)( )

b. **Complainant.** Complainant means any individual making a complaint. (7-1-99)

c. **Investigation.** Investigation means observation and close examination of a public county official's application of property tax assessment or administration law and State Tax Commission rules. The investigation may require field inspections of property, analysis of public records or the interviewing of witnesses. The formal investigation will be focused or limited to specific issues identified in the complaint cover only those issues raised by the complainant. (7-1-99)( )



d. Public County official. The term public county official means the elected or appointed official whose actions are the subject of the complaint. (7-1-99)( )

02. **Investigation Procedure.** The following procedures apply to an investigation of a complaint. (7-1-99)

a. ~~Filed in writing. All complaints must be submitted to the State Tax Commission in writing and signed by the complainant.~~ (7-1-99)( )

b. Examination of complaint. The complaint will be examined by the State Tax Commission to decide if a formal investigation will be conducted. (7-1-99)

b. Notification ~~of public official subject to investigation.~~ Within thirty (30) days of receipt of complaint, the State Tax Commission will notify the complainant of the decision regarding initiation of an investigation. If an investigation is initiated, the affected county official(s) shall also be notified within this time frame public official to review the complaint, as soon as a formal investigation is contemplated. (7-1-99)( )

c. Delivery of investigation order. Within thirty (30) days of a decision to conduct an investigation, the State Tax Commission will deliver to the public affected county official(s) a copy of the investigation order naming the investigators and outlining what is to be investigated. (7-1-99)( )

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 ~~responses~~ information from the public official(s). (7-1-99)( )

e. Presentation of preliminary report. The preliminary report will be presented to the complainant and the public official(s). The State Tax Commission investigators will be present when the report is discussed with the public affected county official(s), subject to investigation, and the complainant. (7-1-99)( )

f. Comment period. The complainant and the public county official(s) will be given a specified time to review and comment on the preliminary report, particularly to correct any errors of fact. (7-1-99)( )

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. (7-1-99)( )

03. Public County Official-s' Response to Final Report. After the final report is completed, the public county official(s) shall outline how the investigator's recommendations will be implemented and provide a written explanation of why any recommendation has been rejected. (7-1-99)( )

04. **Conclusion of Investigation.** The investigator's final report and the public county official-s' written response to the report shall conclude the investigation. The conclusion of the investigation does not preclude the State Tax Commission from enforcing additional powers and duties as prescribed by law or the complainant and public 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. (7-1-99)( )

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. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).**

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-30-07)

**01. Homestead Exemption.** The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

**02. Idaho Annual House Price Index Change.** The successor to the United States Office of Federal Housing Enterprise Oversight is the Federal Housing Finance Agency. Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the annual change in the Idaho House Price Index-All-Transactions, published by the Federal Housing Finance Agency or its successor. The following procedure shall be used: (4-7-11)

**a.** Step 1. Calculate the average Idaho House Price Index-All-Transactions of the four (4) most recently available quarters as of September 15. (4-7-11)

**b.** Step 2. Calculate the average Idaho House Price Index-All-Transactions of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (4-7-11)

**c.** Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)

**d.** Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (3-30-07)

**03. Partial Ownership.** Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall 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 this rule. (4-2-08)

**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

(3-30-07)

**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	
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

(3-30-07)

**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 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2010 (\$101,153 X 66.67%)	\$67,439	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2010 (\$101,153 X 33.33%)	\$33,714	Ms. Smith's Homeowner's Exemption

(4-7-11)

**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	

Description	Value	Notes
Prorated ownership interest (land and improvement) (\$260,000 X 66.67%)	\$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2010 is 50% up to \$101,153)	\$86,671	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 33.33%)	\$86,658	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(4-7-11)

**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 shall 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. ( )

**045.** **Determination of Residency.** The State Tax 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. (4-11-06)

**056.** **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 shall notify the State Tax Commission of the determination. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**988. QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).**  
 Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (4-6-05)

**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. (3-20-04)

**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. (4-6-05)

**b.** Operator's Statement. The "operator's statement" is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

**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. (3-20-04)

**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. (3-20-04)

**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. (3-20-04)

f. Assessor. The “assessor” is the representative of the county assessor’s office or the State Tax Commission who is responsible for the administration of the QIE. (3-29-12)

**02. Designation of Property for Which Exemption Is Elected.** The owner shall designate the property on which the QIE is elected. The owner shall 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. ~~Owners who designate property on which the QIE is elected may not file the annual affidavit provided for in Section 63-602KK(6), Idaho Code, but must file the personal property declaration. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code.~~ 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.

(3-29-10)( )

**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. (3-20-04)

**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. (3-20-04)

**05. Period of QIE.** The QIE shall 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. (3-20-04)

**06. Election Specificity.** The QIE election provided by Section 63-3029B, Idaho Code, shall 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. (4-6-05)

**07. Notification by Assessor.** (4-6-05)

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 shall 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 shall notify the taxpayer and, if applicable, send a copy of this form or listing to the State Tax Commission. (3-29-12)

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 shall notify the State Tax Commission and the taxpayer immediately. The assessor shall 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 shall include: (3-29-12)

i. Owner. Name of the owner receiving the QIE. (4-6-05)

ii. Property description. A description of the property that received the QIE. (4-6-05)

iii. New or used. State whether the individual item was purchased new or used. (4-6-05)

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho.

(4-6-05)

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. (4-6-05)

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. (4-6-05)

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. (4-6-05)

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 shall deny the exemption for those items. The assessor shall notify the taxpayer electing the QIE and shall 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. (3-29-12)

**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: (3-20-04)

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; (4-6-05)

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. (4-6-05)

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. (4-6-05)

b. Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property. (4-6-05)

**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 shall send a copy of this notice to the State Tax Commission. (3-20-04)

**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. (3-20-04)

**11. Limitation on Amount of Exemption.** (3-20-04)

a. New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

b. Used Property. The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: (4-6-05)

i. QIE cost shall 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 shall 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 shall 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). (4-6-05)

ii. For each item purchased used, the QIE shall 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). (4-6-05)

c. Examples. In the following examples, all of the property is owned by the same taxpayer and is a qualified investment. (4-6-05)

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
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

(4-6-05)

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

(4-6-05)

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. (4-6-05)

**12. Multi-County Taxpayers.**

(3-20-04)

**a.** Except taxpayers electing QIE for property that is State 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. (3-20-04)

**b.** Except taxpayers electing QIE for property that is State 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. (3-20-04)

**c.** Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated 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. (4-6-05)

**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. (3-20-04)

**13. Special Provisions for Nonregulated Operating Property.** (4-6-05)

**a.** For nonregulated 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. (4-6-05)

**b.** The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. (4-6-05)

**i.** Reduction in Idaho value. For nonregulated 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. (4-6-05)

**ii.** Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. (4-6-05)

**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. (4-6-05)



## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 437 through 440](#).

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

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

DATED this 10th Day of November, 2014.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742  
[Alan.dornfest@tax.idaho.gov](mailto:Alan.dornfest@tax.idaho.gov)

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Property Tax Rule 126 is being amended to show the changes to the method of gaining the number of courses

required for appraisal certification by providing an opportunity to challenge one of the two required courses by passing a test.

Property Tax Rule 128 is being amended to show changes to the method of gaining the number of courses required for cadastral certification by providing an opportunity to challenge one of the two required courses by passing a test.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, page 103](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1403**

#### **126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).**

Section 63-105A, Idaho Code

**01. Application for Certification.** The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

**a.** After the applicant has completed the requirements of Subsection 126.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: (5-8-09)

i. The name and address of the applicant, (5-8-09)

ii. The applicant's employer, and (5-8-09)

iii. The courses completed. (5-8-09)

**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. (5-8-09)

c. The education director shall make available information regarding the certification process and the application form to students attending the courses referenced in Subsection 126.02 of this rule. (5-8-09)

**02. Certification Requirements.** An applicant for certification must pass at least two (2) appraisal courses: 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. (3-29-10)

a. Upon request to the education director, an applicant may ~~receive credit for Commission Course No. 1 by passing an examination developed for this purpose~~ take one (1) required course and challenge the second required course by passing a test. The education director shall set the time and place for the ~~examination test.~~ (5-8-09)( )

b. Equivalent courses may be approved by the education director and the examination committee. (5-8-09)

c. With the exceptions of the county assessor, the members of the county board of equalization, and the State Tax Commissioners, all persons making decisions regarding final values for assessment purposes shall be certified property tax appraisers. (5-8-09)

**03. Maintaining Property Tax Appraisal Certification.** (5-8-09)

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 shall have completed thirty two (32) hours of continuing education during the previous two (2) years. (5-8-09)

b. When any certified property tax appraiser fails to meet the continuing education requirements, the examination committee shall place this person on ~~a~~ six (6) month probation. When any certified property tax appraiser fails to meet the continuing education requirements within this probationary period, the person shall 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. (5-8-09)( )

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 shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall 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. (5-8-09)( )

**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. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. CADASTRAL CERTIFICATION PROGRAM (RULE 128).**  
Section 63-105A, Idaho Code. (5-8-09)

**01. Application for Certification.** The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

**a.** After any applicant has completed the requirements provided in Subsection 128.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: (5-8-09)

i. The name and address of the applicant, (5-8-09)

ii. The applicant's employer, and (5-8-09)

iii. The courses completed. (5-8-09)

**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. (5-8-09)

**c.** The education director shall make available information regarding the certification process and the application form to students attending the courses mentioned in Subsection 128.02. (5-8-09)

**02. Certification Requirements.** An applicant for certification must have passed the 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. (5-8-09)

**a.** Upon request to the ~~Commission's~~ education director, an applicant may ~~receive credit for the Commission's Basic Mapping Course by passing an examination developed for this purpose~~ **take one (1) required course and challenge the second required course by passing a test.** The education director shall set the time and place for the ~~examination test.~~ (5-8-09)( )

**b.** Equivalent courses may be ~~established by the Commission~~ **approved by the education director** and ~~approved~~ by the examination committee. (5-8-09)( )

**03. Maintaining Cadastral Specialist Certification.** (5-8-09)

**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 shall have completed thirty-two (32) hours of continuing education during the previous two (2) years. (5-8-09)

**b.** When any certified cadastral specialist fails to meet the continuing education requirements, the education committee shall place this person on ~~a~~ six (6) month probation. When any certified cadastral specialist fails to meet the continuing education requirements within this probationary period, the person shall 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. (5-8-09)( )

**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 shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall 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.** (5-8-09)( )

**04. Cross Reference.** See Rule 125 of these rules for the description of the examination committee. (5-8-09)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1404

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 Section 63-105A, 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:

**Property Tax Rule 626. Property Exempt From Taxation – Certain Personal Property.** The proposed rule is being changed to clarify that the classification of rail car companies for apportionment purposes is to be made after the personal property exemption is determined and subtracted from market value. Also, the changes establish a reporting mechanism and timeline for counties to notify the state tax commission regarding the amount of personal property exemption granted locally to companies that are also centrally assessed.

**Property Tax Rule 627. Property Exempt From Taxation – Certain Personal Property – Taxpayer Ownership Clarification.** The proposed rule is being amended to specify sections that pertain to the exemption provided in section 63-602KK(2). Previously the subsection had not been identified. In addition, grammatical errors have been corrected and a label in an example corrected.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-8, pages 104 through 120](#).

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

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

DATED this 7th Day of November, 2014.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742  
[Alan.dornfest@tax.idaho.gov](mailto:Alan.dornfest@tax.idaho.gov)

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2014.

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

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

Property Tax Rule 205 is being amended to allow the rule to conform to Idaho code 63-201(9) as amended by HB441a, which recently became law. The rule deletes language that is inconsistent with current law regarding the three factor test which is used to determine if an item of property is a fixture and therefore real property.

Property Tax Rule 315 deletes the specific statutory references to the various property tax exemptions, and adds the words "property exempt from property tax".

Property Tax Rule 508 Deletes personal property exempt value notification by taxing district or unit rule because reporting is no longer required. It also deletes the notice requirements made unnecessary by statutory changes.

Property Tax Rule 509 This rule required the reporting of the personal property exemption amount, which no longer needs to be reported. SB1213 deletes the need to apply for the oil and gas well exemption so the value may not be known. This rule deletes the requirement to report on the abstract exempt personal property and certain exempt oil and gas well property.

Property Tax Rule 512 is being amended to delete the word "fixture" from the headline describing Category 59 property items. The category is used for personal property and fixtures are statutorily defined as real property, so should not be included under this category.

Property Tax Rule 626 is being amended to clarify that personal property declarations need not be filed every fifth year, and replacement funds which have been established as of 2013 may need to be adjusted if errors are discovered. Taxpayer ownership examples contained in this rule will be transferred to proposed rule 627.

Property Tax Rule 627 is a new rule explaining the terms of common enterprise and taxpayer relationships that is transferred from Rule 626.

Property Tax Rule 645 changes the existing language from 'requires net income when selling livestock' to 'requires gross income when selling livestock' to be consistent with statute.

Property Tax Rule 803 is being amended to require the amount of personal property replacement funds received by the taxing districts to be subtracted before levies are computed. This conforms with HB441a.

Property Tax Rule 805 is being amended to provide a procedure for disallowing certain budget increases in accordance with HB560 when entities do not comply with reporting requirements.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rules are simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief

synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208)334-7742 or [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2014.

DATED this 30th day of June, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1404

**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. (5-8-09)

**01. Real Property.** Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. (5-8-09)

**a. Land.** Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. (5-8-09)

**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. (5-8-09)

**c. Improvements.** Improvements are buildings, structures, fences, and similar property ~~ies~~ that ~~is~~ 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. (5-8-09)( )

**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. (5-8-09)

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

**a. The ~~three part~~ factor test consists of annexation, adaptation and intent as explained below. If an item of property satisfies all three tests, the item becomes a fixture and therefore real property.** (5-8-09)( )

**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 (5-8-09)

**ii. Adaptation.** The use or purpose of an item is integral to the use of the real property to which it is affixed; and (5-8-09)

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. (5-8-09)

b. ~~Fixtures does not include machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles.~~ If an item of property satisfies all three factors of the three factor test, the item becomes a fixture and therefore real property. (5-8-09)( )

**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 State Tax Commission. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**315. USE OF RATIO STUDY TO EQUALIZE BOISE SCHOOL DISTRICT (RULE 315).**  
Section 63-315, Idaho Code. (3-30-07)

**01. Procedures for Boise School District Ratio Studies.** The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the "Standard on Ratio Studies" referenced in Rule 006 of these rules. The following specific procedures will be used. (4-2-08)

a. Information on property sales, which meet the requirements of arm's length and market value sales, will be obtained and assembled into samples representing various primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, within designations defined in Subsection 315.02 of this rule in the Boise School District. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within the Boise School District between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. (4-2-08)

b. A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

c. A statistical analysis is to be conducted for the sales and any appraisals in each property designation described in Subsection 315.02 of this rule in the Boise School District and appropriate measures of central tendency, uniformity, reliability, and normality computed. (4-2-08)

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. (7-1-98)

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the Boise School District by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted: (4-2-08)



**f.** Within the Boise School District, adjusted market value or taxable value for each primary and each applicable secondary category of real, personal and operating property will be summed to produce the total adjusted market value for the Boise School District. The Boise School District taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in the Boise School District. Statewide totals are to be calculated by compiling county totals. (4-2-08)

**g.** Urban renewal increment values will not be included in the taxable value or the adjusted market value for the Boise School District. (4-2-08)

**h.** “Reasonable statistical certainty,” that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not “reasonable statistical certainty” that the property designation is not at market value for assessment purposes. (3-30-01)

**i.** Primary and secondary categories subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

<b>Secondary Categories</b>	<b>Primary Categories</b>	<b>Ratio Study Designations</b>
12, 15, 18, or 20	Vacant Residential Land	Residential
10, 12, 15, 18, 20, 26, 31, 34, 37, 40, 41, 46, 47, 48, or 50	Improved Residential Property	Residential
47, 49, or 65	Manufactured Home on Leased Land	Residential
11, 13, 14, 16, 17, 21, or 22	Vacant Commercial or Industrial Land	Commercial
11, 13, 14, 16, 17, 21, 22, 27, 33, 35, 36, 38, 39, 42, 43, or 51	Improved Commercial or Industrial Property	Commercial

(3-30-07)

**j.** For all secondary categories, described in Rule 510, 511, or 512 of these rules but not contained in the list in Paragraph 315.01.i. of this rule, adjusted market value will equal taxable value. (3-30-07)

**k.** “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal. (7-1-98)

**02. Use of Property Designations.** In computing the ratio for the Boise School District, the State Tax Commission will designate property as residential or commercial and shall assign appropriate primary categories, described in Subsections 130.02 through 130.06 of these rules, and secondary categories, described in Rules 510, 511, and 512 of these rules, to these designations as shown in Paragraph 315.01.i. of this rule. For the Boise School District, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each primary and secondary category assigned to a designation. Except as provided in Subsection 315.06 of this rule, for the taxable value in any secondary category to be included in said sum, at least one (1) observation (sale or appraisal) from that secondary category must be present in the ratio study. If the ratio for any given designation in the Boise School District indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the Boise School District abstract(s) required pursuant to Subsection 315.04 of this rule for each of the secondary categories included in that designation shall be the adjusted market value for said designation for said school district. (4-2-08)

**03. Assessor to Identify Boise School Districts.** Each county assessor will identify for the State Tax

Commission which sales submitted for the ratio study are located within the Boise School District. (4-2-08)

**04. Abstracts of Value for the Boise School District.** Each applicable county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of the Boise School District in that county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (4-2-08)

**05. Urban Renewal Increment and Exemption to be Subtracted.** The taxable value of each primary or secondary category within the Boise School District shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any property exemption ~~pursuant to Sections 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB, 63-602CC, 63-602DD, 63-602GG, 63-602HH, 63-602H, 63-606A, or 63-3029B, Idaho Code~~ from property tax. (4-2-08)( )

**06. Exception from Requirement for at Least One Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one (1) observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

**07. Certification of Values.** The values required to be certified to the county clerk by the first Monday in April each year under Section 63-315, Idaho Code, shall be published on the State Tax Commission's web site or provided in an alternate format on request by the first Monday in April each year to satisfy this required certification. (3-30-07)

**08. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these Rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**418. -- 507~~8~~.** (RESERVED)

~~**508. NOTIFICATION OF PERSONAL PROPERTY EXEMPT VALUE BY TAXING DISTRICT OR UNIT (RULE 508).**~~

~~Sections 63-510 and 63-602KK, Idaho Code. In addition to the requirements of Section 63-510, Idaho Code, for reporting of net taxable value for each taxing district or unit, the value of property exempt pursuant to Section 63-602KK, Idaho Code, shall be reported to the Tax Commission. The value of such exempt property that is included in the increment value within each tax code area in each revenue allocation area shall also be reported. This report shall be submitted by the August and March dates provided under Section 63-510, Idaho Code. (5-8-09)~~

**509. CITY, COUNTY, SCHOOL DISTRICT, AND SPECIAL DISTRICT OR UNIT OF GOVERNMENT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES (RULE 509).**

Sections 63-105A and 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. (3-30-07)

**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. (3-30-07)

**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 State Tax Commission to test for equalization under Section 63-109, Idaho Code. (3-30-07)

**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 State 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. (3-29-12)

**02. Indicate Increment and Exemption Values.** In addition to the value of exemptions required 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, ~~63-602KK~~, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each secondary category of property on each city and county abstract, and the Boise School District abstract. Increment value and the value of the exemptions found in this subsection shall also be indicated and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property. (~~4-4-13~~)(    )

**03. 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. (4-2-08)

**04. 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. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 state tax commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. (3-30-07)

**01. Secondary Category 45 - Utility System Personal Property.** Personal property that is part of locally assessed utility systems not under the jurisdiction of the state tax commission for appraisal. (3-30-07)

**02. Secondary Category 55 - Boats or Aircraft.** Unlicensed watercraft or unregistered aircraft. (3-30-07)

**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. (3-30-07)

- 04. Secondary Category 57 - Equities in Personal Property Purchased From the State.** Personal property purchased from the state under contract. (3-30-07)
- 05. Secondary Category 59 - Furniture, ~~Fixtures~~, 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. (~~3-30-07~~)( )
- 06. Secondary Category 63 - Logging Machinery, Tools, and Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-30-07)
- 07. Secondary Category 64 - Mining Machinery, Tools, and Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-30-07)
- 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. (3-30-07)
- 09. Secondary Category 67 - Operating Property.** Property assessed and apportioned by the state tax commission. (3-30-07)
- 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. (3-30-07)
- 11. Secondary Category 70 - Reservations and Easements.** Reservations, including mineral rights reserved, divide ownership of property rights. Easements convey use but not ownership. (3-30-07)
- 12. Secondary Category 71 - Signs and Signboards.** Signs and signboards, their bases and supports. (3-30-07)
- 13. Secondary Category 72 - Tanks, Cylinders, Vessels.** Containers. (3-30-07)
- 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. (3-30-07)
- 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. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).**  
Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code

**01. Locally Assessed Property - Application Required.** (3-20-14)

**a.** The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. For purposes of reporting personal property, the value is to be based on market value, not book value. (3-20-14)

b. Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, that are exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. (3-20-14)

~~e. In addition, for taxpayers with personal property with a total market value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total market value of all otherwise taxable personal property is less than or equal to one hundred thousand dollars (\$100,000), and must be filed with the county assessor no later than April 15 of the appropriate year. (3-20-14)~~

**02. Locally Assessed Property - Taxpayers' Election of Property Location.** (3-20-14)

a. Multiple Locations Within A County. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. (3-20-14)

b. Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per county. (3-20-14)

**03. Centrally Assessed Property - Application Required.** (3-20-14)

a. Except for private railcar fleets, the taxpayer ~~must~~ may file a list of personal property with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsections 626.03.b. and 03.c. of this rule, for such personal property to be considered for the exemption, the operator's statement must include: (3-20-14)(    )

i. A description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; (3-20-14)

ii. Cost and depreciated cost of the personal property; (3-20-14)

iii. The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. (3-20-14)

b. For private railcar fleets subject to assessment by the Commission, ~~and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the requirements to show specific or county locations, found in Subsections 626.03.a.i. and 626.03.a.iii. shall not apply. Instead,~~ the filing of the annual operator's statement shall constitute application for this exemption. ~~‡~~The Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county within which the

railcar fleet operates. Provided that ~~F~~the remaining taxable ~~and exempt market~~ value is five hundred thousand dollars (\$500,000) or greater, this value is to be further apportioned to each taxing district and urban renewal revenue allocation area. (3-20-14)(    )

c. ~~After subtraction of the personal property exemption calculated as provided in Subsection 626.03.b. of this rule, F~~for private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), neither the final amount of the exemption nor the taxable value of the fleet shall be subject to apportionment ~~the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county.~~ (3-20-14)(    )

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. If such exemption is entered on the property roll, such notification must be made by the first Monday in August. After notice by the Commission of the amount of exemption granted to the centrally assessed property, the assessor may make adjustments to assessed values to be entered on any subsequent or missed property rolls to ensure that the exemption does not exceed \$100,000 (one hundred thousand dollars) for any taxpayer. (3-20-14)(    )

**04. Centrally Assessed Property - Taxpayers' Election of Property Location.** Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection 626.03.b. of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. (3-20-14)

**05. 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 ~~until every fifth year following when the claimant must reapply.~~ (3-20-14)(    )

**06. ~~Tax Commission's Review and~~ Correction of ~~the~~ Personal Property Tax ~~Reduction Lists~~ Replacement Amounts.** (3-20-14)

~~a. If an entry on the personal property tax reduction list is found to be erroneous, the Commission shall disapprove as much of the claim as necessary and so notify the county clerk. (3-20-14)~~

~~b. If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the fourth Monday in February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation, and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the fourth Monday in February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency, and shall change any payment due to the county in accordance with the correction. (3-20-14)~~

~~c. If a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in~~

~~the amount to be paid in June of 2014.~~

~~(3-20-14)~~

~~d. If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission, subsequent to finalization of the amount of replacement money to be paid to any county, an amount paid on behalf of any taxpayer is disapproved by the county, the county shall so notify the Commission, which shall adjust the payment to the county; and then the county shall 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. Any amount so recovered shall be remitted to the Commission.~~

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

~~e. Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property, or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission.~~

~~(3-20-14)~~

**07. Limitation on Eligibility for the Exemption.**

(3-20-14)

a. Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions.

(3-20-14)

b. Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached.

(3-20-14)

c. Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes.

(3-20-14)

d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption.

(3-20-14)

~~08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships. If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, a taxpayer includes two 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:~~

~~(3-20-14)~~

~~[Image Deleted]~~

~~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 common enterprise.~~

~~(3-20-14)~~

~~i. Horizontal Commonality is explained by the following chart:~~

~~(3-20-14)~~

~~[Image Deleted]~~

~~Here, the usual functions involved in a working potato farm 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 Potato Farm, LLC~~

~~ii. Vertical Commonality is explained by the following chart: (3-20-14)~~

~~[Image Deleted]~~

~~b. Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, the entities or individuals would be considered one (1) taxpayer for purposes of this exemption. (3-20-14)~~

~~e. Ownership alone does not determine whether entities are considered one taxpayer 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. (3-20-14)~~

~~d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: (3-20-14)~~

~~i. Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. (3-20-14)~~

~~[Image Deleted]~~

~~So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and 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 farm businesses are common enterprises, and therefore entitled to only one (1) exemption for all the farm businesses. Bob's used car business is not involved with Bob's farm businesses, so Bob is entitled to an additional exemption related to his used car business. (3-20-14)~~

~~[Image Deleted]~~

~~iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. (3-20-14)~~

~~[Image Deleted]~~

~~Here, one 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. (3-20-14)~~

~~[Image Deleted]~~

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

**098. Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code.** (3-20-14)

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. (3-20-14)

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. (3-20-14)

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. (3-20-14)

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application. (3-20-14)

**109. Limitation on Replacement Money.** (3-20-14)

a. ~~Once the 2013 amount of replacement money for each taxing district, and unit, and for each urban renewal district revenue allocation area is made final, following corrections as provided in this rule, there shall be no additions. However~~ 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: (3-20-14)( )

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. (3-20-14)

ii. If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. (3-20-14)

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. (3-20-14)

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 626.170 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. (3-20-14)( )

b. ~~If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code,~~ There shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property adjustment to replacement money if personal property not receiving the exemption found in Section 63-602KK(2), Idaho Code, receives the this exemption in Section 63-602KK(2) in the future. (3-20-14)( )

**110. 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 applied to the exempt personal property, in any school district within which this levy has been certified in 2013, and the amount of tax calculated will be billed to the Commission as part of the property tax reduction list. The Commission shall be ~~remitted any related funds~~ directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. (3-20-14)( )

**121. Special Provision For Exempt Personal Property Within Urban Renewal Revenue Allocation Areas (RAAs).** When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an

RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. (3-20-14)

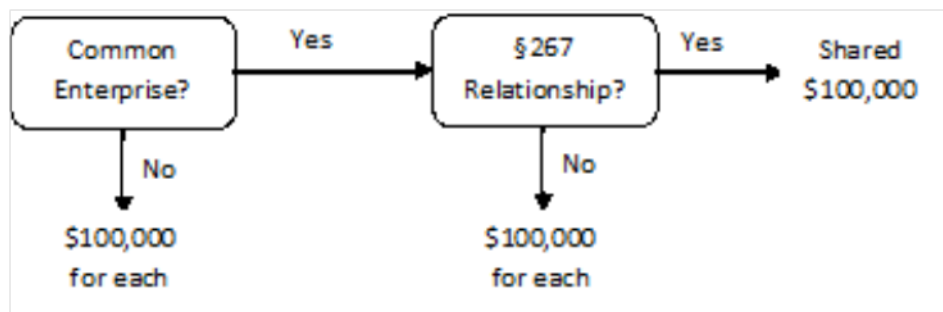
**132. ~~Special Provision For No Reporting of Exempt Value.~~** Beginning in 2014, taxing district values submitted to the Commission as required in Section 63-510, Idaho Code, shall not include or indicate the otherwise taxable value exempt pursuant to Section 63-602KK(2), ~~in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor, or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho State Board of Education and the Idaho Department of Education for each school district, as required in Section 63-1312,~~ Idaho Code. (3-20-14)(    )

**143. Cross Reference.** For information on transient personal property, see Rule 313 of these rules, ~~and~~ 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. (3-20-14)(    )

**627. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY – TAXPAYER OWNERSHIP CLARIFICATION (RULE 627).**  
Section 63-602KK(2), Idaho Code

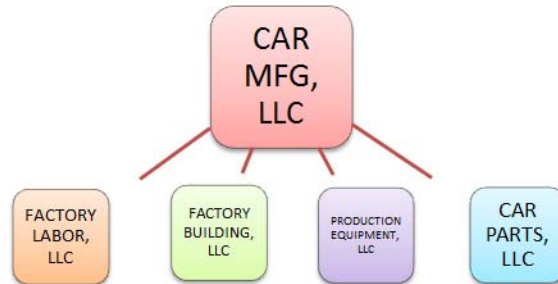
**01. Idaho Code Section 63-602KK(2) Provides Taxpayers With One Exemption in Each Idaho County in Which They Meet the Ownership Rules.** Although taxpayers are limited to receiving one (1) exemption per county, a taxpayer owning more than one (1) business within one (1) county may be entitled to more than one (1) Idaho Code 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 taxpayer 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.** (    )

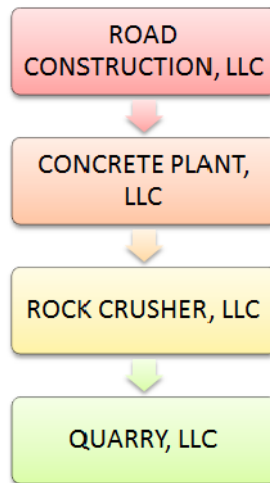
**i. Horizontal Commonality is demonstrated by the following chart:**



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.

( )

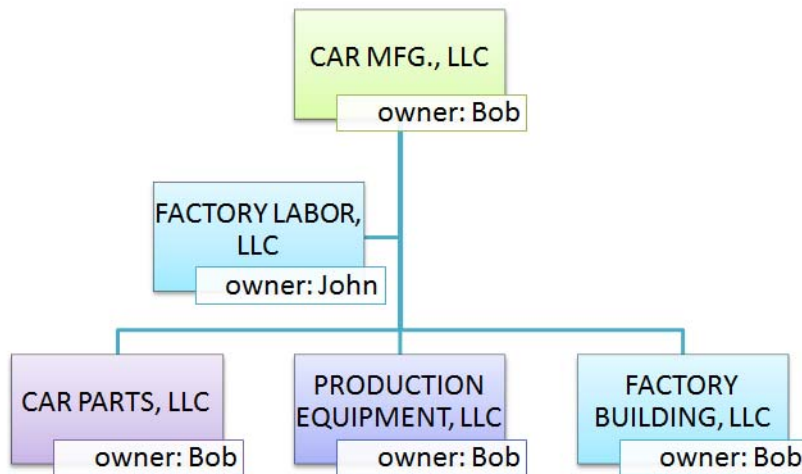
**b.** Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, and the businesses are in a common enterprise, then the entities or individuals would be considered one (1) taxpayer for purposes of this exemption.

( )

c. Ownership alone does not determine whether entities are considered one (1) taxpayer 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: ( )

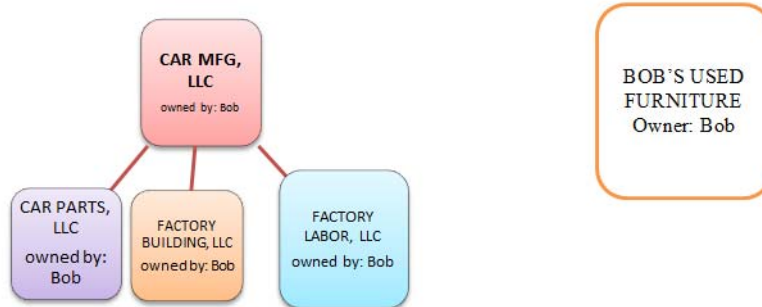
i. Example 1. This is an example of a common enterprise, that is entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ( )



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.

( )

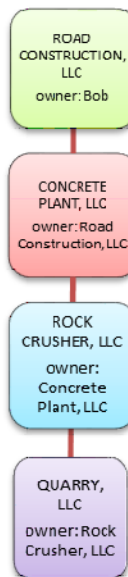
ii. Example 2. This is an example of the same owner with multiple businesses not all united in a common enterprise. Bob's car businesses are common enterprises, and therefore entitled to only one (1) exemption for all the car businesses. Bob's used furniture business is not involved with Bob's car businesses, 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.

( )

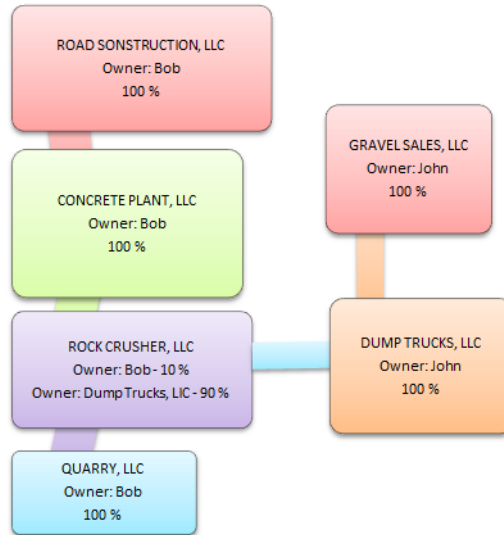


Here, one (1) exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

( )

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. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).**

Section 63-604, Idaho Code.

(3-15-02)

**01. Definitions.** The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

**a. Homesite.** The "homesite" is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

**b. Associated Site Improvements.** The "associated site improvements" include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

**c. Nursery Stock.** Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

**d. Land Used to Produce Nursery Stock.** "Land used to produce nursery stock" means land used by an

agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

**e.** Speculative Value Exemption. The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

**02. Homesite Assessment.** Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

**a.** Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

**b.** Appropriate Market and Comparable Selection. The appropriate market is the market most similar to the homesite and improvements located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

**c.** Assigning secondary category. List and report the secondary category for the homesite using the chart in Subsection 645.02.c.

Description of Land	Secondary Category
Rural and Nonsubdivided	10
Rural and Subdivided	15
Urban	20

(4-2-08)

**d.** Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

**03. Valuing Land, Excluding the Homesite.** The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

**a.** Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit enterprise, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. (4-11-06)

**b.** Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule and shall not qualify for the speculative value exemption. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (4-11-06)

**c.** Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a of this rule, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the

owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less gross income is measured by production of crops, nursery stock, grazing, or ~~net~~ gross income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by March 15, each year. (4-11-06)(\_\_\_\_)

**d.** Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

**04. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).** Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), ~~and~~ 63-3638(101), ~~and~~ (13), Idaho Code. (4-2-08)(\_\_\_\_)

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

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

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

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

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



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

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

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

i. Section 63-602G(5), Idaho Code; and (5-8-09)

ii. Section 63-3029B(4), Idaho Code; and (5-8-09)

iii. Section 31-808(11), Idaho Code: and ~~(5-8-09)~~( )

iv. Section 63-602KK(7), Idaho Code. ( )

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

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

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

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

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

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

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

**c.** “Cash Forward Balance.” List any money ~~brought forward from a prior year to help~~ retained, but intended to be spent to fund the approved budget being certified on the L-2 form. ~~Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6).~~ (3-15-02)(    )

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

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

**i.** The amount of money received annually under Section 63-3638(10~~1~~), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-2-08)(    )

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

**iii.** The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; ~~and~~ (5-8-09)(    )

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

**v.** The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement; and (4-6-05)(    )

**vi.** The amount of money received annually under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code. (    )

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

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

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

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

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

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

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

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

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

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

- iv. Voter approved fund tracker. (3-20-04)
- v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)
- vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)
- vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

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

- a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)
- b. Said new agreement succeeds the original agreement; and (3-30-01)
- c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement** ~~other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code. With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, 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 the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. ~~(5-8-09)( )~~

- a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Sections ~~63-3638(101)~~ and (13), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Sections ~~63-3638(101)~~ and (13), Idaho Code. ~~(5-8-09)( )~~
- b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received, and shall further identify the type of replacement money as described in Paragraph 803.04.e. of this rule. For charter school districts subject to the provisions of Paragraph 803.06.f. of this rule, the amount to be subtracted shall be reported. ~~(4-2-08)( )~~
- c. Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from

other property tax funded budgets. (5-8-09)

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

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

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

~~07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code. The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. (5-8-09)~~

~~a. Such property tax replacement money is not to be subtracted from the "balance to be levied" amount certified on the L-2 Form. (5-8-09)~~

~~b. The otherwise taxable value of the property subject to the exemption provided in Section 63-602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. (5-8-09)~~

~~c. The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.04.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. (5-8-09)~~

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

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

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

**110. 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 levy, sum the school district's tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then

divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

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

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

**143. Cross Reference for School Districts with Tuition Funds.** ~~For any school district certifying a tuition fund levy in 2006 or any year thereafter, levies are exempt from the limitations of Section 63-802, Idaho Code. See Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that the amount of property tax revenue for a tuition fund is not subject to the limitations of Section 63-802, Idaho Code.~~ (4-2-08)( )

(BREAK IN CONTINUITY OF SECTIONS)

**805. PENALTY FOR FAILURE TO ~~PROVIDE NOTICE OF BUDGET HEARING~~ COMPLY WITH REPORTING REQUIREMENTS (RULE 805).**  
Section 63-802A ~~and Section 67-450E~~, Idaho Code. (3-15-02)( )

**01. Property Tax Limitation Penalties for Noncompliance.** ~~Effective January 1, 2003, penalties shall be applied 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 shall be no increase in the portion of the budget subject to the limitations of Section 63-802, Idaho Code. This restriction shall apply to otherwise available budget increases from the three percent (3%) growth factor, new construction or change of land use classification, and annexation. There shall also be no increase resulting from adding previously accrued foregone increase amounts to the budget and the total accrued foregone amount shall not change for a noncomplying district. ~~The penalties provided by this section apply only to failure to comply with the April 30 notification deadline.~~ (4-2-08)( )

**02. Exceptions.** Voter approved budget increases permitted pursuant to Section 63-802(4), Idaho Code, shall be allowed. (3-15-02)

**03. County Clerks to Submit Lists.** By the fourth Monday of May, each county clerk shall submit to the state tax commission a list of ~~noncomplying~~ 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. (4-11-06)( )

**04. Notification by state tax commission.** ~~By September 3 each year, the state 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 state tax commission will also notify each county clerk when a previously noncomplying 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. ( )

**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. ( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1405

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is August 6, 2014. This pending rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary 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.

**RULE 804 - TAX LEVY – CERTIFICATION – URBAN RENEWAL DISTRICTS:** Idaho Code Section 50-2908(1) was amended in 2008 by House Bill 470 to provide that the property tax rate applicable to certain listed funds should be computed based on the current equalized assessed valuation of the taxing district even if the district includes a revenue allocation area. The listed funds included voter approved general obligation bond funds as well as plant facility reserve funds. The list did not include the very similar in purpose state-authorized plant facility fund (I.C. 33-909) leaving the question of whether or not the fund should be included on the list. Because the state-authorized plant facility fund is so similar in purpose to the listed funds, this fund should be added to the list of funds wherein the levy rate will be computed based on the current equalized assessed value.

**RULE 995 - CERTIFICATION OF SALES TAX DISTRIBUTION:** Idaho Code Section 63-602KK(2), the partial (\$100,000) personal property tax exemption statute, enacted in 2013 by House Bill 315 reduced the market value for assessment purposes for all Idaho cities. Idaho Code Section 63-3638(10)(a)(ii) provides that sales tax funds be distributed to cities based in part on the preceding year's market value for assessment purposes. The effects of the personal property exemption on the revenues of taxing districts should be minimized to the extent possible. The amount of the reduction in the market value for assessment purposes for the 2013 tax year is a known amount which can be added back in future years to each cities' market value for assessment purposes thereby minimizing the effect on the revenues of taxing districts which have exempt personal property.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule awaits legislative approval, the Tax Commission amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the August 6, 2014 Idaho Administrative Bulletin, [Vol. 14-08, pages 129 through 136](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Alan Dornfest (208) 334-7742.

DATED this 18th Day of November, 2014.

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

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 6, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2014.

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

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

Rule 804T - Adding the state-authorized plant facility fund to the list of those funds excluded from generating property tax to be allocated to urban renewal agencies.

Rule 995T - Requires the amount of the 2013 personal property tax exemption be included in the market value for assessment purpose for the computation of the amount of sales tax to be distributed to cities.

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

Compliance with deadlines in amendments to governing law or federal programs.

**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: 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 under docket no. 35-0103-1401 in the May 7, 2014 Idaho Administrative Bulletin, [Vol. 14-5, pages 75 and 76](#). Due to the need for temporary rulemaking, a separate docket was necessary for Rules 804 and 995 to be effective.

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

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



Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2014.

DATED this 16th day of July, 2014.

LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1405

**804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).**

Section 50-2908, 63-803, and 63-811, Idaho Code. (5-8-09)

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

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

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

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

**d.** "Initial base value." The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. In the case of annexation to an RAA, initial base value of each annexed parcel shall be the value of that parcel as of January 1 of the year in which the annexation takes place. (4-5-00) ( )

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

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

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

**b.** Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the

changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

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

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

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

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

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. Proportions used to determine the amount of base value assigned to each of the new parcels shall be based on the value of the new parcels had they existed in the year preceding the year for which the value of the new parcels is first established. (4-5-00)( )

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

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

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

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

ii. Partially exempt parcels losing the speculative value exemption. When a partially exempt parcel with a speculative value exemption that applies to farmland within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the taxable value of the parcel for the year in which the exemption is lost and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that this parcel had a speculative value exemption of two thousand dollars (\$2,000) at that time. Two (2) years later the parcel is reclassified as industrial land, loses the speculative value exemption, and has a current taxable value of fifty thousand dollars (\$50,000). The base value within the RAA would be adjusted upwards by forty-nine thousand five hundred dollars (\$49,500), the difference between fifty thousand dollars (\$50,000) and five hundred (\$500). The preceding example applies only in cases of loss of the speculative value exemption that applies to land actively devoted to agriculture and does not apply to timberland. Site improvements, such as roads and utilities, that become taxable after the loss of the speculative value exemption are not to be added to the base value. For example, if, in addition to the fifty thousand dollars (\$50,000) current taxable value of the

undeveloped land, site improvements valued at twenty-five thousand dollars (\$25,000) are added, the amount reflected in the base value remains fifty thousand dollars (\$50,000), and the additional twenty-five thousand dollars (\$25,000) is added to the increment value. In addition, this example applies only to land that loses the speculative value exemption as a result of changes occurring in 2010 or later and first affecting taxable values in 2011 or later. Parcels that lost speculative value exemptions prior to 2010 had base value adjustments as described in Subsection 804.02.d.iii. of this rule. (3-29-12)

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

iv. Partially exempt properties for which the amount of the partial exemption changes. For partially exempt properties that do not lose an exemption, but for which the amount of the exemption changes, there shall be no adjustment to the base value, unless the current taxable value is less than the most recent base value for the property. For example, assume a home has a market value of two hundred thousand dollars (\$200,000) and a homeowner's exemption of one hundred thousand dollars (\$100,000), leaving a taxable value of one hundred thousand dollars (\$100,000), all of which is base value. The following year the homeowner's exemption limit changes to ninety thousand dollars (\$90,000), so the property's taxable value increases to one hundred ten thousand dollars (\$110,000). The base value remains at one hundred thousand dollars (\$100,000). Alternatively, assume the property in the preceding example increases in market value to two hundred twenty thousand dollars (\$220,000) and the homeowner's exemption drops to ninety thousand dollars (\$90,000) because of the change in the maximum amount of this exemption. The base value remains at one hundred thousand dollars (\$100,000). Finally, assume the property decreases in value to one hundred eighty-eight thousand dollars (\$188,000) at the same time the homeowner's exemption limit changes to ninety thousand dollars (\$90,000). The property now has a taxable value of ninety-eight thousand dollars (\$98,000), requiring an adjustment in the base value to match this amount, since it is lower than the original base value of one hundred thousand dollars (\$100,000). (3-29-12)

v. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the *original* 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 twenty nineteen thousand dollars (\$2019,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty nineteen thousand dollars (\$2019,000). (4-5-00)( )

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

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

ii. For personal property, all of the personal property associated with one (1) parcel is physically

removed from the RAA or any of the personal property associated with a parcel becomes exempt. In the case of exemption applying to personal property, the downward adjustment will first be applied to the increment value and then, if the remaining taxable value of the parcel is less than the most current base value, to the base value. Assume, for example that a parcel consists entirely of personal property with a base value of twenty thousand dollars (\$20,000) and an increment value of ninety thousand dollars (\$90,000). The next year the property receives a one hundred thousand (\$100,000) personal property exemption. The increment value is reduced to zero and the base value is reduced to ten thousand dollars (\$10,000). ~~(4-5-00)~~(\_\_\_\_)

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

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

**fg.** Adjustments to increment values. In addition to the adjustment illustrated in subsection (02)(e)(ii) of this rule, ~~D~~ decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). ~~(4-5-00)~~(\_\_\_\_)

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

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

**a.** For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

**b.** For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (5-8-09)

**04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

**a.** Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for

the consolidated RAA. (4-5-00)

b. Modification by annexation. (5-8-09)

i. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

ii. For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$40 Million
	RAA annex (B) increment	\$10 Million

<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">                 School District Area                  \$500 M base             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px; width: fit-content; margin-left: auto;">                 2008 RAA                  Annexation (B)                  \$10 M Increment             </div> <div style="border: 1px solid black; padding: 5px; width: fit-content;">                 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 <del>Override</del> Supplemental	550

~~(5-8-09)~~ ( )

**05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier

as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

**d.** Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

**e.** Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

**f.** Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)

**g.** Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. ( )

**06. Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).**  
Section 63-3638, Idaho Code.

**01. Most Current Census.** Population shall 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 State Tax Commission is notified that the Bureau of the Census has revised any city or county population estimates, the revised estimates shall be used for the distribution of sales tax money. (4-4-13)

**02. Market Value for Assessment Purposes.** Market value for assessment purposes shall mean the market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall 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. (~~5-3-03~~)( )

**03. Current Fiscal Year.** For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September. (3-30-01)

**04. Incorporated City.** Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council. (4-4-13)

**05. Valuation Estimates.** Valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution. (4-4-13)

**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, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(10)(c), Idaho Code. (~~4-6-05~~)( )

**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, shall 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 shall 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~~ State Tax Commission shall 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 shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission. (4-6-05)( )

**a. City and County Base Shares.** For cities and counties, the initial base share shall 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 shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share. (3-30-01)

**b. Special Purpose Taxing District Base Shares.** For special purpose taxing districts the initial base share shall 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 shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed. (3-30-01)

**c. Excess Shares.** Excess shares shall 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 shall not be subject to redistribution provisions of Section 40-801, Idaho Code. (4-6-05)

**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, shall be termed "revenue sharing." Such shares shall 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, shall be considered an annual amount and shall be divided into four (4) equal shares. (4-6-05)

**e. Amounts authorized to be paid to counties for redistribution to taxing districts shall be withheld if necessary to comply with the requirements of Sections 67-450B and 67-450E, Idaho Code. The tax commission shall 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.** ( )

**08. Notification of Value.** The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

**09. Corrections.** (3-30-01)

**a.** When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections shall 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 shall be corrected as soon as practicable in distributions made for the following fiscal year. (4-6-05)

**b.** The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

**c.** The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

## IDAPA 35 - STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 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 of full force and effect upon adoption of 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 and 63-3039, Idaho Code.

**DESCRIPTIVE SUMMARY:** 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 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 443 through 446](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian (208) 334-7670.

DATED this 6th day of November, 2014.

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

<b>THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE</b>
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**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 310 is being amended to add the interest rate for calendar year 2015 and the Revenue Ruling where the



federal rate for the calculation can be found.

Rule 501 is being amended to reflect current division changes in the agency.

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-1401

**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
<u>Calendar Year 2015</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2014-22</u>

(3-20-14)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS (RULE 501).**

Section 63-3048, Idaho Code.

(3-29-10)

**01. Signatures for Settlement.** For settlement agreements where the amount in issue equals or exceeds fifty thousand dollars (\$50,000), the signature of two (2) commissioners is required on the settlement agreement to make it binding and complete. One of the commissioners signing must be delegated the responsibility for oversight of the tax type subject to the settlement. (3-29-10)

**02. 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. (3-29-10)

**a.** Example 1. The audit staff issues a Notice of Deficiency to the taxpayer for one hundred fifty thousand dollars (\$150,000). The taxpayer then submits documentation for additional examination by the Commission or its staff. As a result of the examination, the amount claimed due is reduced to one hundred twenty thousand dollars (\$120,000), and the taxpayer is notified in writing. The taxpayer then submits an offer to settle for eighty thousand dollars (\$80,000). The amount in issue is forty thousand dollars (\$40,000). (3-29-10)

**b.** Example 2. Same facts as in Paragraph 501.02.a., except the taxpayer makes the offer to settle before the Commission communicates the reduction in the amount claimed due based on the additional documentation. In this case, the amount in issue is seventy thousand dollars (\$70,000) (NOD amount of \$150,000 - settlement offer of \$80,000 = \$70,000), because the Commission has not communicated the allowance of the deduction to the taxpayer, and the taxpayer is not aware of the adjustment at the time he made the offer. (3-29-10)

**c.** Example 3. The taxpayer files a refund claim of one hundred thousand dollars (\$100,000). The audit staff reviews the claim and determines the taxpayer is entitled to a refund of twenty thousand dollars (\$20,000). The taxpayer protests the denial of the remaining eighty thousand dollars (\$80,000). The taxpayer makes an offer to settle by proposing a refund of seventy-five thousand dollars (\$75,000). The amount in issue is fifty-five thousand dollars (\$55,000), which is the difference between the refund allowed and the proposed settlement amount. The calculation is as follows:

Audit staff NOD amount	(\$20,000)
Less settlement offer	- (\$75,000)
Amount in issue	(\$55,000)

(3-29-10)

**d.** Example 4. The taxpayer files a refund claim of one hundred thousand dollars (\$100,000). The audit staff reviews the claim and determines the taxpayer is not entitled to a refund and instead owes fifty thousand dollars (\$50,000). The audit staff issues a Notice of Deficiency for fifty thousand dollars (\$50,000) and a denial of the refund claim. The taxpayer submits additional documentation for examination by the Commission or its staff. After review, the amount claimed due is reduced to thirty thousand dollars (\$30,000), and this is communicated to the taxpayer in writing. The taxpayer then offers to settle by proposing a refund of forty thousand dollars (\$40,000). The amount in issue is seventy thousand dollars (\$70,000). The calculation is as follows:

Audit staff NOD amount	\$50,000
Less adjustment submitted to taxpayer	- (\$20,000)
Amount claimed due	\$30,000
Less settlement offer	- (\$40,000)
Amount in issue	\$70,000

(3-29-10)

**e.** For purposes of the amount in issue, interest will be updated to the date of the offer. (3-29-10)

**03. Final Review.** When considering a proposed settlement, and the amount in issue equals or exceeds fifty thousand dollars (\$50,000), the Commission will hold a final review before deciding to finalize the settlement. The meeting on the final review will be attended by at least two (2) commissioners, a the tax policy specialist manager or designee, a deputy attorney general, and a representative from the division in which the Notice of Deficiency originated. The representative shall will be either the division administrator or the bureau chief. One of the commissioners must be the commissioner delegated oversight responsibility for the tax at issue, and the other commissioner signing the settlement agreement must attend the final review. The purpose of the final review is to evaluate the merits of the proposed settlement. ~~(3-29-10)~~( )

**04. Written Summary.** The deputy attorney general or tax policy specialist designee at the final review shall will prepare a written summary of the proposed settlement. The summary shall will include recommendations of the audit staff as well as recommendations of the preparer. The summary shall will be provided to those attending the review. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. A copy of the summary, along with a copy of the related settlement agreement, shall will be maintained in separate files of the Commission. Such files may not be disclosed or inspected under the public

records law.

(3-29-10)( )

**05. 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 ~~Field Services Bureau~~ 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 ~~Field Service Bureau~~ Collection Division will be the division administrator or the ~~bureau chief~~ designee.

(3-29-10)( )

**06. Annual Summary.** The Commission ~~shall~~ will submit an annual report to the governor and legislature by March 1 of each year summarizing all settlement agreements entered into during the previous calendar year in which the amount in issue equals or exceeds fifty thousand dollars (\$50,000). The annual summary ~~shall~~ will be based on the written summary for all applicable cases. The annual summary ~~shall~~ will not contain any confidential taxpayer information but ~~shall~~ will include a brief general description of each settlement. The annual summary ~~shall~~ will be a public record subject to disclosure and inspection.

(3-29-10)( )

**07. Applicable Settlements.** This rule applies to those matters when a protest has been timely filed pursuant to Section 63-3045, Idaho Code, and before the tax has been assessed, and to cases in which a decision of the Tax Commission has been appealed to the Board of Tax Appeals or to a court. However, this rule ~~shall~~ will not apply to settlements where the amount in issue is less than fifty thousand dollars (\$50,000).

(3-29-10)( )