

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**House Revenue & Taxation Committee**  
**64th Idaho Legislature**  
**Second Regular Session – 2018**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2018*

# ***HOUSE REVENUE & TAXATION COMMITTEE***

## ***ADMINISTRATIVE RULES REVIEW***

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## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.01 – INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 075, 263, and 771, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 75 through 81](#).

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

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

DATED this 22nd day of November, 2017.

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

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to 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 July 19, 2017.

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 2017 and remove the information for calendar year 2012 so only five years of historical data is retained in the rule.

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

Rule 771 is being amended to add language stating that the amount of the grocery credit is \$100 for tax years 2015 and after.

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

**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: N/A

**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: N/A

**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, July 26, 2017.

DATED this 9th day of June, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-1701

**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 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
<i>Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.</i>				

(4-1-13)

~~b.~~ **a.** For taxable years beginning in 2013:

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

(3-20-14)

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

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

(4-11-15)

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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,452	\$0	+	1.6% of taxable income
\$1,452	\$2,904	\$23.23	+	3.6% of the amount over \$1,452
\$2,904	\$4,356	\$75.50	+	4.1% of the amount over \$2,904
\$4,356	\$5,808	\$135.03	+	5.1% of the amount over \$4,356
\$5,808	\$7,260	\$209.08	+	6.1% of the amount over \$5,808
\$7,260	\$10,890	\$297.65	+	7.1% of the amount over \$7,260

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$10,890 or more		\$555.38	+	7.4% of the amount over \$10,890
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2015.				

(3-25-16)

**d.** For taxable years beginning in 2016:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,454	\$0	+	1.6% of taxable income
\$1,454	\$2,908	\$23.26	+	3.6% of the amount over \$1,454
\$2,908	\$4,362	\$75.60	+	4.1% of the amount over \$2,908
\$4,362	\$5,816	\$135.21	+	5.1% of the amount over \$4,362
\$5,816	\$7,270	\$209.36	+	6.1% of the amount over \$5,816
\$7,270	\$10,905	\$298.05	+	7.1% of the amount over \$7,270
\$10,905 or more		\$556.14	+	7.4% of the amount over \$10,905
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2016.				

(3-29-17)

**e.** For taxable years beginning in 2017:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,472	\$0	±	1.6% of taxable income
\$1,472	\$2,945	\$23.56	±	3.6% of the amount over \$1,472
\$2,945	\$4,417	\$76.57	±	4.1% of the amount over \$2,945
\$4,417	\$5,890	\$136.94	±	5.1% of the amount over \$4,417
\$5,890	\$7,362	\$212.03	±	6.1% of the amount over \$5,890
\$7,362	\$11,043	\$301.85	±	7.1% of the amount over \$7,362
\$11,043 or more		\$563.21	±	7.4% of the amount over \$11,043
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2017.				

( )

(BREAK IN CONTINUITY OF SECTIONS)

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

Section 63-3026A(3), Idaho Code

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

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

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

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

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

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

b. The amount of guaranteed payments that are sourced as compensation for services is as follows:

TAX YEAR	AMOUNT
<u>2017</u>	<u>\$257,500</u>
2016	\$254,250
2015	\$254,000
2014	\$250,000
2013	\$250,000

(3-29-17)( )



**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
2016	\$100	\$100
2015	\$100	\$100
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

For tax years 2015 and after, the credit is one hundred dollars (\$100). ~~(3-29-17)~~ ( )

**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)

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0102-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 067, and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the August 2, 2017 Idaho Administrative Bulletin, [Vol. 17-8, pages 116 through 118](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Leah Parsons (208) 334-7531 or e-mail [leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov).

DATED this 22nd day of November, 2017.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690

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

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2017.

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:

Sales Tax Rule 067 – Real Property. We are proposing changing this rule to clearly state that data cabling that is installed in a building will be presumed to be an improvement to real property.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, pages 74-75](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@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 23, 2017.

DATED this 10 Day of June, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1701**

**067. REAL PROPERTY (RULE 067).**

Sections 63-3609, 63-3612, & 63-3616, Idaho Code

**01. Improvements or Fixtures.** Improvements or fixtures to real property include: (7-1-93)

**a.** Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)

**b.** Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)

**c.** Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)

**02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

**a.** Annexation to the realty, either actual or constructive. (7-1-93)

**b.** Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

**c.** Intention to make the article a permanent addition to the realty. (7-1-93)

**03. Example 1:** The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)

**04. Example 2:** The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (5-8-09)

**05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(b), Idaho Code. (7-1-93)

**06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: (5-8-09)

**a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or (5-8-09)

**b.** It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. (5-8-09)

~~**07. Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber~~

~~optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. (5-8-09)~~

**07. Fiber Optic and Communication Cable.** Fiber optic and communication cable installed in a building is presumed to be a real property improvement. ( )

## IDAPA 35 – STATE TAX COMMISSION

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

#### DOCKET NO. 35-0102-1702

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**Rule 048**

No change will be made to Rule 048. It will remain as it is currently codified.

**Rule 079**

The descriptive summary for the proposed rule stated that Subsections 079.05.m. and 079.05.n. were being modified; Subsection 079.05.n. was removed; Subsection 079.05.m. used the word “defined,” this was changed to “described.”

**Rule 107**

Subsection 107.10.f. was changed to separately state a park model recreational vehicle from a trailer or a utility trailer

**Rule 128**

Subsection 128.07 used the word “defined,” this was changed to “describe.”

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 September 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, pages 251-273](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Leah Parsons (208) 334-7531 or e-mail [leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov).

DATED this 22nd day of November 2017.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531

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

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 27, 2017.

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 013 – Road And Paving Contractors. We are proposing to add some examples to this rule to clarify when taxes are owed.

Rule 044 – Trade-ins, Trade-downs And Barter. We are proposing to change this rule to conform to 2017, HB 156. The main change is to replace park trailer with park model recreational vehicle. This rule is also amended to include a reference to Rule 35.01.02.048 regarding how to treat trade-ins of Park Model Recreational Vehicles. Some technical and grammar changes are also proposed.

Rule 048 – Manufactured Homes (Mobile Homes) And Modular Buildings. We are proposing to change to conform to 2017, HB 156. The changes are to replace park trailer with park model recreational vehicle. This change will add a new paragraph to define New Park Model Recreational Vehicles and clearly state that these are taxed at 100% of the sales price. The way in which used Park Model Recreational Vehicles are taxed will also be addressed. This rule is also being amended to reflect how trade-ins are to be treated. Some technical and grammar changes are also proposed.

Rule 061 – Transportation, Freight, And Handling Charges. We are proposing to change this rule to conform to the 2017, HB 156. In the negotiated process we discussed what changes were necessary. Since HB 156 modified code section 63-3613 to specifically include those costs in a Park Model Recreational Vehicle, no changes were needed within the rule. The statute reference was added to the title. Some technical and grammar changes are also proposed.

Rule 079 – Production Exemption. We are proposing to change this rule to conform to the 2017, HB 156. HB 156 added Park Model Recreational Vehicles to 63-3622HH(4) as a type of vehicle that is not eligible for the production exemption. Rule 35.01.02.079.05.m. and 05.n. are being modified to reflect this treatment for Park Model Recreational Vehicles. Some technical and grammar changes are also proposed.

Rule 099 – Occasional Sales. We are proposing to change this rule to conform to 2017, HB 156. Rule 35.01.02.099.09 lists items that do not qualify for the occasional sales exemption and are therefore always taxable. Park Model Recreational Vehicles is being added to that list. Some technical and grammar changes are also proposed.

Rule 107 – Vehicles And Vessels – Gifts, Military Personnel, Nonresident, New Resident, Tax Paid To Another State, Sales To Family Members, Sales To American Indians, And Other Exemptions: It was decided in the negotiated rule-making process that referencing the statutes would be the only necessary change to meet the requirements of 2017, HB156 regarding the Park Model RV statute. This rule is also being changed to reflect the law change allowing the nonresident use of a vehicle in Idaho from 60 to 90 days. Some technical and grammar changes are also proposed.



Rule 128 – Certificates For Resales And Other Exemption Claims. We are proposing to change this rule to conform to the 2017, HB 156. Park Model Recreational Vehicles will be added to the list of nonexempt items under the production exemption in Rule 35.01.02.128.07. Some technical and grammar changes are also proposed.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 82-83](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 8th day of August, 2017.

### **LSO Rules Analysis Memo**

Italicized red text that is *double underscored* is new text that has been added to the pending rule.

#### **THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1702**

#### **013. ROAD AND PAVING CONTRACTORS (RULE 013).**

[Sections 63-3609 & 63-3615, Idaho Code](#)

**01. In General.** This rule illustrates the application of Idaho sales and use tax to specific activities of road and paving contractors. The general principles stated in Rule 012 of these rules apply equally to road and paving contractors. (7-1-96)

**02. Road or Paving Contractor.** A road or paving contractor is a contractor improving real property. The use of materials over which he exercises right or power in the course of performing the contract is subject to tax. This is true even if an exempt entity, such as a government agency, owns the material. *It is also true if the contractor does the work under the full or partial supervision of the person for whom the contractor is performing the contract.* (7-1-96)( )

**03. Examples.** Here are some examples of taxable materials contractors use in paving and road contracts: ( )

a. Example 1: A contractor is hired to pave a road for a city. The materials the contractor will use are taxable, regardless of ownership, and include rock, sand, asphalt oil, chemicals, bonding agents, or any other like materials which become the aggregate pavement. ( )

b. Example 2: A contractor is hired to chip seal a local road. The chip seal includes a layer of liquid asphalt or similar material applied to the road with an immediate layer of rock chips applied on top of the wet asphalt. A roller sets the rock chips in place. Once this dries, the surface is cleaned and another oil seal or like product is applied. These three items and any other materials used to form the aggregate chip seal are subject to tax. ( )

c. Example 3: A contractor is hired to perform landscaping for the barrow pits and shoulders of a new highway. The highway district provides the grass seed and some bushes for the project. The contractor provides labor to sow the seed, plant the bushes, and labor and materials to provide erosion control, land leveling, contouring, etc. The contractor owes sales or use tax on all materials consumed, including those provided by the highway district. ( )

d. Example 4: A contractor is hired to install a new bridge and provide drainage for a new freeway interchange. The highway district provides the bridge components and culverts needed for the project, and the contractor provided all of the remaining materials and the labor for the project. The contractor will owe sales or use tax on all materials he consumes including the bridge components and culverts provided by the highway district, as well as on the materials the contractor purchased for use on the project. ( )

e. Example 5: A contractor is hired to install traffic control lights, signage, and roadway illumination for a rebuilt section of roadway. The highway district provides the traffic control signals and the permanent signage for the highway so that all signage will be consistent throughout the highway district. The contractor owes use tax on the value of the traffic signals and signage provided by the highway district as well as on the cost of electrical wiring, signal wiring, and the lights and light poles, etc., purchased and consumed by the contractor. ( )

**034. Materials.** The sale or use of materials which are extracted and crushed is taxable. Use tax does not apply to the use of natural materials that are secured on site and used without significant change. (7-1-96)

**045. Rock Crushing.** The application of the sales or use tax to rock crushing operations depends upon the circumstances of the case. (7-1-96)

**a.** A sale of crushing only is a sale of a taxable processing service. In this circumstance the crusher obtains raw material owned by another, crushes the rock, and stockpiles it for subsequent use either by the owner or a third party. Unless an exemption applies, the crusher must charge tax on all such sales. (7-1-96)

**b.** A contractor who applies crushed rock to the highway pursuant to a contract is a person engaged in improving real property. If the contractor applying the crushed rock purchases the rock, the purchase price will be subject to a sales or use tax. If the contractor applies rock owned by another party, the contractor will be responsible for a use tax on the value of the rock, unless the other party paid a sales tax upon its acquisition. This is true even if a government agency supplied the rock. If a recent retail acquisition of the crushed rock exists, the retail price shall be presumed to be the value of the material. If a recent retail sales price does not exist, then value shall be determined by the current acquisition cost of like material from the same or a similar source. For purposes of this section, a retail acquisition within one (1) year of the time of the performance of the contract shall be presumed to be a recent sales price. (7-1-96)

**c.** A contractor whose contract calls for him to both crush and apply rock to a road is also subject to sales or use tax on the value of the rock whether the contract is performed for a governmental or private contractee. The value shall be determined by the royalty or similar charge for raw materials. If a royalty or similar charge does not exist, then the value will be determined as the royalty fee or value of like material from a similar source. If the contractor chooses to have the rock crushed by a subcontractor, the measure of the use tax is on the crushed value. (7-1-96)

**d.** A sale of rock crushing services to a retailer who will sell the rock is an exempt sale. The sale of crushed rock to a consumer is a taxable sale unless an exemption applies. (7-1-96)

~~056.~~ **Production Exemption.** (7-1-96)

a. Since a contractor improving real property is defined as the consumer of materials incorporated into realty, he is not producing an article for resale. Therefore, the production exemption does not apply to the use of equipment used by contractors to produce asphalt or concrete which are used to complete paving contracts. (7-1-96)

b. A business which is primarily devoted to producing crushed rock, asphalt, or concrete which is ultimately sold at retail will qualify for the production exemption. See Idaho Administrative Sales Tax Rules 079 and 082. (7-1-96)

**(BREAK IN CONTINUITY OF SECTIONS)**

**044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).**  
Section 63-3613, Idaho Code

**01. Trade-Ins.** A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. (4-4-13)

a. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). (4-4-13)

**03. Trade-Downs.** A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero (0) and no sales tax is due on the transaction. (4-4-13)

**04. Disallowed Trade-In ~~Deductions~~ Allowances.** ( )

a. **Private Party Transactions.** A ~~Trade-in~~ ~~deductions are~~ allowance is not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. ~~(3-30-01)~~( )

~~a.i.~~ Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

~~b.ii.~~ Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

b. Manufactured Homes (Mobile Homes), New Park Model Recreational Vehicles, and Modular Buildings. Trade-in allowances are not allowed on the sale of manufactured homes, new park model recreational vehicles, and modular buildings. See IDAPA 35.01.02.048 of these rules. ( )

**05. Insurance Settlements.** An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)

**06. Core Charges.** Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

**07. Trade-In for Rental/Lease Property.** When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

**a.** The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

**b.** The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

**c.** A combination of the two (2) methods, above. (7-1-93)

**d.** Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). (3-30-01)

**i.** Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. (3-30-01)

**ii.** Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. (3-30-01)

**iii.** Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (3-30-01)

**08. Rental/Lease Property Traded-In.** When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax. (3-30-01)

**b.** Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case,

the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000). (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**061. TRANSPORTATION, FREIGHT, AND HANDLING CHARGES.**

Section 63-3613, Idaho Code

**01. In General.** Whether or not transportation and handling charges are separately stated, the sales price includes any charges made for delivery of goods to the seller. Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes. (7-1-97)

**02. Charges Not Separately Stated.** Regardless of other provisions of this rule, transportation and handling charges which are not separately stated are included in the sales price subject to tax. (7-1-97)

**03. Example 1: Charges for Delivery to the Seller.** A customer orders goods from a retailer. The goods are shipped to a catalog store where the customer picks them up. A charge to the customer for delivery to the store is a charge for delivery to the seller and is included in the sales price subject to sales tax. (7-1-97)

**04. Example 2: Freight-In Taxable.** A seller of construction equipment orders a part for a customer. The seller separately states on the invoice charges for freight-in to the seller and freight-out to the consumer. The charges for freight-in are part of the sales price subject to sales tax. The charges for freight-out are not subject to sales tax. (7-1-97)

**05. Example 3: Delivery by Retailer.** A consumer orders building materials from a retailer. The retailer delivers the goods to the purchaser by means of the retailer's delivery van. The retailer separately states the charge for transportation and handling of the building materials. Since the charge is for delivery to the consumer, it is not subject to sales tax. (7-1-97)

**06. Example 4: Use of Transportation Charges as a Means of Avoiding Sales Tax.** Seller offers to give away merchandise worth approximately twenty dollars (\$20) if the purchaser pays shipping of nineteen dollars and ninety-five cents (\$19.95). The entire price of nineteen dollars and ninety-five cents (\$19.95) is subject to sales or use tax. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**079. PRODUCTION EXEMPTION (RULE 079).**

Sections 63-3622, ~~&~~ 63-3622D, & 63-3622HH, Idaho Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

i. Equipment used primarily to fabricate production equipment. (7-1-93)

j. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (3-29-17)

**04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will

be sold at retail, whichever occurs last. See Rule 083 of these rules regarding farming. (3-29-17)

**05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)

a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

c. Office equipment and supplies. (7-1-93)

d. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)

e. Equipment and supplies used in selling and distribution activities. (7-1-93)

f. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

g. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

h. Transportation equipment and supplies. (7-1-93)

i. Aircraft of any type and supplies. (7-1-93)

j. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

k. Other incidental items not directly used in production. (7-1-93)

l. Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

m. ~~Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATVs), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth wheel travel type trailers designed to provide temporary living quarters; motor homes; buses and van type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply~~ Recreation-related vehicles as described in 63-3622HH, Idaho Code, regardless of use. (7-1-93)( )

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

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

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

improve real property. (3-20-14)

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

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

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

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

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**099. OCCASIONAL SALES (RULE 099).**  
Sections 63-3622K, & [63-3622HH](#), Idaho Code

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

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

**b.** Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108TR to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-25-16)

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



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

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

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

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

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

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

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

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

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

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

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

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

**06. Sales and Rentals to Related Parties.** The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Rentals and leases of capital

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

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

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

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

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

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

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

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

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

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

**e.** Camping, ~~park~~, travel, ~~and~~ fifth-wheel travel-type trailers ~~which are~~ and park model recreational

vehicles designed to provide temporary living quarters.

~~(7-1-93)~~( )

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

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

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

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

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

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

a. Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner's purchase does not qualify for the occasional sale exemption. (4-11-06)

b. Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt occasional sale. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

Sections 49-117, 49-121, 49-122, 63-3606B, & 63-3622R, & 67-7101, Idaho Code

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

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

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

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

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

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

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

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

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

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

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

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

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (4-11-15)

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

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

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

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to

transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: (3-25-16)

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (3-25-16)

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than ~~sixty~~ ninety (90) days in any twelve-month period. ~~(3-25-16)~~ ( )

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, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. (3-29-17)

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)

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, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. (3-29-17)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of ~~either a park model recreational vehicle, a~~ “trailer” or “utility trailer” found in Sections ~~49-117~~, 49-121, and 49-122 Idaho Code,

which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers or park model recreational vehicles defined in Sections 49-117, and 49-121(6)(a) through 49-121(6)(h), Idaho Code. (7-2-08)( )

**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)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

Sections 63-3622, & 63-3622HH, Idaho Code

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

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

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

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

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

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

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



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

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

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

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

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

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

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

**d.** Sales Tax Exemption on Lodging Accommodations Claimed by Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-25-16)

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

**f.** Sales Tax Exemption Certificate -- Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-25-16)



**g.** Sales Tax Exemption Certificate -- Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-25-16)

**h.** Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. (3-25-16)

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

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

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

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

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

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

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than**

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

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

- i. Maintenance and janitorial equipment and supplies; (3-6-00)
- ii. Office equipment and supplies; (3-6-00)
- iii. Selling and distribution equipment and supplies; (3-6-00)
- iv. Property used in transportation activities; (3-6-00)
- v. Equipment or other property used to make repairs; (3-6-00)
- vi. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- vii. Licensed motor vehicles; (3-6-00)
- viii. Aircraft; and (3-6-00)
- ix. Recreational-~~related~~ vehicles as described in Section 63-3622HH, Idaho Code. ~~(3-6-00)~~ ( )

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (3-25-16)

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

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

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

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

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

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

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NATURE OF BUSINESS

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BUYER'S SIGNATURE

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

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

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

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

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

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

taxable. (3-6-00)

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

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

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

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

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0102-1703**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 028 and 103, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the September 9, 2017 Idaho Administrative Bulletin, [Vol. 17-9, pages 273 through 275](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Leah Parsons (208) 334-7531 or e-mail [leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov).

DATED this 22nd day of November, 2017.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690

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

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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:

Sales Tax Rule 028 – Hotels, Motels And Campgrounds. We are proposing changing this rule to include the terms introduced by 2017, HB 216, the Short-term or Vacation Rental Act. Some technical and grammar changes are also proposed.

Sales Tax Rule 103 – Hand Tool, Component, And Unit Price. We are proposing deleting this rule because of statute changes that have made this obsolete. The \$100 exemption to the production exemption has been repealed.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 84-85](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 8th day of August, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-1703

**028. HOTELS, MOTELS AND CAMPGROUNDS (RULE 028).**  
Section 63-3612(2), Idaho Code

**01. Fees.** Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Travel and Convention taxes and may be subject to the Greater Boise Auditorium District sales tax. This includes fees collected for short-term rentals and vacation rentals even when the sale is facilitated by a short-term rental marketplace. These taxes are explained in IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." (7-1-93)( )

**02. Purchases by Hotels, Motels, Lodging Operators, Short-Term Rentals, Vacation Rentals, and Campgrounds.** ~~Effective July 1, 1988, by~~ Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds may purchase tangible personal property for consumption by their customers without paying tax if the tangible personal property is included in the fee charged to the customer and is directly consumed by the customer in such a way that it cannot be reused. Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds must provide a resale certificate to their vendor when purchasing such items for resale. Examples include: (7-1-93)( )

- a. Facial tissue, toilet tissue, toilet sanitation tissues, disposable laundry pickup bags, and paper napkins. (7-1-93)
- b. Soaps, hair shampoo, hair conditioners, and lotions. (7-1-93)
- c. Disposable plastic drinking glasses, disposable plastic utensils, disposable shoe shine cloths, and disposable shower caps. (7-1-93)
- d. Candies, beverages, meals, and newspapers furnished with the room. (7-1-93)
- e. Room stationery, envelopes, notepads, and matches. (7-1-93)

**03. Tangible Personal Property Subject to Tax.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. Tangible personal property subject to tax includes property which is ~~NOT~~ not directly consumed by the customer, property that is nondisposable in nature, or property that is depreciated in the books and records of the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. The hotel, motel, lodging operator, short-term rental, vacation rental, or campground is the user and consumer of such supplies and equipment and will pay sales tax on the purchase of such items. Examples include: (7-1-93)( )

- a. Bath towels, bath mats, linens, and bedding. (7-1-93)
- b. Glassware, silverware, and china. (7-1-93)
- c. Furniture and fixtures. (7-1-93)
- d. Bibles, room service menus, and directories. (7-1-93)
- e. Toilet sanitary rings and garbage can liners. (7-1-93)
- f. Any tangible personal property available to the general public. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

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

~~Sections 63-3622S, 63-3622T, 63-3622W, & 63-3622JJ, Idaho Code~~

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

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

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

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

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

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

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

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



## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2018 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 509, 609, 619, 700, 804, and 995, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 460 through 477](#).

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

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

DATED this 22nd day of November, 2017.

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 PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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 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. Defines “abstract” as a document summarizing taxable (net taxable value) and market value for assessment purposes (full market value) by secondary categories. Also, outlines the signature requirements.

Rule 609 – Property Exempt From Taxation – Homestead. Changes deal with partial ownerships; instructs to count the community property interest as 50% interest in the property rather than 66 2/3%.

Rule 619 – Property Exempt From Taxation – Facilities For Water Or Air Pollution Control. Section 63-602(3)b, Idaho Code, application date is April 15 – Current rule states March 15. This change make the dates the same.

Rule 700 – Definitions For Property Tax Reduction Benefit. Changes deal with partial ownerships; instructs to count the community property interest as 50% interest in the property rather than 66 2/3%.

Rule 804 – Tax Levy – Certification – Urban Renewal Districts. This covers levy setting when there is refinancing of bonded debt. Since this is not considered new debt it may still generate revenue for urban renewal agencies depending on the year incurred. Also, the urban renewal attestation of the plan’s modification due date is changed to first Monday in June to match law.

Rule 995 – Certification Of Sales Tax Distribution. Deals with the payment of withheld sales tax funds when taxing districts or urban renewal agencies come back into compliance with reporting requirements. (67-450E and 50-2913) The STC makes the payment no later than next quarterly sales tax distribution due date.

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

**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: N/A

**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 March 1, 2017 Idaho Administrative Bulletin, [Volume 17-3, pages 24-25](#).

**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: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 4th day of October, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1701

**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)

**d.** Abstract. A document summarizing taxable (net taxable value) and market value for assessment purposes (full market value) by secondary category of property. Abstracts are prepared for the county, cities, the Boise School District, and any taxing district or unit of government which does not levy property tax against all otherwise taxable property. Abstracts are to be prepared for the property roll and the combined missed and subsequent property rolls. ( )

**02. ~~Indicate Increment and Exemption Values~~ Additional Information to be Included.** In addition to the taxable value and the market value for assessment purposes of property on the property rolls, the abstract must report the value of exemptions required to be reported under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections 63-602W(4), 63-602GG, 63-602HH, 63-602II, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code. Increment value and exemption value thus reported shall be indicated and subtracted from the taxable market value for assessment purposes 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. (4-11-15) ( )

**03. Verification of Abstracts.** For the purposes of this rule and meeting the requirements of Section 63-509, Idaho Code, the abstract of the property rolls prepared by the county auditor shall be considered duly verified provided that the auditor signs a document indicating: ( )

**a.** That the required summary information is based on the most current available information received from the assessor following the conclusion of the county board of equalization, and: ( )

**b.** That the assessor certifies to the auditor that all changes, corrections, additions, and exemptions entered onto the rolls as a result of county board of equalization action have been duly entered. ( )

**04. Nature of Verification Document.** The abstract verification document shall include the signatures of the county assessor and auditor or duly appointed representatives. The substance of the verbiage in the document shall be equivalent to that found in the following sample:

(Name of county auditor), being first duly sworn, deposes and says that he/she is the duly qualified and acting auditor in and for the county of (Name), State of Idaho, and that the above and foregoing is a full, true and correct abstract of the valuation of all property entered on the property roll (or subsequent and missed property rolls) for the year (Year), as certified by the assessor to the auditor and equalized by the Board of County Commissioners of said county in session as a board of equalization. ( )

**~~03~~5. 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~~6. 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)**

**609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).**  
Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code

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

**02. Maximum Amount of Homestead Exemption.** The homestead exemption is limited to the lesser of fifty percent (50%) of assessed value or one hundred thousand dollars (\$100,000). (3-29-17)

**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 these rules. (3-29-17)

**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	Split 50% to each owner
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

(3-29-17)

**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 <del>66.67</del> 50%)	<del>\$206,677</del> \$155,000	Mr. & Mrs. Johnson's interest

Description	Value	Notes
Homeowner's Exemption Maximum for 2010 (\$100,000 X <del>66.67</del> 50%)	<del>\$66,670</del> \$50,000	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X <del>33.33</del> 50%)	<del>\$103,323</del> \$155,000	Ms. Smith's interest
Homeowner's Exemption Maximum for 2017 (\$100,000 X <del>33.33</del> 50%)	<del>\$33,330</del> \$50,000	Ms. Smith's Homeowner's Exemption

(3-29-17)( )

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X <del>66.67</del> 50%)	<del>\$173,342</del> \$130,000	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2017 is 50% up to \$100,000)	<del>\$86,671</del> \$65,000	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X <del>33.33</del> 50%)	<del>\$86,658</del> \$130,000	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(3-29-17)( )

**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.

(4-11-15)

**05. 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)

**06. Notification of Erroneous Claims.** When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination.

(3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**619. PROPERTY EXEMPT FROM TAXATION -- FACILITIES FOR WATER OR AIR POLLUTION CONTROL (RULE 619).**

**01. Exempt Property.** Only those portions of installations, facilities, machinery, or equipment which are devoted exclusively to elimination, control, or prevention of water or air pollution are exempt. The owner of the property shall annually apply for exemption. (4-4-13)

**02. Calculation of Partial Exemption.** The exemption shall not include the percentage of the value for any portion of the facility which is used for the production of marketable by-products. The exempted value is the difference between the market value of the pollution control facilities and the present value of the net income from the sale of by-products. Net income shall be determined by subtracting the expenses of sale, raw materials required to produce by-products, and transportation to F.O.B. point from gross sales of recovered by-product.

For example:

The industry capitalization rate is 10%.

The purchase price of scrubber is \$1 million with a 20 year life  
1st Year, Calculation of Exemption;

Gross sales of precipitate	\$11,000/yr.
Transport to F.O.B. point	\$100/yr.
Lime to precipitate products	\$900/yr.
Net Income	\$10,000/yr.
Present value of net income	\$85,130
Exempt Value is purchase price minus present value of net income (\$1,000,000-\$85,130)	\$914,870

Indirect costs associated with operating the scrubber such as power, maintenance, etc., are not to be deducted from gross sales to reach net income. (3-30-01)

**03. Ineligibility.** Landfills, toxic waste dumps, or storage facilities deriving revenue from processing or storing pollution or pollution by-products generated by other persons or businesses are ineligible for this exemption. (7-1-97)

**04. Filing Procedure.** Application for exemption shall be made in the following manner: (4-4-13)

**a.** The property owner may obtain the application form issued by the State Tax Commission from the county assessor or the State Tax Commission. (4-4-13)

**b.** The property owner completes the application to report an itemized listing of all installations, facilities, machines or equipment qualifying for exemption. Each component part of the system must be identified by a brief description (e.g., Dust Collector), the date of original acquisition, dollar amount of the original cost, and the percentage of the component devoted exclusively to pollution control. The application must be signed by the owner or duly authorized agent. Lack of required information shall be grounds for denial. (4-4-13)

**c.** The completed application must be filed with the county commissioners by ~~March~~ April 15 for locally assessed property or with the State Tax Commission by April 30 for centrally assessed property. (4-4-13)( )

**05. Inspection.** The county or State Tax Commission representative may inspect the property or audit the owner's records to identify components for which the exemption has been applied. Those components listed on

the application must be identifiable as capital assets of the property. (4-4-13)

**06. Exemption Reported on Abstracts.** For locally assessed property, exempt value shall be reported on the property abstracts. (4-4-13)

**07. Exemption for Portion of Water Corporation Property.** A portion of water corporation property may be exempt from taxation. (3-30-01)

**a.** On or before April 30, each year, the State Tax Commission shall receive a notice from the Idaho Public Utilities Commission listing the value of the investment percentage of the total plant of each water company that is devoted exclusively to the elimination, control, or prevention of water pollution or air pollution. (3-30-01)

**b.** In estimating the market value of the company for assessment purposes, the State Tax Commission will take into consideration the investment as certified by the Public Utilities Commission that such equipment bears to the total invested plant of the company. (3-30-01)

**c.** The State Tax Commission will notify the water company of the estimated market value, gross assessed value, and the amount of exemption allowed under Section 63-602P, Idaho Code, on or before July 15. (4-4-13)

**d.** Any person or party wishing to contest the percentage of exemption reported to the State Tax Commission by the Public Utilities Commission may submit a written request for a public hearing to the State Tax Commission by August 1 of the current tax year. The request for a hearing shall state the petitioner's grounds for contesting the percentage reported by the Public Utilities Commission. On or before the second Monday of August the State Tax Commission shall notify the petitioner of the hearing time and place. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).**  
Section 63-701, Idaho Code

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden of Proof.** See Rule 600 of these rules. (3-15-02)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. (3-30-07)

**a.** An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (3-30-07)

i. The annuity must not be part of any pension plan available to an employee; (3-30-07)

ii. No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (3-30-07)

iii. The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (3-30-07)

iv. Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (3-30-07)



**b.** Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (3-30-07)

**c.** The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (3-30-07)

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction of Value.** Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. (3-15-02)

**a.** There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)

**b.** In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. (4-2-08)

**i.** Example 1. The claimant is the sole occupant of the property but only owns fifty percent (50%) of the property. In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of \$50,000.

Land Market Value	\$50,000
Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value & Improvement Market Value (Land Market Value & Improvement Market Value x Percentage of Ownership)	\$100,000
Claimant's Homeowner's Exemption (Claimant's Share of Improvement and Land Market Value x 50%, not to exceed <del>\$89,325</del> <u>\$100,000 for 2007</u> )	<\$50,000>
Claimant's Eligible Net Taxable Value equals Claimant's Share of Market Value less Homeowner's Exemption (\$100,000 - \$50,000 = \$50,000)	\$50,000

(4-2-08)( )

**ii.** Example 2. Tom Johnson and Marie Johnson, husband and wife, and property tax reduction claimant June Smith jointly own a property and occupy one (1) residential improvement located on the property. Calculate both homeowners' exemptions, and apply Ms. Smith's property tax reduction benefit to the tax on the net taxable value of her interest in the property.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X <del>66.67</del> 50%)	<del>\$206,677</del> \$155,000	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum <del>for 2007</del> (\$ <del>89,325</del> 100,000 X <del>66.67</del> 50%)	<del>\$59,550</del> \$50,000	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X <del>33.33</del> 50%)	<del>\$103,323</del> \$155,000	Ms. Smith's interest
Homeowner's Exemption Maximum <del>for 2007</del> (\$ <del>89,325</del> 100,000 X <del>33.33</del> 50%)	<del>\$29,775</del> \$50,000	Ms. Smith's Homeowner's Exemption
Value of prorated interest less homeowner's exemption.	<del>\$73,548</del> \$105,000	Ms. Smith's property tax reduction benefit is applied to the tax on the net taxable value.

~~(4-2-08)~~( )

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-15-02)

**08. Cross Reference.** See Chapter 79, Title 67, Idaho Code, for requirements relating to lawful presence in the United States. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Subsection 702.02.c. for information concerning authorization to release applicant information to a state or federal elected official. (3-20-14)

**804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).**  
Sections 50-2908, 50-2033, 50-1903, 50-2903A, 50-2905A, 50-2913, 63-803, and 63-811, Idaho Code

**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. A new urban renewal plan is required when an urban renewal agency establishes a new RAA. Revenue allocation areas (RAAs) are not taxing districts. (3-29-17)

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

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

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

f. “Revenue allocation financing provision.” A revenue allocation area (RAA) shall be considered to be a revenue allocation financing provision. (3-29-17)

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

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

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

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

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

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

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

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

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

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

as set forth in Subsection 804.02.c.ii.

(4-5-00)

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

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

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

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

iv. Partially exempt properties for which the amount of the partial exemption changes. For partially exempt properties that do not lose an exemption, but for which the amount of the exemption changes, there shall be no adjustment to the base value, unless the current taxable value is less than the most recent base value for the property. For example, assume a home has a market value of two hundred thousand dollars (\$200,000) and a homeowner's exemption of one hundred thousand dollars (\$100,000), leaving a taxable value of one hundred thousand dollars (\$100,000), all of which is base value. The following year the homeowner's exemption limit changes to ninety thousand dollars (\$90,000), so the property's taxable value increases to one hundred ten thousand dollars (\$110,000). The base value remains at one hundred thousand dollars (\$100,000). Alternatively, assume the property in the preceding example increases in market value to two hundred twenty thousand dollars (\$220,000) and the homeowner's exemption drops to ninety thousand dollars (\$90,000) because of the change in the maximum amount of this exemption. The base value remains at one hundred thousand dollars (\$100,000). Finally, assume the property decreases in value to one hundred eighty-eight thousand dollars (\$188,000) at the same time the homeowner's exemption limit changes to ninety thousand dollars (\$90,000). The property now has a taxable value of ninety-eight thousand dollars (\$98,000), requiring an adjustment in the base value to match this amount, since it is lower than the original base value of one hundred thousand dollars (\$100,000). (3-29-12)

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

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

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

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

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

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

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

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

**03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts.** Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

a. For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the

taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

**b.** For taxing district or taxing unit funds meeting the criteria listed in Subsections 804.05 and 804.07 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). ~~(5-8-09)~~ ( )

**04. Modification of an Urban Renewal Plan.** Except when inapplicable as described in Paragraphs 804.04.a, b, or c, of this rule, when an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, for the tax year immediately following the year in which the modification occurs, the base value of property in the RAA shall be reset by being adjusted to reflect the current taxable value of the property. All modifications to boundaries of RAAs must comply with the provisions of Rule 225 of these rules. (3-29-17)

**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 annexation (B) increment	\$10 Million

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 School District Area \$500 M base             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 2008 RAA Annexation (B) \$10 M Increment             </div> <div style="border: 1px solid black; padding: 5px;">                 Pre 2008 RAA (A) Boundaries \$40 M Increment             </div>	2009 School Levies	
	Fund	Value for Setting Levies \$ Millions
	Tort	500
	2001 Plant	510
	2008 Bond (Passed and first levied in 2008)	550
	2009 Supplemental	550

(3-29-17)

iii. An annexation permitted pursuant to section 50-2033, Idaho Code, to an RAA in existence prior to July 1, 2016 shall not change the status of the urban renewal agency or the RAA and its related plan regarding inapplicability of the base reset or attestation provisions found in section 50-2903A, Idaho Code. (3-29-17)

c. Other modifications – attestation requirements. Modification resulting in adjustment of base value to reflect the current taxable value of the property within the RAA shall not be deemed to have occurred when the urban renewal agency attests to having made no modifications to a plan or is not required to attest to plan modifications. Certain urban renewal agencies are required to attest annually to having made or not made plan modifications. These include: (3-29-17)

i. Urban renewal agencies that establish new RAAs on or after July 1, 2016, provided however that such agencies are only required to attest to having made or not made modifications with regard to any new RAA. (3-29-17)

ii. Urban renewal agencies that enact new plans including an RAA on or after July 1, 2016. (3-29-17)

d. Modifications when there is outstanding indebtedness. When any urban renewal agency attests to having had a plan modification that is not an exception identified in Paragraphs 804.04.a. or b. or c. of this rule or fails to provide the required attestation, the base value will be determined without regard to the modification, provided that the agency certifies to the ~~State Tax~~ ~~Commission~~ by June 30 of the tax year that there is outstanding indebtedness as defined in Section 50-2903A(2), Idaho Code. In this case, the allocation of revenue to the urban renewal agency shall be limited to the amount certified as necessary to pay the indebtedness. Any additional revenue shall be distributed to each taxing district or unit in the same manner as property taxes. Such revenue shall be treated as property tax revenue for the purpose of the limitations in Section 63-802, Idaho Code. The county clerk will notify the tax commission of the amount so distributed for each year beginning July 1 of the prior year and ending June 30 of the current tax year. ~~(3-29-17)~~ ( )

e. Failure to submit attestation regarding plan modification. For any urban renewal agency subject to the requirements of Section 50-2903A, Idaho Code, attestation of plan modification or attestation that there has been no plan modification is required to be made to the State Tax Commission by ~~June 30~~ ~~the first Monday of June~~ each year. Except as provided in Paragraph 804.04.d. of this rule, if such agency fails to provide the required attestation, the ~~State Tax~~ ~~Commission~~ will proceed to reset the base value or limit allocation of property tax to the urban renewal agency as otherwise required in Section 50-2903A, Idaho Code. Provided there is no new plan, an urban renewal agency with a plan including one or more revenue allocation financing provisions (RAAs) in existence prior to July 1, 2016 shall only be required to provide this attestation or be subject to base resetting or other limitations for failure to submit this attestation with respect to new RAAs formed on or after July 1, 2016. If such an agency develops a new plan, on or after July 1, 2016, or provides for a new RAA under an existing plan, the agency shall be



subject to the attestation requirements and other provisions of Section 50-2903A, Idaho Code, with respect to any RAAs formed July 1, 2016 or later. (3-29-17)( )

f. Notice of actions related to base reset or revenue allocation limitations. (3-29-17)

i. The State Tax Commission will notify any urban renewal agency within thirty (30) days of the time the State Tax Commission receives an attestation that an urban renewal plan has been modified, or by July 30 in any year in which an attestation is required but none is received, of the State Tax Commission's intent to initiate the process to reset the base value in the following tax year. Said notice will be provided to affected county commissioners and city officials. (3-29-17)

ii. In the case of base reset due to failure to attest to a modification or to having made no modification in an urban renewal plan, despite being required to provide this attestation, the agency and county and city officials will be so notified and will be given an opportunity to provide the necessary attestation. This further notice will provide that, if the State Tax Commission has not received the attestation by December 31 of the tax year, the base will be reset in the immediate following year. (3-29-17)

iii. In the case of a revenue allocation limitation pursuant to Section 50-2913, Idaho Code, notice will be provided to the agency, county, and city officials including the county assessor and county clerk, within thirty (30) days of the due date of the plan or plan update. (3-29-17)

iv. In the case of a revenue allocation limitation due to a plan modification but outstanding indebtedness, notice will be provided to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of receipt by the State Tax Commission of the certification of the amount needed to repay the indebtedness. (3-29-17)

v. Once decisions about base reset or revenue allocation limitations are final, additional notice will be sent to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of any such final decision. Said notice will include an identification of the year in which the reset or revenue allocation limitation will take effect and the amount of any revenue allocation limitation. (3-29-17)

**05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes.** Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

e. Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)



g. Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. (4-11-15)

h. Levies authorized by Section 33-805, Idaho Code, known as school emergency fund levy. (3-29-17)

**06. Setting Levies When There is a De-annexation From an RAA.** In any de-annexation from an RAA, levies will be set using the base value and, as indicated in Subsection 804.05 of this rule, the appropriate amount of increment value associated with the parcels and operating property remaining in the RAA after the de-annexation, provided that the de-annexation is in effect no later than September 1 of the current tax year and provided further that the de-annexation is approved by the State Tax Commission in accordance with Rule 225 of these rules. (3-29-17)

**07. Setting Levies When There is a Refinancing of Bonded Indebtedness.** Refinancing of bonded indebtedness in existence as of December 31, 2007 does not create new bonded indebtedness for any taxing district with respect to the levy setting criteria in Subsection 804.05 of this rule. ( )

**~~07.8.~~ Cross Reference.** The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. See also Rule 802 of these rules for calculation of new construction given de-annexation from an RAA and see Rule 805 of these rules for penalties for failure to submit plans. (3-29-17)

**(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. (4-11-15)

**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.** (4-11-15)

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. (4-11-15)

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 ~~State Tax e~~Commission's receipt of notification of non compliance and continuing until the distribution following the ~~State Tax e~~Commission's receipt of notification of compliance. At that time the ~~State Tax e~~Commission shall add to the current quarterly distribution any amount previously withheld under these provisions. (4-11-15)( )

**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. (4-11-15)

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 ~~State Tax e~~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. Withheld funds will be distributed by the tax commission no later than the next quarterly sales tax distribution due date following receipt by the State Tax Commission of a determination by the Legislative Services Office that a previously noncompliant taxing district is in compliance. (4-11-15)( )

f. Amounts authorized to be paid to an urban renewal agency pursuant to Section 63-3638(13), Idaho Code, shall be withheld if the agency has not complied with the reporting requirements of Section 50-2913, Idaho Code. The State Tax Commission will notify the urban renewal agency of the amount being withheld and notify the urban renewal agency that the withheld funds will be distributed by the State Tax Commission no later than the next quarterly sales tax distribution due date after the urban renewal agency has complied with the reporting requirements of Section 50-2913, Idaho Code. ( )

**08. Notification of Value.** The county auditor 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**

### **35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1704**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** 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:

RULES 314, 404, and 612 are being adopted as proposed with no changes.

RULES 631 and 803 are being adopted with the noted changes:

**RULE 631** - The published version of the rule was changed by adding a new sentence to Subsection 631.02 which reads “Real property improvements owned or leased, and personal property owned, by the taxpayer applying for the exemption may be granted the exemption” and by striking the word non-residential from Paragraph 631.02.c. This change was made in response to an assessor who pointed out that amended Idaho Code Section 63-602NN (HB 235,2017) did not extend the property tax exemption to leased personal property. These changes were supported by those who attended the Nov. 7, 2017 public hearing.

**RULE 803** - The published version of the rule was changed by deleting the words “from the immediate prior year’s amount” and by adding the words “The following table illustrates calculations of the maximum forgone amount that may be disclaimed in 2018.” A table explaining that amount of forgone which may be disclaimed is limited to the forgone generated in the current budget year was added. The change from allowing the disclaiming of the current budget’s forgone from allowing the disclaiming of the prior year budget’s forgone was suggested by a county commissioner and supported by those who attended the Nov. 7, 2017 public hearing.

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 October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 478-491](#).

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

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

DATED this 20th day of November, 2017

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 PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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 314 – County Valuation Program To Be Carried On By Assessor. Addresses the use of aerial photographs and other digital imaging technology tools. These tools may supplement but not replace physical site inspections. The IAAO Standard on Mass Appraisal suggests such tools and applies to the extent that resources are available. Deletes the Idaho Supreme Court Brandon Bay case cross reference concerning section 42 properties.

Rule 404 – Operator’s Statement – Contents. Day for day penalty extension for date to file the operator’s statement applies only to geographic information and not to financial information.

Rule 612 – Property Exempt From Taxation – Motor Vehicles, Recreational Vehicles, And Vessels Properly Registered. (HB156) Park model recreational vehicles - The assessor makes the determination that the park model is permanently attached to a foundation, has attached building addition or has been substantially modified and no longer meets the definition of a park model recreational vehicle. In these cases, as provided by statute, the vehicle is subject to property tax and cannot be licensed. Associated property is taxable and is subject to the homeowner’s exemption regardless of whether the vehicle is exempt from property tax.

Rule 631 – Tax Exemption For Investment In New Plant And Building Facilities Upon County Commissioners’ Approval. (HB235) Addresses the BOCC resolution to establish minimum investment requirement of not less than \$500,000. Expands the examples to explain the base value, which is the value during the year immediately preceding the first year of the exemption.

Rule 803 – Budget Certification – Dollar Certification Form (L-2 Form). HB 207 – Allows taxing districts to disclaim forgone accumulation from the previous year rule change also deletes requirements related to county property tax relief related to local sales taxes (law expired).

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

**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: N/A

**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 7, 2017 Idaho Administrative Bulletin, [Volume 17-6, pages 64-65](#).

**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: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 4th day of October, 2017.

**LSO Rules Analysis Memo**

Italicized red text that is *double underscored* is new text that has been added to the pending rule.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1704**

**314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR (RULE 314).**

Sections 63-314 and 63-316, Idaho Code

**01. Definitions.** (7-1-99)

**a.** Continuing Program of Valuation. “Continuing program of valuation” means the program by which each assessor completes the assessment of all taxable properties each year. (7-1-99)

**b.** Field Inspection. The “field inspection” shall include an observation of the physical attributes of all structures which significantly contribute to the property value, the visible land amenities, and a notation of any other factors which may influence the market value of any improvements. (7-1-99)

**c.** Index. “Index” refers to any annual adjustment or trending factor applied to existing assessed values to reflect current market value. Ratio studies or other market analyses can be used to develop indexes based on property type, location, size, age or other characteristics. (7-1-99)

**d.** Prediction of Market Value. As used in Section 63-314, Idaho Code, “prediction of market value” means an estimate of market value. (7-1-99)

**e.** Category to be Assessed at Current Market Value. The level of assessment of each category will be considered to be current market value unless there is reasonable statistical certainty that the category is not equalized pursuant to Section 63-109, Idaho Code, and Rule 131. (3-30-01)

**02. Plan for Continuing Program of Valuation.** The plan for continuing program of valuation shall include: (7-1-99)

**a.** General Contents. A parcel count by category, the number of parcels to be appraised each year, maps that show each of the market areas, an analysis of staff requirements, a budget analysis that provides adequate funding for labor costs, capital and supply costs, travel and education costs and the method of program evaluation. (3-30-01)

**b.** Market Data Bank. A market data bank including collection, verification and analysis of sales, income and expense data, building cost information, and application of this information to estimate market value. To mail assessment notices by the first Monday in June as required by Section 63-308, Idaho Code, assessors should include income and expense data submitted by property owners by the first Monday in April. Income and expense data for low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Code includes actual rents, the monetary benefit of income tax credits, and expenses. (4-2-08)

**c.** Maps. Maps prepared in accordance with Section 63-209, Idaho Code, which identify characteristics of each geographic area. (7-1-99)

**d.** Property Record. A property record for each parcel, complete with the assigned secondary category and property characteristics necessary for an estimate of the current market value. Such characteristics may include data elements as described in the International Association of Assessing Officers (IAAO) Standard on Mass Appraisal of Real Property and the IAAO Standard on Digital Cadastral Maps and Parcel Identifiers. Common elements identified in these standards include: (3-29-12)

- i. Date of most current physical review. (3-29-12)
- ii. Significant improvements, buildings and structures. (3-29-12)
- iii. Photographs of significant improvements. (3-29-12)
- iv. Sketches and/or blue prints of significant improvements. (3-29-12)
- v. Location data, such as market area, neighborhood, site amenities and external nuisances. (3-29-12)
- vi. Year built, effective age and/or condition of significant improvements. (3-29-12)
- vii. Land size or diagram of all taxable parcels within the county. (3-29-12)

~~03e.~~ Date plan is submitted. The plan must be submitted to the State Tax Commission on or before the first Monday of February in ~~1997~~ 2017, and every fifth year thereafter. (~~7-1-99~~)( )

~~04f.~~ Request for extension. As provided in Section 63-314, Idaho Code, a county may request an extension to the current five (5) year county valuation plan. (3-30-01)

~~ai.~~ Amended Plan. Any request for an extension must include an amended plan incorporating an inventory of the parcels to be appraised during the period of the approved extension. This inventory shall constitute the schedule of required appraisals for the initial year or years of the subsequent five (5) year valuation program. Parcels appraised during the extension will be considered appraised during both the current and subsequent five (5) year plan valuation program periods, maintaining the same five (5) year cycle for all counties. (3-30-01)

~~bii.~~ Approval of the Extension and Amended Plan. A county shall be notified of the State Tax Commission's decision regarding the granting of an extension as provided in Section 63-314, Idaho Code, within thirty (30) days of receipt of the written request for the extension when accompanied by an amended plan. (3-30-01)

~~eiii.~~ Approval of the Amended Plan. The State Tax Commission's approval of any extension shall specify timing and nature of progress reports. (3-30-01)

~~div.~~ Voiding of the Extension. The State Tax Commission can void an extension unilaterally. (3-30-01)

**03. Field Inspections.** The methods of observation of the physical attributes of property as described in the International Association of Assessing Officers (IAAO) "Standard on Mass Appraisal of Real Property" referenced in Rule 006 of these rules should be followed to the extent that resources are available. This includes the use of aerial photographs and other digital imaging technology tools, which may be used to supplement, but not replace physical inspections. ( )



~~054.~~ **Testing for Current Market Value.** Assessed values shall be tested annually by the State Tax Commission as described in Section 63-109, Idaho Code, and Rule 131 of these rules to determine whether the level of assessment reflects “current market value.” (3-30-01)

~~06. **Cross Reference.** For clarification on tax credits when valuing low income housing properties receiving tax credits under Section 42 of the Internal Revenue Code, see the case of Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006).~~ (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. OPERATOR’S STATEMENT – CONTENTS (RULE 404).**  
Sections 63-401 and 63-404, Idaho Code

**01. Operator's Statement.** In the operator’s statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

**02. Tax Code Area Maps.** By March 1 of each year, the State Tax Commission shall furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic ~~operator’s statement~~ extension equal to the delay in the filing requirement, equal to the delay, for the portion of the operator’s statement that includes taxing district or taxing authority specific information that is to be reported by tax code area as required in Section 404.01 of this rule. All other information, excluding the mileage as required in Sections 404.01 and 404.03 of this rule shall still be required by April 30 as required in Section 404.06 of this rule. The reporting entity shall review the list of changes to identify any tax code areas, within which any of the entity’s operating property is located. The reporting entity shall report, under Subsection 404.01 of this rule based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. (5-3-03)( )

**03. Reporting of Mileage.** The following procedures apply for reporting mileage. (7-1-99)

**a. Railroad Track Mileage.** The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., shall be reported as Secondary Track Miles. (5-3-03)

**b. Electric Power Line Mileage.** The electric power companies shall report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includible in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (5-3-03)

**c. Telephone Wire Mileage.** All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (5-3-03)

**d. Natural Gas Pipeline and Gathering Line and Water Distribution Pipeline Mileage.** Beginning January 1, 2013, all natural gas and water distribution companies shall report pipeline and gathering line miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. (4-4-13)

**e. Transmission Pipeline Mileage.** All transmission pipeline companies shall report pipeline miles on



a one-inch (1") comparison basis.

(4-2-08)

**04. Situs Property.** Situs property includes microwave stations and radio relay towers. This property also includes facilities, used for and in conjunction with thermal generation of electricity, constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. The investment in this property shall be reported in the tax code area(s), within which it is located.

(4-2-08)

**05. Record of Property Ownership.** The following procedures apply for maintaining records of operating property ownership.

(7-1-99)

**a.** STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office.

(7-1-99)

**b.** Identification of Operating Property and Nonoperating Property. On the STC Form R, the State Tax Commission shall identify which property is operating property and which property is nonoperating property.

(5-3-03)

**c.** Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year.

(7-1-99)

**06. Filing Date for Operator's Statement.** By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho shall file information pertinent to the entity's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. Such automatic extension shall apply only to the taxing district, taxing authority, and tax code area specific information contained in the operator's statement.

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

**07. Cross Reference.** For information relating to the exemption of certain intangible personal property, see Section 63-602L, Idaho Code, and Rule 615 of these rules. For valuation, allocation, and apportionment information, see Section 63-405, Idaho Code, and Rule 405 of these rules.

(4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**612. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES, RECREATIONAL VEHICLES, AND VESSELS PROPERLY REGISTERED (RULE 612).**

Sections 49-123, 49-401, 49-402A, 49-422, 49-432, 49-445, 49-446, and 63-602J, Idaho Code

**01. Motor Vehicle Defined.** Motor vehicle means any vehicle as defined in Section 49-123(2)(g), Idaho Code, and any recreational vehicle as defined in Section 49-119(6.) Idaho Code, and any personal property permanently affixed to ~~that~~ any of those vehicles.

~~(4-11-06)~~ ( )

**02. Exempt Motor Vehicles.** Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49, Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code.

(4-11-06)

**03. Taxable Vehicles.** The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code.

(4-11-06)

**a.** Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code.

(4-11-06)

- b. Any manufactured home registered under Section 49-422, Idaho Code. (4-11-06)

**04. Exempt Permanently Affixed Personal Property.** Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. (4-11-06)

**05. Taxable Personal Property.** The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. (4-11-06)

a. Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. (4-11-06)

b. Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. (4-11-06)

c. Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. (4-11-06)

**06. Recreational Vehicles.** The owner of a recreational vehicle, as defined in Section 49-119(6), Idaho Code, must pay a recreational vehicle annual license fee as authorized by Section 49-445, Idaho Code, and as computed in accordance with Rule 020 of these rules in order to be exempt under Section 63-602J, Idaho Code. ~~Recreational vehicles that are wider than eight and one-half (8½) feet cannot be licensed by the Idaho Department of Transportation and therefore must be included on the assessment roll.~~ (4-4-13)( )

a. Recreational vehicles that qualify for licensing and registration and have paid the required registration fee by August 31 each year are eligible for the exemption provided in Section 63-602J, Idaho Code. The owners of recreational vehicles that do not qualify or have not paid the fee must be sent a valuation assessment notice for the recreational vehicle after the August 31 deadline. The assessment of the recreational vehicle is subject to cancellation as provided in Rule 020, provided any applicable registration fee is paid before the fourth Monday of November. ( )

b. The provisions of Paragraph 612.06.a. of this rule apply to a park model recreational vehicle unless it is determined by the assessor to: ( )

i. Be permanently attached to a foundation; or ( )

ii. Have an attached building addition; or ( )

iii. Have been substantially modified and no longer meet the definition of a park model recreational vehicle. ( )

**07. Taxable Real Property Associated with Vehicles.** Associated property, other than the vehicle itself, is taxable unless another exemption applies. Examples include the land on which the vehicle is located, fences, buildings, and appurtenances. Such property may be eligible for the exemption provided in Section 63-602G, Idaho Code, regardless of whether the vehicle is exempt as provided in Section 63-602J, Idaho Code. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**631. TAX EXEMPTION FOR INVESTMENT IN NEW OR EXISTING PLANT AND BUILDING FACILITIES UPON COUNTY COMMISSIONERS' APPROVAL (RULE 631).**  
Section 63-602NN, Idaho Code

- 01. The Investment in Plant.** In order to qualify for this exemption a taxpayer must invest at least

~~three million dollars (\$3,000,000)~~ the minimum required investment as established by county ordinance in new or existing plant or building facilities excluding the investment in land. See Section 63-602NN, Idaho Code.  
(3-29-17)( )

a. Ordinance to establish the minimum required investment. The county commissioners must pass an ordinance to establish any minimum required investment amount of not less than five hundred thousand dollars (\$500,000). Once passed, any minimum so established shall remain in place until superseded by another ordinance.  
( )

b. Frequency of ordinances to establish minimum required investment. Any ordinance establishing a minimum required investment must remain in effect during the tax year in which it is first in effect. After that tax year, the county commissioners may provide a different required investment amount by passing a new ordinance. However, any agreement entered into under minimum investment criteria established by prior ordinance will be effective for the duration of the exemption time period granted.  
( )

**02. The Exemption.** The board of county commissioners may agree to exempt all or a portion of the ~~market~~ value of non-retail commercial and industrial real property improvements and associated personal property that would otherwise be in excess of the base value for property designated as the defined project for a period of up to five (5) years. Real property improvements owned or leased, and personal property owned, by the taxpayer applying for the exemption may be granted the exemption. Land is not eligible to be included in this exemption. See Section 63-602NN(2), Idaho Code.  
(3-29-17)( )

a. Base value. The base value is the taxable value, as found on the property roll, subsequent property roll, or missed property roll, of the property associated with the plant investment for the tax year immediately preceding the first year in which the exemption is to be granted. This includes the taxable value of existing buildings and personal property but not the taxable value of land.  
( )

b. Site improvements. Site improvements, which may add value to land, but are not otherwise categorized as improvements for property tax purposes, are not eligible for this exemption.  
( )

c. Mixed use properties. Non-retail portions of any mixed use building or structure otherwise used for commercial or industrial purposes may qualify.  
( )

d. Application. Except as provided in Paragraph 631.02.f. with respect to occupancy tax, the taxpayer must make application by April 15 of the first year for which the exemption is sought. Such application must be made with the county commissioners who have complete discretion to accept or deny the application.  
( )

e. Agreement for exemption. The agreement granting the exemption shall be considered a contract arrangement between the county and the taxpayer for the exemption time period as granted by the county commissioners, not to exceed five (5) years. The amount of exemption as provided by the agreement may be any amount related to taxable value added due to the investment, to the extent the property's total taxable value before considering the exemption exceeds the base value and the increase in value is not associated with or due to an increase in land value.  
( )

f. Occupancy tax. As provided in Section 63-602Z, Idaho Code, the exemption may apply to property subject to occupancy tax. Granting of the exemption from occupancy tax will not reduce the period during which the property tax exemption provided in Section 63-602NN, Idaho Code, may be granted. The April 15 application deadline is not applicable to exemption from occupancy tax, which may be granted any time during the year.  
( )

**03. Examples.** The exemption applies only to ~~new~~ plant or ~~new~~ building facilities in which the required investment ~~has been~~ is to be made during the project period and that are located at the project site. The exemption ~~does not apply to property existing prior to the execution of the contract to exempt~~ may be applied to any value increases if these increases are directly attributable to the investment. See the following clarifying examples, all of which are based on the assumptions that the county has established five hundred thousand dollars (\$500,000) as the required minimum amount of investment and the county enters into an agreement with the taxpayers for the period shown in the examples.  
(3-29-17)( )

a. A company chooses your community to tear down an existing facility and build a new manufacturing facility. Prior to the project, the base value is four million dollars (\$4,000,000) which is comprised of the market value of the land ~~purchased is~~ three million dollars (\$3,000,000)- and the market value of the ~~new facility after construction is ten million dollars (\$10,000,000), not including the land. The board of county commissioners may exempt all or a portion of the market value of the facility (ten million dollars (\$10,000,000)) for up to five (5) years. They cannot exempt any portion of the land value~~ existing facility at one million dollars (\$1,000,000), thus, the base value is one million dollars (\$1,000,000). After construction, the land and facility have a taxable value of thirteen million dollars (\$13,000,000), three million (\$3,000,000) of which is the land value. Providing all conditions of the agreement have been met and the commissioners agreed to a full exemption, the exempt amount will be nine million dollars (\$9,000,000). (3-29-17)( )

b. An existing company chooses to expand and build a new processing line. Prior to the project, the base value of the existing building and land ~~are valued at~~ is twelve million dollars (\$12,000,000). After the expansion project is complete, the new processing line will increase the value of the building and land to sixteen million dollars (\$16,000,000), with all of the increase in value attributed to the building. Providing all conditions of the agreement have been met and the commissioners previously agreed to a full exemption, the exempt amount will be. The board of county commissioners may exempt all or a portion of the increase value of the facility, which is four million dollars (\$4,000,000) for up to five (5) years. They cannot exempt any. No portion of the original taxable value of twelve million dollars (\$12,000,000) can be granted this exemption. (3-29-17)( )

c. A ~~new~~ company purchases an existing building. ~~The existing building and land is~~ which are valued at eight million dollars (\$8,000,000). The company will purchase new equipment in the amount of three million dollars (\$3,000,000). After the investment is made, the existing property with the new land, building and equipment is are now valued at ~~eleven twelve~~ million dollars (\$~~11~~2,000,000). ~~The board of county commissioners may exempt all or a portion of the increased value of the property, which is three~~ The additional one million dollars (\$1,000,000) in building value is attributed to the contributory value of the investment. The investment did not add value to the land. Providing all conditions of the agreement have been met and the commissioners agreed to a full exemption, the exempt amount will be four million dollars (\$4,000,000). They cannot exempt any. No portion of the original taxable value of eight million dollars (\$8,000,000) can be granted this exemption. (3-29-17)( )

d. A company buys a building with a prior year's value of one million dollars (\$1,000,000). The company makes application to the county commissioners requesting a full exemption for the next five (5) years for any increases in value that are directly related to its plan to invest in the facility. An agreement is reached whereby the taxpayer will be granted a limited exemption for the increase in market value up to two million dollars (\$2,000,000) for three years. In the first year, the company invests two million dollars (\$2,000,000) in the facility and the market value of the building increases to two million five hundred thousand dollars (\$2,500,000) (not all of the investment contributes to market value). Providing all conditions of the agreement have been met, the first year exempt amount will be one million five hundred thousand dollars (\$1,500,000). In year two (2), the company invests an additional eight hundred thousand dollars (\$800,000) and the value of the building increases to three million three hundred thousand dollars (\$3,300,000). The exemption in year two (2) will be two million dollars (\$2,000,000). This is the difference between the original base value of one million dollars (\$1,000,000) and the current value in year two (2), but is limited by the agreed-upon two million dollar (\$2,000,000) maximum. In year three (3), the company makes additional investments and the building value increases to four million dollars (\$4,000,000). The exemption in year three (3) is limited to two million dollars (\$2,000,000) as provided in the original agreement. Beginning in year four (4), there will be no exemption allowed under the original agreement. ( )

04. Cross Reference. See Rule 802 of these rules for instructions relating to the valuation of new construction. (5-8-09)

(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), 63-3502B, 50-2903A, 50-2913, 63-3638(11), and (13), Idaho Code

**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>				
	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>
<b>Annual Budget</b>	\$10,000	\$10,000	\$10,700	\$11,621
<b>3% Increase</b>	\$0	\$300	\$321	\$349
<b>Subtotal</b>	\$10,000	\$10,300	\$11,021	\$11,970
<b>1999 Election Amount</b>	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
<b>Certified Budget</b>	\$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 63-602KK(7), Idaho Code, for personal property exempted after 2013 for which no replacement money was paid; and (3-29-17)
- iv. Section 63-3502B(2), Idaho Code, for distributions of gross earnings tax on solar farms; and (3-29-17)

v. Section 50-2903A(3), Idaho Code, for distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, when required; and (3-29-17)

vi. Section 50-2913(3)(c), Idaho Code, for distributions of urban renewal allocations in excess of the amount received during the immediate prior tax year, when required. (3-29-17)

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. ( )

**a. Foregone Increase Documentation.** For any taxing district submitting a budget including previously forgone increases, required documentation includes a copy of the resolution certifying the amount of the forgone increase being included and the specific purpose for which this increase is being budgeted. Each such taxing district must submit the resolution to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the State Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the State Tax Commission. (3-29-17)( )

**b. Forgone increase disclaimer.** Any resolution to disclaim the right to recover an annual increase in the forgone amount must state the amount of such forgone increase being disclaimed and must be submitted to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the State Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the State Tax Commission. The following table illustrates calculation of the maximum forgone amount that may be disclaimed in 2018:

<u>Step</u>	<u>Description</u>	<u>Comments</u>
<u>1</u>	<u>2017 maximum property tax \$10,000. This is an increase of \$1,000 from 2016.</u>	<u>The district has no prior forgone balance.</u>
<u>2</u>	<u>The district certifies \$9,800 in 2017.</u>	<u>The district now has \$200 in forgone balance.</u>
<u>3</u>	<u>2018 maximum property tax \$11,000 (not including \$200 forgone).</u>	



<u>Step</u>	<u>Description</u>	<u>Comments</u>
<u>4</u>	<u>2018 property tax budgeted (to be submitted for certification) is \$10,600.</u>	<u>This amount is approved to be levied and would generate \$400 in additional forgone balance.</u>
<u>5</u>	<u>2018 maximum amount of forgone increase that may be disclaimed by the district is \$400.</u>	<u>If the district disclaims the full \$400, their forgone balance remains at \$200.</u>

( )

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

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

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

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

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

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

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

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

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

~~iv. The 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; (3-25-16)~~

~~iv.~~ The amount of money received annually under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code; (3-29-17)

~~vi.~~ The amount of money received annually under Section 63-602KK(7), Idaho Code, for personal property exempted after 2013, for which no replacement money was paid, and listed on the “Recovered/recaptured property tax substitute funds list”; (3-29-17)

~~vii.~~ The amount of money received in the twelve (12) month period ending June 30 of the current tax year as a result of distributions of the gross earning tax on solar farms, as provided in Section 63-3502B(2), Idaho Code., and listed on the “Recovered/recaptured property tax substitute funds list”; (3-29-17)

~~viii.~~ The amount of money received in the twelve (12) month period ending June 30 of the current tax

year as a result of distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, as provided in Section 50-2903A(3), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; and (3-29-17)

~~ix~~<sup>viii</sup>. The amount of money received in the twelve (12) month period ending June 30 of the current tax year as a result of distributions of urban renewal allocations in excess of the amount received by the urban renewal agency in the immediate prior year, as provided in Section 50-2913(3)(c), Idaho Code and listed on the “Recovered/recaptured property tax substitute funds list.” (3-29-17)

**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)

v. For any taxing district including previously forgone increases in their budget or disclaiming any forgone increase, an attestation to having held the required public hearing on the resolution to include or disclaim the forgone amount. ~~(3-29-17)~~ ( )

**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)

viii. For any taxing district including previously forgone increases in their budget or disclaiming any forgone increase, a copy of the resolution describing the amount of the forgone increase being disclaimed, or the



amount included and specific purpose for which it is being included.

~~(3-29-17)~~ ( )

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

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

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

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

**06. Special Provisions for Property Tax Replacement.** Property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. Except as provided in Paragraph 803.06.f. of this rule, for all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 63-3502B(2), Idaho Code, and the amount actually levied. (3-29-17)

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

**b.** By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies and the type of replacement money as described in Paragraph 803.04.e. of this rule. For charter school districts subject to the provisions of Paragraph 803.06.f. of this rule, the amount to be subtracted shall be reported. (3-29-17)

**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 taxing districts receiving distributions of the gross earning tax on solar farms described in Section 63-3502B(2), Idaho Code, the amount of any such distribution received during the 12 (twelve) months ending June 30 of the current tax year shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. In addition to the amounts reported as described in Paragraph 803.06.b. of this rule, the county clerk shall, by the third Monday in August, notify each taxing unit of the total amount of the gross earnings tax on solar farms billed for the current tax year. (3-29-17)

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

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

**g.** For recovered personal property exemptions, as provided in Section 63-602KK(7), Idaho Code, for personal property exempted in 2013 for which replacement money was paid, recovered amounts shall be distributed to the State Tax Commission. Once received, the amount of future payments to the affected taxing districts shall be reduced by the amount received. (3-25-16)

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

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

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

**10. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this hypothetical levy, sum the amount of the school district's tort fund levied for the prior year, the agricultural equipment replacement revenue, and the personal property replacement revenue, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (3-25-16)

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

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

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1706**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2018 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 610 and 709, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 492 through 496](#).

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

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

DATED this 22nd day of November, 2017.

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 PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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 610 – Property Exempt From Taxation – Residential Improvements – Special Situations. Changes deal with partial ownerships; instructs to count the community property interest as 50% interest in the property rather than 66 2/3%.

Rule 709 – Property Tax Reduction Benefit Program – Special Situations. Changes deal with partial ownerships; instructs to count the community property interest as 50% interest in the property rather than 66 2/3%.

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

**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: N/A

**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 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 81](#).

**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: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 4th day of October, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1706**

**610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (RULE 610).**

Sections 63-602G and 63-701(2), Idaho Code

**01. Scope.** This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

**02. Definitions.** The following definitions apply to this rule: (4-7-11)

**a.** Dual Residency Couples. As used in this rule, "dual residency couple" means a husband and wife, each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 609.03 of these rules. (4-2-08)

**b.** Multidwelling or Multipurpose Building. "Multidwelling or Multipurpose Building" means a building which is the primary dwelling place of the owner and which has a portion used for any purpose other than the primary dwelling place of the owner. (4-7-11)

**c.** Related Land. "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home. (4-7-11)

**03. Dual Residency Couples -- General Principles.** (7-1-99)

**a.** Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 609.03 of these rules. (4-2-08)

**b.** If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. (7-1-99)

**c.** Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(7) Idaho Code.) Thus, there is no authority to reduce the value of the improvement proportionally to reflect one (1) spouse's ownership in community property before determining the amount of the homeowner's exemption. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. (3-15-02)

**d.** An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property except as provided in Subsection 610.07. (3-15-02)

**04. Example -- Both Residences are Community Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different

residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid because the couple can not make more than one (1) application. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**05. Example -- One Residence Is Community Property, the Other Is Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**06. Example -- Both Residences are Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. (7-1-99)

**07. Apportionment of Homeowner's Exemption by Dual Residency Couples.** Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement shall be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties shall not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. (4-5-00)

**08. Multiple Ownerships Including Community Interests as Partial Owners.** A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a ~~two-thirds (2/3)~~ one-half (1/2) partial interest and the child holds a ~~one-third (1/3)~~ one-half (1/2) partial interest in the property. Qualification of the property for the homeowner's exemption is as follows: (7-1-99)( )

**a.** If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to ~~two-thirds (2/3)~~ one-half (1/2) of the value of the improvement. (3-15-02)( )

**b.** If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to ~~one-third (1/3)~~ one-half (1/2) of the value of the improvement. (3-15-02)( )

c. If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. (3-15-02)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to ~~two-thirds (2/3)~~ one-half (1/2) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. The ~~two-thirds (2/3)~~ one-half (1/2) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Paragraph 610.03.c. of this rule. (4-7-11)( )

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. (3-15-02)

**09. Determining the Qualifying Portion of a Multidwelling or Multipurpose Building and the Related Land.** The portion of a Multidwelling or Multipurpose Building and Related Land used for the primary dwelling place of the owner qualifies for the homeowner's exemption. When determining the value of the qualifying portion, the assessor shall include the Related Land value. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**709. PROPERTY TAX REDUCTION BENEFIT PROGRAM -- SPECIAL SITUATIONS (RULE 709).**  
Section 63-701, Idaho Code

**01. Scope.** This rule addresses issues relating to the property tax reduction benefit program as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. The following examples apply to qualified property tax reduction claimants. (3-30-01)

**02. General Principles.** Benefits under the property tax reduction program are only available to owners of property that have first qualified for the homeowner's exemption under Section 63-602G, Idaho Code. See Rule 610 of these rules. (3-15-02)

**03. Dual Residency Couples.** The definition of "dual residency couple" in Rule 610.02 of these rules applies to this rule. (3-15-02)

**a.** Example -- Both residences are community property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.04 of these rules. (3-15-02)

**b.** Example -- One (1) residence is community property, the other is separate property. Property tax reduction is available in regard only to the residential improvement qualifying for the homeowner's exemption. See Rule 610.05 of these rules. (3-15-02)

**c.** Example -- Both residences are separate property. Property tax reduction is available in regard to both residential improvements. See Rule 610.06 of these rules. (3-15-02)

**d.** Household income. In the three (3) examples in Subsection 709.03, the household income upon which qualification is determined is the total of one-half (1/2) the community income plus any separate income of the spouse residing in the residence. (3-15-02)

**04. Apportionment of Property Tax Reduction Benefits by Dual Residency Couples.** If a dual residency couple makes the election provided in Subsection 610.07 of these rules and the applicable county assessor

provided the State Tax Commission with a copy of the election required under that rule, each spouse shall be entitled to one-half (1/2) of the amount of any property tax reduction available to that spouse alone. The household income of the spouse shall be one-half (1/2) of the community income plus any separate income of the spouse residing in the residence. The total property tax reduction benefit shall not exceed the amount of benefit available to the individual spouse with the least household income if no election were made. (3-15-02)

**05. Multiple Ownerships Including Community Interests as Partial Owners.** Example: A deed conveys title to real property to a husband and wife and to an adult child of theirs. The husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a ~~two-thirds (2/3)~~ one-half (1/2) partial interest and the child holds a ~~one-third (1/3)~~ one-half (1/2) partial interest in the property. For clarification of the calculation of the net taxable value, see Rule 700.05.b. of these rules. Qualification for the property tax reduction is as follows: (3-15-02)( )

**a.** If the residential improvement is the primary dwelling of the husband and wife but not of the child, the claimant qualifies for full benefits applied on ~~two-thirds (2/3)~~ one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses. (3-15-02)( )

**b.** If the residential improvement is the primary dwelling of the qualifying child, but neither the husband or wife, the claimant qualifies for full benefits applied on ~~one-third (1/3)~~ one-half (1/2) of the value of the property less the homeowner's exemption. Household income is the total of the child's income. (3-15-02)( )

**c.** If the residential improvement is the primary dwelling of the husband, wife and a qualifying child, the claimant qualifies for the full benefits applied on full value of the property less the homeowner's exemption. Household income is the total of the community and separate income of the spouses and the income of the child. (3-15-02)

**d.** If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the claimant qualifies for full benefits applied on ~~two-thirds (2/3)~~ one-half (1/2) of the value of the property less the homeowner's exemption unless the residential improvement of the other spouse has qualified for the homeowner's exemption. Household income is the total income of both spouses. (3-15-02)( )

**e.** If the residential improvement is the primary dwelling of one (1) spouse and a qualifying child, the claimant qualifies for the full benefits applied on the full value of the property less the homeowner's exemption unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption. Household income is the total income of both spouses plus the income of the child. (3-15-02)



## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1707**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2018 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 020, and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 497 through 499](#).

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

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

DATED this 22nd day of November, 2017.

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 PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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 020 – Value Of Recreational Vehicles For Annual Registration And Taxation Of Unregistered Recreational Vehicles. Sets out methods to value park model recreational vehicles as defined in HB156. Confirms the requirement to value park model recreational vehicles using any available standard indices of retail value. If an index is not available the procedures outlined in Rule 217 must be used.

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

**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: N/A

**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 5, 2017 Idaho Administrative Bulletin, [Volume 17-7, page 92](#).

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 4th day of October, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1707

**020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).**

Section 49-446, Idaho Code

**01. Value of Recreational Vehicle For Registration Fees.** For the types of recreational vehicles shown in the “Depreciation Schedule for RVs,” ~~beginning~~ beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule. For all other types of recreational vehicles, the assessor shall use any available standard industry indices of retail value to determine the market value. If no such indices are available, the assessor shall determine market value from sale price or by using appraisal procedures as defined in Rule 217 of these rules.

DEPRECIATION SCHEDULE FOR RVS				
	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price or the market value of the RV adjusted by the percentage, if applicable from Subsection 020.02 or 020.03 below, by the appropriate “Percent Good” based on the “Age” and type of RV. Decide the “Age” based on the year of purchase as follows: purchased in the current year equals “Age” zero (0), purchased in the previous year equals “Age” one (1), etc. For example, in year 2004, the “Age” for an RV

purchased in 2004 is zero (0), the “Age” for an RV purchased in 2003 is one (1), the “Age” for an RV purchased in 2002 is two (2), the “Age” for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. ~~(3-29-17)~~ ( )

**02. Value of Motor Home or Van Conversion For Registration Fees.** The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion’s total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

**03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees.** For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is fifty percent (50%) of the sales price. (3-20-14)

**04. Assessment Notice Mailed or Assessment Canceled.** If after August 31, the required annual registration fee has not been paid, a taxpayer’s valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1709**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** These rules have been adopted by the agency and are now pending review by the 2018 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 006 and 406, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 500 through 502](#).

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

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

DATED this 22nd day of November, 2017.

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 PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105A and 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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 006 – Incorporation By Reference. This rule is being amended to update references to current editions of the railway equipment register used to identify railcar ownership. The amendment also confirms the link to all referenced IAAO standards. Effective Jan. 1, 2018.

Rule 406 – Rules Pertaining To Market Value Of Operating Property Of Rate Regulated Electric Utility Companies. (HB 30) - Flotation cost factor of 0.2% added to the discount rate. Also deletes an obsolete URL (link) to a table showing the U.S. Dept. of Commerce's GDP price deflator.

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

**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: N/A

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 4th day of October, 2017.

**[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis](#)**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-1709

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 2013, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2015, “Standard on Mass Appraisal of Real Property” published in 2012, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at [http://www.iaao.org/wcm/Resources/Publications\\_access/Technical\\_Standards/wcm/Resources\\_Content/Pubs/Technical\\_Standards.aspx?hkey=9c330567-135b-4adc-a772-00008232ab90](http://www.iaao.org/wcm/Resources/Publications_access/Technical_Standards/wcm/Resources_Content/Pubs/Technical_Standards.aspx?hkey=9c330567-135b-4adc-a772-00008232ab90) which was last accessed and verified on June 23, 2016. (4-1-17)( )

b. “Official Railway Equipment Register” published for the last three (3) quarters in 2016 and the first quarter in 2017 issued by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade and published by JOC Group, Inc. (4-1-17)( )

c. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

d. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

e. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

f. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

g. “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**406. RULES PERTAINING TO MARKET VALUE OF OPERATING PROPERTY OF RATE REGULATED ELECTRIC UTILITY COMPANIES (RULE 406).**

Section 63-105(2) and Section 63-205(1), Idaho Code

**01. Valuation of Operating Property of Rate Regulated Electric Utility Companies.** The market value for assessment purposes of operating property of rate regulated electric utility companies shall be determined by the State Tax Commission using statute, these rules as referenced in Rule 001 of these rules, any other applicable law, and the following: (3-20-14)

**a.** Depending on the weighting placed on the income approach, as described in Subsection 406.01.d. of this rule, no more than twenty percent (20%) weight will be placed on the cost indicator when utilizing the Historic Cost Less Depreciation (HCLD) method in the system value correlation. (3-20-14)

**b.** In the income approach, income to be capitalized will be normalized, utilizing the Gross Domestic Product Implicit Price Deflator found in Table 1.1.9 from the United States Department of Commerce, Bureau of Economic Analysis ~~www.bea.gov/national/txt/dgpa.txt last accessed August 12, 2013~~, by using an average of at least the previous four (4) years' net operating incomes and by adjusting each year's net operating income for unusual non-recurring items. (3-20-14)( )

**c.** In the income approach, a market discount rate will be determined ~~and will include~~ to which a flotation cost component ~~supported by nationally recognized sources~~ of twenty hundredths of one percent (0.20%) will be added. (3-20-14)( )

**d.** A weighting between eighty percent (80%) and one hundred percent (100%) will be placed on the income approach in the system value correlation. (3-20-14)

**e.** Within the market approach, as prescribed in Rule 405 of these rules, a sales comparison approach may be used if reliable data is available and appropriate comparison adjustments can be made. No weight will be placed on a stock and debt approach in the system value correlation. (3-20-14)

**f.** For rate regulated electric utility companies, the weightings prescribed in this rule shall supersede any weightings in the system correlation prescribed in Subsection 405.08 of this rule. (3-20-14)

**02. Accounting For Obsolescence.** Subsection 406.01.a. of this rule shall be construed to mean that the use of no more than twenty percent (20%) weight placed on the cost indicator, when utilizing HCLD method to calculate the cost approach, accounts for any and all forms of depreciation, including any and all forms of obsolescence, and the appraiser shall not consider any further obsolescence as provided for in Subsection 405.05 of these rules. (3-20-14)



## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0106-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 001, 018, and 019, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the September 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, pages 280 through 282](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Leah Parsons (208) 334-7531 or e-mail [leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov).

DATED this 22nd day of November, 2017.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3612(2)(g), 67-4718, and 67-4917C, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

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 001 – Title And Scope. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 011 – No change will be made to Rule 011. It was determined in the negotiated rule process that it is not necessary to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act to this rule.

Rule 018 – Returns. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 019 – Penalties, Collections And Enforcement. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 94-95](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 8th day of August, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0106-1701

**001. TITLE AND SCOPE (RULE 001).**

~~These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds. These rules shall also impose a retail sales tax upon the user or occupant of a hotel or motel room which is located in the Greater Boise Auditorium District~~ (7-1-93)  
Sections 67-4711, 67-4718, 67-4917B & 63-1801 through 63-1804, Idaho Code

**01. Title.** These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." ( )

**02. Scope.** These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority for: ( )

**a. Accommodations.** The imposition of a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, campgrounds, lodging providers, and short-term rental marketplaces. ( )

**b. Greater Boise Auditorium Tax.** The imposition of a retail sales tax upon the user or occupant of a hotel/motel room, short-term rental, or vacation rental located in the Greater Boise Auditorium District. ( )

**c. Short-Term Rental Marketplaces.** The imposition of a registration requirement for short-term rental marketplaces for the collection, reporting, and payment of taxes due from a lodging operator on any lodging transaction facilitated by the short-term rental marketplace. ( )

**d. Sales Tax.** These rules explain the application of the state sales tax to hotel/motel room charges but do not undertake a comprehensive explanation of state sales and use taxes as they may apply to such businesses. See the Tax Commission's rules relating to the Idaho Sales Tax Act for detailed statutory and regulatory provisions. See specifically, Sales Tax Rule, IDAPA 35.01.02.028. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**018. RETURNS (RULE 018).**

**01. Filing Returns.** Each hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace providing accommodations subject to the room sales tax shall file with the State Tax Commission on forms prescribed by the State Tax Commission monthly or quarterly returns showing the amount of tax required to be paid ~~by the hotel, motel, or campground~~ to the State Tax Commission and such other information as the State Tax Commission shall require. The return, together with the remittance shown to be due thereon, must be received by the State Tax Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All charges subject to tax actually charged to the user or occupant shall be reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. (7-1-93)( )

**02. ~~Allocation of Revenue.~~** ~~Because revenue from the statewide Travel and Convention tax must be allocated to the area of the state from which it is collected, taxpayers who operate more than one (1) hotel, motel or campground within the state must report the tax relating to each hotel, motel or campground on a separate return.~~ (7-1-93)

**019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (RULE 019).**  
Sections 63-3629, & 63-3634, Idaho Code

**01. Remittance of Taxes.** In the event that taxes required to be collected and remitted by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace are not remitted to the State Tax Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the State Tax Commission, the State Tax Commission shall issue a Notice of Deficiency Determination pursuant to the provisions of the Idaho Sales Tax Act and IDAPA 35.01.02 ~~the Tax Commission's rules relating thereto~~. A hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace to which such a Notice of Deficiency Determination ~~may be~~ has been issued may file a written protest ~~the notice and seek~~ requesting a redetermination ~~thereof of the deficiency~~ pursuant to the provisions of IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 121. ~~(7-1-93)~~( )

**02. Penalties.** In the event that any deficiency in reporting or remitting taxes by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace required to file a return with the State Tax Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act shall apply to the room sales tax. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule ~~44~~410. ~~(7-1-93)~~( )

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0106-1702**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 006, and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 513 through 514](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Leah Parsons (208) 334-7531 or e-mail [leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov).

DATED this 22nd day of November, 2017.

Leah Parsons  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690

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

**AUTHORITY:** In compliance with Sections 67-5220(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 63-105(2), 63-3624(a), 63-3612(2)(g), 67-4718, and 67-4917C, 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 18, 2017.

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:

Hotel/Motel Room Sales Tax Rule 006 – Lodging Operators And Short-Term Rental Marketplaces. The current proposal is to add this new rule to reference the new statutes created by 2017, HB 216. Also to state in the rules that the sales taxes and any local government taxes apply to this type of rental.

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

**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: N/A

**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 2, 2017, Idaho Administrative Bulletin, [Vol. 17-8, page 122](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Tom Shaner at (208) 334-7518 or [tom.shaner@tax.idaho.gov](mailto:tom.shaner@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 25, 2017.

DATED this 1st Day of September, 2017.

[LSO Rules Analysis Memo](#)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0106-1702

**006. LODGING OPERATORS AND SHORT-TERM RENTAL MARKETPLACES (RULE 006).**  
Sections, 63-1801 through 63-1804, 63-3612, 63-4711, 67-4718, 67-4917B, Idaho Code

**01. In General.** These rules apply to the Short-term Rental and Vacation Rental Act, Section 63-1801 through 63-1804, Idaho Code. ( )

**02. Applicable Taxes.** Any state or local government taxes imposed according to Section 63-1804, Idaho Code, will be collected, reported, paid, and administered according to these rules or as further explained by the Tax Commission's rules in IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules." ( )

**03. Registration.** Registration will be in the same manner and in the same form as is required for obtaining a seller's permit for state sales tax. However, a short-term rental marketplace that has not facilitated a lodging transaction in Idaho shall have forty-five (45) days from the completion of their first lodging transaction in Idaho to register to collect room sales tax. ( )

**006Z. -- 009. (RESERVED)**

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.09 – IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 23-1323, and 23-1322A, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 003, 006, and 017, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 96 through 97](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)



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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code, and Section 23-1322A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2017.

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 003 – Administrative Appeals. This rule provides for administrative appeals procedures for wine tax appeals. The current rule incompletely lists only Idaho Code Section 63-3049, Judicial Review, relating to administrative appeals. The rule will be amended to include administrative appeals procedures included in Rule 017, Redetermination, Collection, and Enforcement.

Rule 006 – Incorporation By Reference. This new rule includes selected provisions of Rule 017, Redetermination, Collection, and Enforcement, which is being deleted. Rule 017 incorporates by reference the Tax Commission Administrative and Enforcement Rules, IDAPA 35.02.01.

Rule 017 – Redetermination, Collection, And Enforcement. This rule is being deleted and the provisions included in Rule 003, Administrative Appeals, and Rule 006, Incorporation by Reference. Rules 003 and 006 both include provisions relating to the administration and enforcement of the wine tax.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules were amended to meet the rule writing guidelines.

**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:

Currently, this rule chapter does not conform to the incorporation by reference provision of the Administrative Procedure Act. Rule 017, Redetermination, Collection, and Enforcement, is being deleted and the provisions of this section are included in amended Rule Sections 003 and 006. IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules” as they relate to income tax administration and enforcement statutes authorized by Section 23-1322A, Idaho Code, are incorporated by reference in Rule 006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

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 July 26, 2017.

DATED this 7th day of June 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0109-1701

**003. ADMINISTRATIVE APPEALS (RULE 003).**

Section 23-1322A, Idaho Code

These rules only apply to the imposition and collection of wine tax. This chapter ~~does~~ allows administrative relief ~~of the provisions outlined herein under as provided in~~ Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Section 23-1322A, Idaho Code

These rules incorporate the sections of IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," relating to the statutes authorized by Section 23-1322A, Idaho Code, and will apply to wine tax collection and enforcement unless they are expressly contrary to the "Idaho County Option Kitchen and Table Wine Act" and these rules. Wherever the terms income or income tax are used in those statutes and rules, the terms wine or wine tax shall be substituted for purposes of the "Idaho County Option Kitchen and Table Wine Act" and these rules. ( )

**0067. -- 009. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. REDETERMINATION, COLLECTION, AND ENFORCEMENT (RULE 017).**

~~01. Administrative Appeals. Sections 63-3042 through 63-3065A, 63-3068, and 63-3070, Idaho Code, govern the method for administrative appeals, appeals to the Board of Tax Appeals, and appeals to Idaho's District and Supreme Courts, as well as collection and enforcement of the wine tax. The provisions and terms of those Income Tax statutes and Income Tax Rules promulgated thereunder, to the extent consistent with the Idaho County Option Kitchen and Table Wine Act and these rules, are hereby adopted by this reference as if stated in full in this rule.~~ (7-1-93)

~~02. Substitution of Terms. Wherever the terms income or income tax are used in those statutes and rules, the terms wine or wine tax shall be substituted for purposes of the County Option Kitchen and Table Wine Act and these rules.~~ (7-1-93)

~~03. Copies of Code and Rules Available. Copies of Idaho Code provisions and rules that deal with procedures for redetermination, collection, enforcement, and other matters are available at offices of the Division of Statewide Administrative Rules and at those libraries specified in Section 67-5205(e), Idaho Code.~~ (7-1-93)

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.09 – IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-1702**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 23-1323, and 23-1322A, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 011 and 015, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 515 through 517](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1323), Idaho Code, and Section 23-1314, 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 18, 2017.

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:

Wine Tax Rule 011 – Sales Subject To Wine Tax. This rule describes when dispositions of wine are subject to the wine tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Wine Tax Rule 015 – Wine Tax Permit Reporting Number. This rule authorizes the issuing of a wine tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

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

**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: N/A

**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 2, 2017 Idaho Administrative Bulletin, [Vol. 17-8, page 123](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned using the contact information below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 30th day of August, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0109-1702

**011. SALES SUBJECT TO WINE TAX (RULE 011).**

Sections 23-1314 and 23-1319, Idaho Code

**01. In General.** Section 23-1319, Idaho Code, imposes an excise tax per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

**02. Imposition.** All of the terms defined in Section 23-1303, Idaho Code; the Idaho County Option Kitchen and Table Wine Act apply to ~~the assessment of the excise taxes provided in Section 23-1319, Idaho Code~~ these rules. (7-1-93)( )

**a.** All wine distributors, as defined in Section ~~23-1303(d) and (g)(c)~~, Idaho Code, and wine direct shippers as defined in Section 23-1309A, Idaho Code are required to collect and to pay the excise taxes imposed by Section 23-1319, Idaho Code. (3-30-07)( )

**b.** Any vintner, winery, producer or manufacturer of wine within Idaho shall be considered a wine importer within the meaning of the definitions provided in Sections 23-1303(e) and (h), Idaho Code, for the purpose of administration of the excise tax as imposed by Section 23-1319, Idaho Code. However, to ensure payment of taxes on wine, any entity holding a winery license shall be considered a distributor to the extent of any dispositions from such winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. (7-1-93)

~~**c.** References to the Act as used in these rules, are to the County Option Kitchen and Table Wine Act, Chapter 13, Title 23, Idaho Code.~~ (7-1-93)

~~**d.** Ales, strong beer, new beer, or any other alcoholic beverages containing a greater percentage of more than four percent (4%) alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code are taxed as wine.~~ (3-30-07)( )

~~**e.** Premixed cocktails having an alcoholic content of fourteen percent (14%) or less by volume shall be taxed as wine.~~ (7-1-93)

**e.** If a winery supplements its inventory, adequate records are required to support any tax paid. The State Tax Commission may presume no tax is paid on wine in the winery's inventory without evidence of the payment of tax. Wineries purchasing wine or grape juice from other wineries to blend and produce wine are not considered supplementing their inventory for the purpose of this rule. ( )

**03. Every Disposition is a Sale.** Every disposition of wine by a distributor to a retailer or consumer shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and the distributor shall be liable for the payment of taxes on such sales. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code on all shipments of wine to Idaho residents. Any person making sales or dispositions of wine, whether licensed as a distributor or not, shall be liable for the taxes on such sale or disposition of wine for which no tax under the Act has otherwise been collected. (3-30-07)

**04. All Sales Presumed Taxable.** Every sale or disposition of a distributor's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

015. WINE TAX ~~REPORTING~~ PERMIT ~~NUMBER~~ (RULE 015).  
Sections 23-1322 and 23-1323, Idaho Code

01. **Permit ~~Number~~ Required.** Every winery, and wine distributor located within this state, ~~every wine distributor~~, and every wine direct shipper is required to obtain a wine tax ~~reporting~~ permit ~~number~~ before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a wine tax ~~number~~ ~~permit~~. (3-30-07)( )

02. **Permit ~~Number~~ Is Non-Assignable.** A wine tax ~~reporting~~ permit ~~number~~ is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. (3-30-07)( )

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's wine tax ~~reporting~~ permit ~~number~~ without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (3-30-07)( )

03. **Cancellation of Permit.** The State Tax Commission may cancel the permit of a person not actively engaged in activities requiring a permit according to the Idaho County Option Kitchen and Table Wine Act or these rules. ( )

a. Notice of cancellation must be given in the manner provided for deficiencies by the Idaho County Option Kitchen and Table Wine Act and these rules. ( )

b. A permit held by a person who, for a period of twelve (12) consecutive months, files reports showing no wine activity reportable under the Idaho County Option Kitchen and Table Wine Act or these rules is canceled automatically upon the State Tax Commission providing notice of the cancellation to the last known address of the person to whom the permit was issued. ( )

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0110-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105, 63-3039, 63-2516, and 63-2563, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 006, and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 98 through 99](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-3039, 63-2516, and 63-2563, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2017.

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 006 – Incorporation By Reference. This new rule incorporates by reference IDAPA 35.02.01, “Tax Commission Administrative and Enforcement Rules” related to income tax administration and enforcement statutes adopted in Sections 63-2516 and 63-2563, Idaho Code.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules were amended to meet the rule writing guidelines.

**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:

Currently, these administrative rules have no incorporation by reference rule in conformance with the rule writer guidelines. Cigarette and Tobacco Tax Rule 006, Incorporation by Reference, will incorporate income tax administrative and enforcement rules related to income tax administration and enforcement statutes adopted in Sections 63-2516 and 63-2563, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

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 July 26, 2017.

DATED this 7th day of June, 2017.

**LSO Rules Analysis Memo**



THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0110-1701

**006. INCORPORATION BY REFERENCE (RULE 006).**

Sections 63-2516 and 63-2563, Idaho Code

These rules incorporate the sections of IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," relating to the statutes authorized by Sections 63-2516 and 63-2563, Idaho Code, and will apply to cigarette and tobacco tax collection and enforcement unless they are expressly contrary to the "Cigarette and Tobacco Products Taxes Act" and these rules. Wherever the terms income or income tax are used in those statutes and rules, the terms cigarette, cigarette tax, tobacco, or tobacco tax shall be substituted for purposes of the "Cigarette and Tobacco Products Taxes Act" and these rules. ( )

**006~~7~~. -- 009. (RESERVED)**

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.12 – IDAHO BEER TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0112-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 23-1051, and 23-1050A, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 003, 006, and 014, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, pages 100 through 101](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1051, Idaho Code, and Section 23-1050A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 19, 2017.

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 003 – Administrative Appeals. This rule provides for administrative appeals procedures for beer tax appeals. The current rule incompletely lists only Idaho Code Section 63-3049, Judicial Review, relating to administrative appeals. The rule will be amended to include administrative appeals procedures included in Rule 014, Redetermination, Collection, and Enforcement.

Rule 006 – Incorporation By Reference. This new rule includes selected provisions of Rule 014, Redetermination, Collection, and Enforcement, which is being deleted. Rule 014 incorporates by reference IDAPA 35.02.01, “Tax Commission Administrative and Enforcement Rules.”

Rule 014 – Redetermination, Collection, And Enforcement. This rule is being deleted and the provisions included in Rule 003, Administrative Appeals, and Rule 006, Incorporation by Reference. Rules 003 and 006 both include provisions relating to the administration and enforcement of the beer tax.

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

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules were amended to meet the rule writing guidelines.

**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:

Currently, these administrative rules have no incorporation by reference rule in conformance with the rule writer guidelines. There is an incorporation by reference in Beer Tax Rule 014, Redetermination, Collection, and Enforcement. This incorporation by reference will be deleted from Rule 014 and used to create Beer Tax Rule 006, Incorporation by Reference. The incorporated references are Income Tax Administration and Enforcement rules related to Income Tax Administration and Enforcement Statutes authorized by Section 23-1050A, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned.

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 July 26, 2017.

DATED this 7th day of June, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0112-1701

**003. ADMINISTRATIVE APPEALS (RULE 003).**

Section 23-1050A, Idaho Code

These rules only apply to the imposition and collection of beer tax. This chapter ~~does~~ allows administrative relief ~~of the provisions outlined herein under as provided in~~ Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Section 23-1050A, Idaho Code

These rules incorporate the sections of IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," relating to the statutes authorized by Section 23-1050A, Idaho Code, and will apply to beer tax collection and enforcement unless they are expressly contrary to the "Beer Act" and these rules. Wherever the terms income or income tax are used in those statutes and rules, the terms beer or beer tax shall be substituted for purposes of the "Beer Act" and these rules. ( )

**006 -- 009. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**014. REDETERMINATION, COLLECTION, AND ENFORCEMENT (RULE 014).**

~~01. Administrative Appeals. Sections 63-3042 through 63-3065A, 63-3068, and 63-3070, Idaho Code, govern the method for administrative appeals, appeals to the Board of Tax Appeals, and appeals to Idaho's District and Supreme Courts, as well as collection and enforcement of the beer tax. The provisions and terms of those Income Tax statutes and Income Tax Rules promulgated thereunder, to the extent consistent with the Act and these Beer Tax Rules, are hereby adopted by this reference as if stated in full in this rule.~~ (7-1-93)

~~02. Substitution of Terms. Wherever the terms income or income tax are used in those statutes and rules, the terms beer or beer tax shall be substituted for purposes of the Act and these rules.~~ (7-1-93)

~~03. Copies of Code and Rules Available. Copies of Idaho Code provisions and rules which deal with procedures for redetermination, collection, enforcement, and other matters are available at offices of the Tax Commission and at those libraries specified in Section 67-5205(e), Idaho Code.~~ (7-1-93)

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.12 – IDAHO BEER TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0112-1702**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105 and 23-1051, and 23-1050A, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 011 and 016, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 518 through 520](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1051, Idaho Code, and Section 23-1006, 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 18, 2017.

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:

Beer Tax Rule 011 – Sales Subject To Beer Tax. This rule describes when dispositions of beer are subject to the beer tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Beer Tax Rule 016 – Beer Tax Permit Reporting Number. This rule authorizes the issuing of a beer tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

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

**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: N/A

**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 2, 2017 Idaho Administrative Bulletin, [Vol. 17-8, page 124](#).

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned using the contact information below.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 30th day of August, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0112-1702

**011. SALES SUBJECT TO BEER TAX (RULE 011).**

Sections 23-1003, 23-1006, 23-1008, and 23-1048, Idaho Code

**01. In General.** Idaho imposes an excise tax upon barrels or fractional amounts of barrels as provided by Section 23-1008, Idaho Code, sold by wholesalers for use or consumption within Idaho. (7-1-93)

**02. Imposition.** All of the terms defined in Section 23-1001, Idaho Code, et seq., the Beer Act apply to the assessment of the tax provided in Section 23-1008, Idaho Code these rules. (7-1-93)( )

**a.** All beer wholesalers, as defined in Section 23-1001(gk), Idaho Code, are required to collect and to pay the tax imposed by Section 23-1008, Idaho Code. (7-1-93)( )

**b.** Any brewer, brewery, producer or manufacturer of beer within Idaho shall be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(d), Idaho Code, for the purpose of administration of the tax as imposed by Section 23-1008, Idaho Code. However, to ensure payment of taxes on beer, any entity holding a brewery license shall be considered a wholesaler to the extent of any dispositions from such brewery for the purpose of resale or consumption in, by or through any retail facilities including, but not limited to, tasting rooms on or near the brewery's premises. (7-1-93)

~~**c.** References to the Act as used in these rules are to Chapter 10, Title 23, Idaho Code.~~ (7-1-93)

~~**dc.** Ales, strong beer, new beer, or any other alcoholic beverages containing a greater percentage of more than four percent (4%) alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code are taxed as wine.~~ (7-1-93)( )

**d.** If a brewery supplements its inventory, adequate records are required to support any tax paid. The State Tax Commission may presume no tax is paid on beer in the brewery's inventory without evidence of the payment of tax. ( )

**03. Every Disposition Is a Sale.** Every disposition of beer by a wholesaler to a retailer or consumer shall constitute a sale of beer for use in this state, whether said sale is made within or without this state, and the wholesaler shall be liable for the payment of taxes on such sales. Any person making sales or dispositions of beer, whether licensed as a wholesaler or not, shall be liable for the tax on such sale or disposition of beer for which no tax under the Act has otherwise been collected. (7-1-93)

**04. All Sales Presumed Taxable.** Every sale or disposition of a wholesaler's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. BEER TAX REPORTING PERMIT NUMBER (RULE 016).**

**01. Permit Number Required.** Every brewery and beer wholesaler located within this state and every beer wholesaler is required to obtain a beer tax reporting permit number before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a beer tax number permit. (7-1-93)( )

**02. Permit ~~Number~~ Is Non-Assignable.** A beer tax ~~reporting~~ permit ~~number~~ is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. ~~(7-1-93)~~( )

**a.** The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

**b.** If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's beer tax ~~reporting~~ permit ~~number~~ without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. ~~(7-1-93)~~( )

**03. Cancellation of Permit.** The State Tax Commission may cancel the permit of a person not actively engaged in activities requiring a permit according to the Beer Act or these rules. ( )

**a.** Notice of cancellation must be given in the manner provided for deficiencies by the Beer Act and these rules. ( )

**b.** A permit held by a person who, for a period of twelve (12) consecutive months, files reports showing no beer activity reportable under the Beer Act or these rules is canceled automatically upon the State Tax Commission providing notice of the cancellation of the last known address of the person to whom the permit was issued. ( )



## **IDAPA 35 – STATE TAX COMMISSION**

### **35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1701**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 326, 327, and 328, and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 521 through 523](#).

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

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

DATED this 22nd day of November, 2017.

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

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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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 18, 2017.

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:

Rules 326, 327 and 328 are being promulgated to provide guidance for the appeals process. These rules will establish definitions, provide restrictions, exceptions, permitted communications and procedures for a taxpayer to participate in communications between the appeals unit and the originating division and others during the redetermination process.

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

**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: N/A

**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 7, 2017, Idaho Administrative Bulletin, [Vol. 17-6, pages 66](#).

**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: N/A

**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 25, 2017.

DATED this 1st day of September, 2017.

**[LSO Rules Analysis Memo](#)**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-1701

**326. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: DEFINITIONS (RULE 326).**

Section 63-3045, Idaho Code

For purposes of Rules 327 and 328, the following definitions apply:

( )

**01. Appeals Unit.** Appeals unit means the unit created within the State Tax Commission with the responsibility for performing the independent administrative redetermination provided for in Section 63-3045, Idaho Code.

( )

**02. Appeals Officer.** Appeals officer means the staff of the appeals unit performing the redetermination.

( )

**03. Originating Division.** Originating division means the division within the State Tax Commission that issued the notice of deficiency determination or other determination under dispute.

( )

**04. Petitioner.** Petitioner means the taxpayer or the taxpayer's authorized representative.

( )

**05. Unable to Participate.** Unable to participate means the petitioner had expressed intent to participate in the discussion with the originating division but did not participate and did not provide adequate notice to the appeals officer to reschedule the discussion.

( )

**327. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: RESTRICTIONS, EXCEPTIONS, AND PERMITTED COMMUNICATIONS (RULE 327).**

Section 63-3045, Idaho Code

**01. In General.** Section 63-3045, Idaho Code, does not adopt the formal ex parte restrictions on communications that would apply in a judicial proceeding or under Section 67-5253, Idaho Code. However, the State Tax Commission will apply the following procedures as part of its redetermination process. The provisions contained within this rule do not create substantive rights affecting the taxpayer's tax liability, or the State Tax Commission's ability to determine, assess, or collect the tax liability (including statutory interest and any penalties, if applicable).

( )

**02. Restrictions on Certain Communications.** An appeals officer may engage in discussions relating to the petitioner's petition with employees of the originating division, including the strengths and weaknesses of the issues, new issues, and the parties' positions, only after having provided the petitioner the opportunity to participate in the discussions.

( )

**03. Exceptions.** The limitation on communications contained within Subsection 327.02 of this rule does not apply to communications with or by:

( )

**a.** A Commissioner of the State Tax Commission;

( )

**b.** An employee of a State Tax Commission outside of the originating division;

( )

**c.** An employee of the Idaho office of Attorney General;

( )

**d.** An employee of another state agency that the State Tax Commission has entered into an exchange agreement with;

( )

e. An employee of the Internal Revenue Service; or ( )

f. An employee of the Multi State Tax Commission. ( )

04. Permitted Communications. Communications with the originating division that do not require an appeals officer to first provide the petitioner with an opportunity to participate in the communication include: ( )

a. Any matters that are ministerial, administrative, or procedural including routine account inquiries, transcript requests, and other similar inquiries because they do not involve more than a limited amount of dialogue or interaction between appeals and the originating division. ( )

b. Communications in which the petitioner is given an opportunity to participate and is unresponsive, declines, or is unable to participate in a discussion between an appeals officer and the originating division. ( )

c. Assisting an appeals officer in locating or indexing documents within the originating division's audit file that were relied upon by the originating division when it issued its notice of deficiency determination. ( )

d. Requesting verification of calculations that an appeals officer may utilize as part of a settlement or decision. ( )

e. Obtaining a response from the originating division when the petitioner provides new information or makes new legal arguments during the redetermination. The originating division's response must be in writing and a copy of the written response provided to the petitioner. ( )

f. Requesting confirmation of calculations that the petitioner has provided during the redetermination process. ( )

g. Requesting verification that information provided by the petitioner during the redetermination is the same or different from what was previously submitted to the originating division. ( )

h. A settlement meeting conducted in accordance with Rule 501 of these rules. ( )

**328. OPPORTUNITY TO PARTICIPATE: NOTICE TO PETITIONER (RULE 328).**

01. Notification and Participation. If an appeals officer believes a discussion with staff from the originating division is warranted to review matters restricted by Subsection 327.02 of these rules, an appeals officer shall provide petitioner reasonable notice of the time and date of any discussion. Such notice may be provided to the petitioner by telephone, mail or electronic form and pursuant to Section 63-4003, Idaho Code. An appeals officer shall make a reasonable effort to accommodate the petitioner's schedule but will not unduly delay the discussion. The petitioner may participate by telephone or in-person at the State Tax Commission office in Boise, Idaho, and any discussion will be held during normal business hours. ( )

02. Additional Petitioner Participation Information. Any discussion held under this rule that includes petitioner participation is not an informal hearing under Rule 325 of these rules and does not start the one hundred and eighty (180) day period for issuing a final decision. ( )

**329. -- 399. (RESERVED)**

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1703**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 310 and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 524 through 526](#).

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

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

DATED this 22nd day of November, 2017.

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

<p><b>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</b></p>
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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 18, 2017.

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 2018 and the Revenue Ruling where the federal rate for the calculation can be found.

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

**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: N/A

**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: N/A

**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 25, 2017.

DATED this 1st day of September, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-1703**

**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.  
(4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22
Calendar Year 2016	4% simple interest	Revenue Ruling 2015-19
Calendar Year 2017	3% simple interest	Revenue Ruling 2016-20
<u>Calendar Year 2018</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2017-17</u>

~~(3-29-17)~~ ( )