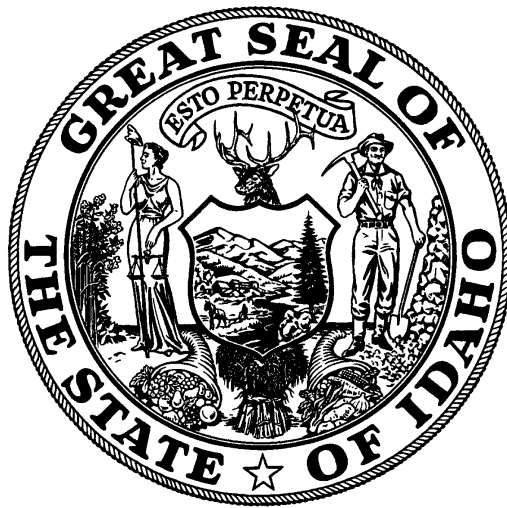


# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

**Submitted for Review Before  
Senate Local Government  
& Taxation Committee  
67th Idaho Legislature  
First Regular Session – 2023**



*Prepared by:*

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

*January 2023*

**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**DOCKET NO. 35-0101-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

Sections 300-699 of these rules that were negotiated and previously included in this ZBR chapter rewrite, have been promulgated under companion docket 35-0101-2202 published in this bulletin.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022 Idaho Administrative Bulletin, [Volume 22-10, pages 741-809](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian at (208) 332-6691.

DATED this 7th day of December.

Cynthia Adrian, Income Tax Specialist  
Idaho State Tax Commission, Governmental Affairs  
(20820 (20811321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36. Boise ID 83722-0036  
[cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov)  
(208) 334-6691

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

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

**PUBLIC HEARING SCHEDULE:** 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 19, 2022.

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:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

Sections 300-699 of these rules that were negotiated and previously included in this ZBR chapter rewrite, have been promulgated under companion docket 35-0101-2202 published in this bulletin.

**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 under this docket number. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 47](#). The Tax Commission has held three public meetings, and all public comments received will be considered in the formulation and adoption of the pending rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-6691).

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 26, 2022

DATED this October 5th, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 35-0101-2201

**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY.**

In accordance with Sections 63-105 and 63-3039, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Income Tax Act. ( )

**001. SCOPE.**

Section 63-3039, Idaho Code.

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

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

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

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

**002. INCORPORATION BY REFERENCE (RULE 002).**

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

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

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

**003. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Section 63-3003, Idaho Code

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

**02. Mathematical Error.** A mathematical error includes arithmetic errors and incorrect computations. ( )

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

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

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

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

**011. -- 014. (RESERVED)**

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

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

**02. Retroactive Amendments.** For the purpose of determining federal taxable income, any retroactive amendments to the Internal Revenue Code that are enacted on or before the date found in Section 63-3004(1), Idaho Code, are applied retroactively to the extent allowed under federal law. ( )

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

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

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

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

**03. Gross Income from Idaho Sources.** Gross income from Idaho sources is that portion of total gross income derived from or related to sources within Idaho. Income derived from or related to sources within Idaho is determined pursuant to this rule and Rules 263 through 286 of these rules. ( )

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

- a. Partnership. The amount of a partner's gross income from Idaho sources is: ( )
  - i. The partner's distributive share of partnership gross income included in the partnership's apportionable income multiplied by the Idaho apportionment factor of the partnership; and ( )
  - ii. The partner's distributive share of gross income allocated to Idaho. ( )
- b. S Corporation. The amount of a shareholder's gross income from Idaho sources is: ( )
  - i. The shareholder's pro rata share of the S corporation gross income included in the S corporation's apportionable income multiplied by the Idaho apportionment factor of the S corporation; and ( )
  - ii. The shareholder's pro rata share of gross income allocated to Idaho. ( )
- c. Trust or Estate. The Idaho source portion of the income that constitutes gross income pursuant to federal Treasury Regulation Section 1.61-13 and Part I, Subchapter J, Chapter 1 of the Internal Revenue Code, is the amount of such income that would be Idaho source if received directly by the individual. ( )

**05. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

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

Section 63-3002, Idaho Code

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

**018. -- 024. (RESERVED)**

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

Section 63-3010, Idaho Code

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

**02. Change of Accounting Period.** ( )

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

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

**026. -- 029. (RESERVED)**

**030. RESIDENT (RULE 030).**

Section 63-3013, Idaho Code

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

**02. Domicile.** The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and where he intends to return when absent. An individual can have several residences or dwelling places, but he legally has only one domicile at a time. ( )

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

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

**c.** Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. ( )

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

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

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

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

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

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

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

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

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

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

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

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

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



declared by the President and supported by federal funds. ( )

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

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

**03. Idaho Residency Status.** ( )

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

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

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

**04. Military Service Compensation.** ( )

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

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

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

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

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

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

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

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

**b.** If a spouse of a servicemember and the servicemember are both Idaho residents for income tax

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

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

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

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

**02. Gambling Winnings.** ( )

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

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

**03. Per Capita Distributions.** ( )

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

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

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

**01. Resident Estates.** If the estate is other than an estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho. ( )

**035. -- 039. (RESERVED)**

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

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

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

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

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

consistent with that of a vacationer, seasonal visitor, tourist or guest. ( )

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

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**041. -- 044. (RESERVED)**

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

**01. Traveling Salesmen.** ( )

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

**b.** If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. ( )

**02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code.**  
Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: ( )

**a.** An operator, including an independent contractor, of a commercial motor vehicle; ( )

**b.** A mechanic; ( )

**c.** A freight handler; and ( )

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

**03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code.**  
Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: ( )

**a.** Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or ( )

**b.** Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. ( )

**04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code.**  
Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: ( )

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

**05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code.** Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. ( )

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

**046. -- 074. (RESERVED)**

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

Section 63-3024, Idaho Code

The tax rates applied to the Idaho taxable income of an individual, trust or estate are listed at <https://tax.idaho.gov/indrate>. The maximum tax rate as listed for the applicable taxable year applies in computing the tax attributable to the S corporation stock held by an electing small business trust. ( )

**076. -- 077. (RESERVED)**

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

Section 63-3024, Idaho Code

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

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

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

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

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

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

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

**079. -- 104. (RESERVED)**

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

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

- 01. Interest and Dividend Income Exempt From Federal Taxation.** Certain interest and dividend

income that is exempt from federal income tax must be added. ( )

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

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

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

**02. Special First-Year Depreciation Allowance.** The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes must be added. ( )

**106. (RESERVED)**

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

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income will be allocated with the income produced. ( )

**108. -- 114. (RESERVED)**

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

Section 63-3022M, Idaho Code

**01. In General.** The interest expense offset provided by Section 63-3022M, Idaho Code, is a separate and distinct adjustment from provisions in the Internal Revenue Code that disallow interest expense related to federal tax-exempt interest. ( )

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

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

**116. -- 119. (RESERVED)**

**120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).**

Section 63-3022, Idaho Code. The following are allowable subtractions to all taxpayers in computing Idaho taxable income. ( )

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

**02. Idaho Net Operating Loss.** An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. ( )

**03. Income Not Taxable by Idaho.** Income exempt from taxation by Idaho includes the following: ( )

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and may not be subtracted from taxable income. ( )

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

**c.** Certain income from loss recoveries. See Section 63-3022R, Idaho Code. ( )

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

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

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

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

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

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

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

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

Section 63-3022, Idaho Code

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

**a.** Certain income earned by American Indians. ( )

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

**02. Standard or Itemized Deduction.** If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back will be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. ( )

**03. Unused Net Operating Losses of Estates and Trusts.** An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. ( )

**122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).**  
Sections 63-3022 and 41-3821, Idaho Code

**01. Stock Insurance Subsidiary Dividends or Distributions.** ( )

**a.** As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company is to subtract the amount received as a dividend or distribution from a stock insurance subsidiary. ( )

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

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

**123. -- 124. (RESERVED)**

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

Section 63-3022O, Idaho Code

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

**02. Depreciation.** ( )

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

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

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

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

**126. -- 127. (RESERVED)**

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

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

**a.** Partnerships. An adjustment passes through to a partner based on that partner's distributive share of



partnership profits. ( )

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

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

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

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

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

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

**129. (RESERVED)**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**  
Section 63-3022A, Idaho Code

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

**a.** Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System, the Foreign Service Retirement and Disability System, or the offset programs of these systems. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. ( )

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

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

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

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

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

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

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

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

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

**04. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**131. -- 139. (RESERVED)**

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

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

**141. -- 149. (RESERVED)**

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

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

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

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

**151. -- 169. (RESERVED)**

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

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

**02. Losses From Qualified Property.** ( )

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

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

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).**  
Section 63-3022H, Idaho Code

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

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

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

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

**05. Nonqualifying Property.** Nonqualifying property includes: ( )

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

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

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

**i.** Stocks and bonds; ( )

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

**03. Holding Periods.** ( )

**a.** In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. ( )

**b.** Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. ( )

**c.** Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. ( )

**04. Holding Periods of S Corporation and Partnership Property. ( )**

**a.** Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. ( )

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

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

**05. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

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

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

**a.** Retail sales; ( )

**b.** Professional or managerial services; ( )

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

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

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

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

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

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

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

**01. In General.** ( )

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

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

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

apportioned to Idaho. ( )

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**a.** An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. ( )

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

**174. -- 179. (RESERVED)**

**180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).**  
Section 63-3022J, Idaho Code

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

**02. Pass-Through of Deduction.** ( )

**a.** The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. ( )

**181. -- 184. (RESERVED)**

**185. ADOPTION EXPENSES (RULE 185).**  
Section 63-3022I, Idaho Code

**01. Ineligible Expenses.** ( )

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

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

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

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**186. -- 189. (RESERVED)**

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

Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**191. -- 192. (RESERVED)**

**193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).**  
Sections 63-3022P and 63-3022Q, Idaho Code

**01. Costs Deducted or Accounted For.** Deductions are not allowed for health insurance costs and

premiums paid for long-term care insurance that are otherwise deducted or accounted for. Health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for include amounts: ( )

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

**194. (RESERVED)**

**195. LOSS RECOVERIES (RULE 195).**

Section 63-3022R, Idaho Code

No deduction is allowed for recovery of an amount not included in federal taxable income of the current year. No deduction is allowed to the extent the loss recovered previously reduced Idaho taxable income. Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**196. -- 199. (RESERVED)**

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

Section 63-3021, Idaho Code

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

**02. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

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

Section 63-3022(c), Idaho Code

**01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers.** ( )

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

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

**02. Adjustments to Net Operating Losses.** ( )

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

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

**03. Adjustments in Carryback and Carryover Years.** ( )

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

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

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

**04. Net Operating Loss Carrybacks Application.** ( )

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

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

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

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

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

e. For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ( )

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

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

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

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

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

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

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely. ( )

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

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

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

**202. -- 209. (RESERVED)**

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

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

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

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

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

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

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

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

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

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

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



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

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

**211. -- 249. (RESERVED)**

**250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).**

Sections 63-3026A(1) and (2), Idaho Code

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

**02. Receipt of Intangible Income -- Part-Year Residents.** ( )

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

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

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

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

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

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

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

**04. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

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

Section 63-3026A, Idaho Code

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

( )

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).**

Section 63-3026A(6), Idaho Code

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

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

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

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

**c.** Jury duty pay remitted to an employer. ( )

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

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

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

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

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

**a.** Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction will be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction

allowed for federal purposes. For purposes of this rule, compensation means “compensation” as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. ( )

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

**04. Other Deductions.** Deductions that do not relate to specific items of income or to the earning of qualifying income will be allowed in the proportion that Idaho total income bears to federal total income. The federal net operating loss deduction is not included in either the federal total income or the Idaho total income for this calculation. Such deductions include the following: ( )

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

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

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

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

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

**b.** Nonresidents. Interest and dividend income reportable from a pass-through entity that was transacting business in Idaho must be added to the extent the income was apportioned or allocated as Idaho income. ( )

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

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

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

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

**06. Idaho College Savings Program.** ( )

**a.** An account owner must add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted gross income. The addition is

limited to contributions previously exempt from Idaho state income tax and earnings generated from the program as long as the earnings are not already included in federal adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. ( )

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

**07. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. An individual must add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on property acquired after 2007 and before 2010. ( )

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

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

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

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

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

**a.** Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. ( )

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

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

**d.** Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. ( )

**e.** Certain income from loss recoveries. See Section 63-3022R, Idaho Code. ( )

**04. Military Pay.** Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States

for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. ( )

**05. Social Security and Railroad Retirement Benefits.** Social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code may be subtracted to the extent the benefits are included in Idaho total income. ( )

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

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

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

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

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

**11. Idaho Medical Savings Account.** ( )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).**

Section 63-3026A(4), Idaho Code

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

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

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

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

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

**256. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF QUALIFIED BUSINESS INCOME DEDUCTION (RULE 256).**

Section 63-3026A(6), Idaho Code

**01. In General.** The qualified business income deduction allowable for federal purposes is allowed in part in computing Idaho taxable income. To determine the portion of qualified business income deduction allowable for part-year and nonresident individuals, the qualified business income deduction allowed by Section 199A, Internal Revenue Code, is multiplied by the calculated proration. ( )

**02. Proration.** For taxable years beginning in or after 2018, the proration is calculated by dividing the total Idaho source qualified business income (loss) by the total qualified business income (loss). Calculate four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000 / \$15,000 = .66666 = .6667 = 66.67\%$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000 / \$30,000 = .33333 = .3333 = 33.33\%$ ). The percentage may not exceed one hundred percent (100%), nor be less than zero (0). ( )

**a.** Idaho source qualified business income or (loss) means the taxpayer's Idaho apportioned share of the qualified business income or (loss) from each qualified trade or business. ( )

**b.** If the net Idaho source qualified business income is zero or less, no qualified business income deduction is allowed for Idaho income tax purposes. ( )

257. -- 262. (RESERVED)

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

Section 63-3026A(3), Idaho Code

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

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

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

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

**04. Guaranteed Payments Treated As Compensation.** ( )

a. Guaranteed payments to an individual partner up to the amount shown at <https://tax.idaho.gov/guarpay> in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. ( )

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

**05. Distributions.** ( )

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

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



**264. INCOME FROM REAL AND TANGIBLE PERSONAL PROPERTY (RULE 264).**

Section 63-3026A(3), Idaho Code

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

**02. Property Located Within and Without Idaho.** ( )

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

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

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

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

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

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

**265. SOLE PROPRIETORSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 265).**

Section 63-3026A(3), Idaho Code

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

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

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

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

**b.** The method proposed by the taxpayer may be used in lieu of the method in Subsection 265.01

unless the Tax Commission expressly denies its use. ( )

**266. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME FROM INTANGIBLE PROPERTY (RULE 266).**

Section 63-3026A(3), Idaho Code

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

**a.** If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. ( )

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

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

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

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

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

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

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

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

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

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

payments is Idaho source income. ( )

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

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

**02. Idaho Activity.** An activity is an Idaho activity only to the extent the income from that activity would be included in the Idaho taxable income of a nonresident pursuant to Section 63-3026A, Idaho Code. If a passive activity is engaged in both within and without Idaho, the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules must be applied to determine the extent of Idaho activity. ( )

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

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

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

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

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

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

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

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

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

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**269. (RESERVED)**

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

Section 63-3026A(3), Idaho Code

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

**02. Definitions.** ( )

**a.** The Idaho compensation percentage is the percentage computed by dividing Idaho workdays by total workdays. ( )

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

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

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

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

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

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

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

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

**271. IDAHO COMPENSATION: STOCK OPTIONS (RULE 271).**

Section 63-3026A(3), Idaho Code

**01. In General.** The granting of stock options is considered to be compensation for services. Although considered as compensation, in some circumstances the taxpayer may report the compensation on his federal income tax return as capital gain income. The character of the income from the granting of stock options and the timing of

reporting it for federal income tax purposes apply in computing Idaho taxable income. ( )

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

**a.** Workdays, Idaho workdays, and total workdays are defined in Rule 270 of these rules. ( )

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

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

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

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

**04. Statutory Stock Options.** ( )

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

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

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

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

**05. Nonstatutory Stock Options.** ( )

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

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

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

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

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

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

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

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

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

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

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

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

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

**273. IDAHO COMPENSATION: UNEMPLOYMENT COMPENSATION (RULE 273).**

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

**274. (RESERVED)**

**275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).**

Section 63-3026A(3)(c), Idaho Code

**01. In General.** ( )

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

**b.** The exemption from tax on investment income from a qualified investment partnership does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is governed by Section 63-3026A(3)(a)(vii), Idaho Code, and Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership is determined as provided in Rule 263 of these rules. ( )

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

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

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

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

**04. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**276. -- 279. (RESERVED)**

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

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

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

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

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

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

**281. -- 284. (RESERVED)**

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

**01. Minimum Tax.** The minimum tax is required of every S corporation that is required to file a return. A name-holder or inactive S corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars (\$20) even though the S corporation did not conduct Idaho business activity during the taxable year. ( )

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

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

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

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

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

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

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

- a. The shareholder's share of each pass-through item of income and deduction; ( )
- b. The shareholder's share of each Idaho addition and subtraction; ( )
- c. The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; ( )
- d. The shareholder's share of income allocated to Idaho; ( )
- e. The S corporation's apportionment factor; and ( )
- f. The shareholder's distributive share of S corporation gross income. ( )

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

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



Rule 340.03. ( )

**287. -- 290. (RESERVED)**

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

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

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

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

**b.** Distributable net income from an estate or trust that is income from Idaho sources. ( )

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

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

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

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

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

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

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

**i.** The standard deduction; ( )

**ii.** Personal exemptions; ( )

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

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

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

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

**292. -- 299. (RESERVED)**

*[Sections 300-699 that were originally negotiated in this ZBR chapter rewrite have been promulgated under companion docket 35-0101-2202 published in this bulletin]*

**700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: IN GENERAL (RULE 700).**

Section 63-3029, Idaho Code

**01. Taxes Not Eligible for the Credit.** If any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit is not allowed for income taxes imposed by another state on income not taxed by Idaho. ( )

**02. Credit Calculated on a State-by-State Basis.** The credit and credit limitations are to be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. ( )

**03. Income Tax Payable to Another State.** The income tax payable to another state is to be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. ( )

**04. Limitations.** The credit for taxes paid to another state is limited as follows: ( )

**a.** The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, estate, or trust. ( )

**b.** If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit reduces the income tax paid by the pass-through entity. ( )

**c.** The credit may not exceed the proportion of the tax otherwise due to Idaho that the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. ( )

**d.** The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to

Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. ( )

i. Federal total income of the estate or trust derived from sources in the other state is to be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state is to be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. ( )

**05. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: PART-YEAR RESIDENTS (RULE 701).**  
Section 63-3029, Idaho Code

**01. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**702. -- 704. (RESERVED)**

**705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS FOR TAXABLE YEARS BEGINNING AFTER 2010 (RULE 705).**  
Section 63-3029A, Idaho Code

**01. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. ( )

**02. Other Limitations.** ( )

**a.** This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). ( )

**03. Effect on Itemized Deductions.** The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ( )

**04. Nonprofit Public and Private Museums.** To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. ( )

**706. -- 709. (RESERVED)**

**710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).**  
Section 63-3029B, Idaho Code

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code. ( )

**02. Limitations.** The investment tax credit allowable in any taxable year will be limited by the following: ( )

**a.** Tax liability. ( )

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. ( )

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. ( )

b. Unitary taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. ( )

c. Nonrefundable credits. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. ( )

d. Used Property Limitation. The term used property limitation means the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. ( )

**03. Carryovers.** ( )

a. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. ( )

b. Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. ( )

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. ( )

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. ( )

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment when the bonus first-year depreciation was also allowed in computing depreciation for Idaho. ( )

**07. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**711. IDAHO INVESTMENT TAX CREDIT: TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).**  
Section 63-3029B, Idaho Code

**01. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. ( )

a. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ( )

b. In the taxable year when a corporation that earned the investment tax credit is acquired or disposed of, only a portion of the tax of the other members of the unitary group may be offset with shared investment tax credit from that corporation. To determine the allowable portion of the tax, a percentage is calculated by dividing the number of days that the corporation that earned the investment tax credit is included in the unitary group's taxable year by the total number of days in the taxable year. The tax for each member with an Idaho filing requirement is multiplied by the percentage. The result is the amount of tax that can be offset with a share of the credit, subject to other limitations imposed by law or related rules. ( )

**02. Conversion of C Corporation to S Corporation. ( )**

**a.** An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains and excess net passive income. The credit is allowed against this tax until the carryover period has expired. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. ( )

**b.** The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation is liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. ( )

**03. Agricultural Cooperatives.** The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year is to be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. ( )

**a.** The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. ( )

**04. Leased Property.** Generally, the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. ( )

**a.** If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit is to be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. ( )

**b.** If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. ( )

**712. -- 713. (RESERVED)**

**714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).**  
Section 63-3029B, Idaho Code

**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each taxable year during the recapture period. ( )

**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. ( )

**a. Percentage-of-Use Method.** If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year will be determined by the ratio of departures from locations in Idaho to total departures. ( )

**b. Property Factor Method.** If the property factor numerator option is elected, the qualified investment is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. ( )

i. The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. ( )

ii. “Correctly included in the numerator of the Idaho property factor” means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit will be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit will be allowed only on the fifty percent (50%) of the basis of the asset. ( )

**03. Order of Limitations.** The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. ( )

**04. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**715. IDAHO INVESTMENT TAX CREDIT: RECAPTURE (RULE 715).**  
Section 63-3029B, Idaho Code

**01. In General.** If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit will be made. ( )

**02. Recomputation of the Investment Tax Credit.** ( )

**a.** The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify. ( )

**b.** The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04. ( )

**c.** The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture. ( )

**03. Unitary Taxpayers.** The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. ( )

**04. Applicable Recapture Percentages.** For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows: ( )

**a.** If less than one (1) year, use one hundred percent (100%); ( )

**b.** If more than one (1) year but less than two (2) years, use eighty percent (80%); ( )

**c.** If more than two (2) years but less than three (3) years, use sixty percent (60%); ( )

- d. If more than three (3) years but less than four (4) years, use forty percent (40%); ( )
- e. If more than four (4) years but less than five (5) years, use twenty percent (20%). ( )

**716. IDAHO INVESTMENT TAX CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 716).**  
Section 63-3029B, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: ( )

- a. A description of the property; ( )
- b. The asset number assigned to the item of property, if applicable; ( )
- c. The acquisition date and date placed in service; ( )
- d. The basis of the property; ( )
- e. The class of the property for recovery property or the estimated useful life for nonrecovery property; ( )
- f. The designation as new or used property; ( )
- g. The location and utilization (the usage both in and outside Idaho) of the property; ( )
- h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and ( )
- i. The reason for acquisition if acquired prior to January 1, 1995. ( )

**02. Accounting Records Subject to Examination.** Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: ( )

- a. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. ( )
- b. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. ( )
- c. Records verifying ownership including purchase contracts and cancelled checks. ( )
- d. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. ( )
- e. Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. ( )
- f. Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars are to be calculated according to actual mileage in and outside Idaho. ( )
- g. A system that verifies that property on which the investment tax credit was claimed continues to

maintain its status as Idaho qualifying property throughout the recapture period. ( )

**03. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ( )

**04. Unitary Taxpayers.** Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ( )

**717. -- 718. (RESERVED)**

**719. IDAHO INVESTMENT TAX CREDIT: PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).**  
Section 63-3029B, Idaho Code

**01. In General.** Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. ( )

**02. Terms.** As used in this rule: ( )

**a. Qualifying Taxpayer.** A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. ( )

**i.** The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation is to not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group is to determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. ( )

**ii.** The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. ( )

**b. Second Preceding Taxable Year.** The term second preceding taxable year means the second preceding taxable year from the taxable year in which the property is placed in service. ( )

**03. Negative Idaho Taxable Income in Second Preceding Taxable Year.** ( )

**a. Net Operating Loss Carryovers and Carrybacks.** Negative Idaho taxable income in the second preceding taxable year is to be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. ( )

**b. Taxable year,** for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. ( )

**c. Unitary Taxpayers.** Each corporation included in a unitary combined group is to use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. ( )

**d. Pass-Through Entities.** A taxpayer who is a partnership or an S corporation does not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. ( )



**e.** Return Not Filed. If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer is not entitled to the exemption. ( )

**04. Used Property Limitation.** ( )

**a.** In General. The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment does not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. ( )

**b.** Selection of Items of Used Property. If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. ( )

**c.** Electing Property Tax Exemption on Selected Used Property Items. Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer is to determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. ( )

**05. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**720. CREDIT FOR IDAHO RESEARCH ACTIVITIES: IN GENERAL (RULE 720).**  
Section 63-3029G, Idaho Code

**01. Definitions.** The Idaho credit is computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. ( )

**02. Limitations.** The credit for Idaho research activities allowable in any taxable year is limited as follows: ( )

**a.** Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ( )

**b.** Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. ( )

**03. Short Taxable Year Calculations.** Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations are used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. ( )

**721. CREDIT FOR IDAHO RESEARCH ACTIVITIES: ELECTIONS (RULE 721).**  
Section 63-3029G, Idaho Code

**01. Election to Be Treated as a Start-Up Company.** Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal

Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities. ( )

- a. The election once made is irrevocable. ( )
- b. The election is made by checking the appropriate box on Form 67. ( )

c. A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company must use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. ( )

**02. Unitary Sharing.** A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ( )

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**722. (RESERVED)**

**723. CREDIT FOR IDAHO RESEARCH ACTIVITIES: RECORD-KEEPING REQUIREMENTS (RULE 723).**

Section 63-3029G, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item included in the computation of the credit for Idaho research activities claimed on an Idaho income tax return. The records must include all of the following: ( )

- a. Verification that the research was conducted in Idaho; ( )
- b. Verification that wages included in the computation were for qualified service performed by an employee in Idaho; ( )
- c. Verification that supplies included in the computation were used for research conducted in Idaho; ( )
- d. Verification that contract research expenses were for research conducted in Idaho; ( )
- e. Verification that the research activities meet the definition of qualified research; and ( )
- f. Verification that the amounts included in the Idaho computation are includable in the computation of the federal credit allowed by Section 41, Internal Revenue Code. ( )

**02. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ( )

**03. Unitary Taxpayers.** Corporations claiming the credit for Idaho research activities must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ( )

**724. -- 729. (RESERVED)**

**730. CREDIT FOR CONTRIBUTIONS TO IDAHO YOUTH FACILITIES, REHABILITATION FACILITIES AND NONPROFIT SUBSTANCE ABUSE CENTERS (RULE 730).**

Section 63-3029C, Idaho Code

**01. Qualified Contributions.** Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Fees for services provided, room and board, and similar charges are not contributions. ( )

**02. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. ( )

**03. Effect on Itemized Deductions.** The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. ( )

**731. -- 749. (RESERVED)**

**750. BROADBAND EQUIPMENT INVESTMENT CREDIT: IN GENERAL (RULE 750).**

Section 63-3029I, Idaho Code

**01. Unitary Taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. ( )

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

i. The fourteen (14) year carryover period provided by section 63-3029I(7), Idaho Code, extends throughout the fourteen (14) taxable years following the year in which the equipment was installed. The fourteen (14) year carryover period begins to run regardless of whether the taxpayer has sought and received approval from the Idaho public utilities commission (PUC). ( )

ii. Once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward pursuant to section 63-3029I(7), Idaho Code. ( )

iii. Example: A calendar year filer installed qualifying equipment on July 20, 2001. However, it was not until 2013 that the taxpayer sought and received the approval order from the PUC. The fourteen (14) year carryover period already began to run based on the installation date and will expire at the end of the 2015 taxable year. On March 10, 2013 the taxpayer is preparing his tax returns and considering how much broadband credit is available and to which taxable years it could be applied to. The taxpayer can file an amended return to claim the credit starting with taxable year 2009 (prior years would be out of the statute of limitations for filing an amended return assuming all returns had been timely filed and no other special circumstances had held the period open). The taxpayer must look back to taxable year 2001 (the year of installation) to see how much credit the taxpayer could have used in each taxable year up to 2009 to determine how much credit carryover amount is still available pursuant to the carryover limitations of section 63-3029I(7), Idaho Code. The taxpayer must use up or transfer any unused credit before taxable year 2016; after taxable year 2015, the carry forward period will expire and any unused credit will no longer be available for the taxpayer to apply or transfer. ( )

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

**04. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. ( )

**751. -- 752. (RESERVED)**

**753. BROADBAND EQUIPMENT INVESTMENT CREDIT: RECORD-KEEPING REQUIREMENTS (RULE 753).**

Section 63-3029I, Idaho Code

**01. Information Required.** Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the broadband equipment investment credit claimed on an income tax return subject to examination. The records must include all of the following: ( )

- a.** The order from the Idaho Public Utilities Commission confirming that the installed equipment is qualified broadband equipment. ( )
- b.** A description of the property; ( )
- c.** The asset number assigned to the item of property, if applicable; ( )
- d.** The acquisition date and date placed in service; ( )
- e.** The basis of the property; and ( )
- f.** The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable. ( )

**02. Accounting Records Subject to Examination.** Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: ( )

- a.** Source documents supporting the application to the Idaho Public Utilities Commission; ( )
- b.** Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information; ( )
- c.** Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents; ( )
- d.** Records verifying ownership including purchase contracts and cancelled checks; ( )
- e.** Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho; and ( )
- f.** A system that verifies that property on which the broadband equipment investment credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. ( )

**03. Failure to Maintain Adequate Records.** Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. ( )

**04. Unitary Taxpayers.** Corporations claiming broadband equipment investment credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. ( )

**05. Credit Transferred.** A taxpayer that transfers the broadband equipment investment credit is to continue to be subject to the record-keeping requirements of this rule for as long as the credit may be carried over by the transferee or until further assessment or deficiency determinations are barred by a period of limitation, whichever is longer. ( )

**754. -- 770. (RESERVED)**

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

**01. Residents.** ( )

**a.** The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. ( )

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

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

**a.** Received assistance under the federal food stamp program; or ( )

**b.** Was incarcerated. ( )

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

**05. Members of the Uniformed Services.** A member of the uniformed services who is: ( )

**a.** Domiciled in Idaho is entitled to this credit; ( )

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

**06. 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. ( )

**772. -- 774. (RESERVED)**

**775. CREDIT FOR LIVE ORGAN DONATION EXPENSES (RULE 775).**  
Section 63-3029K, Idaho Code

**01. Live Organ Donation Expenses.** Qualifying expenses is to be directly related to a live organ donation by the taxpayer or by a dependent of the taxpayer and includes the following: ( )

**a.** The unreimbursed cost of travel paid by the taxpayer to and from the place where the donation operation occurred. ( )

**b.** Unreimbursed lodging expenses paid by the taxpayer. ( )

**c.** Wages or other compensation lost because of the taxpayer's absence from work during the donation procedure and convalescence. ( )

**776. -- 784. (RESERVED)**

**785. CREDITS: PASS-THROUGH ENTITIES (RULE 785).**  
Section 63-3029(a), Idaho Code

**01. In General.** A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. ( )

**a.** Partnerships. A credit passes through to a partner based on that partner's distributive share of partnership profits. ( )

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

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

**d.** Idaho credits may not pass through to partners or owners based on special allocations. ( )

**02. Limitations.** ( )

**a.** In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. ( )

**03. Carryovers.** Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. ( )

**04. Different Taxable Year Ends.** If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. ( )

**05. Information Provided by a Pass-Through Entity.** The pass-through entity is to prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules are to be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. ( )

**06. Pass-Through Entities That Pay Tax.** ( )

**a.** A pass-through entity may apply and may recapture credits that generally pass through to the partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity. ( )

**b.** The partner, shareholder or beneficiary is responsible for the recapture or recomputation of credits passed through to the partner, shareholder, or beneficiary. ( )

**c.** Carryovers that exist after a pass-through entity offsets the tax with credit available to that partner, shareholder or beneficiary, remain a carryover of the partner, shareholder or beneficiary. ( )

**07. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**786. -- 789. (RESERVED)**

**790. TRANSFER OF CREDIT: IN GENERAL (RULE 790).**  
Sections 63-3029I Idaho Code

**01. Terms.** For purposes of Rules 790 through 795 of these rules, the following terms have the stated meanings: ( )

**a.** Transferor. The taxpayer who earns the credit and sells, conveys, or transfers the credit to another

taxpayer are referred to as the transferor. ( )

**b.** Transferee. The taxpayer who receives the credit from the transferor or intermediary is referred to as the transferee. ( )

**791. TRANSFER OF CREDIT: NOTIFICATION OF INTENDED TRANSFER (RULE 791).**

Sections 63-3029I Idaho Code

**01. Timing of Notification.** A taxpayer who intends to transfer qualified credit is to notify the Tax Commission in writing of its intent to transfer the credit at least sixty (60) days prior to the date of the transfer. A transfer may not take place prior to the Tax Commission providing its response as to the amount of credit available and the years the credit may be carried forward. ( )

**02. Information Required.** A transferor or intermediary is to notify the Tax Commission by submitting the following information on a form prescribed by the Tax Commission: ( )

**a.** Name, address, and federal employer identification number of the transferor or intermediary; ( )

**b.** Name, address, and federal employer identification number of the transferee; ( )

**c.** Type of credit to be transferred; ( )

**d.** Amount of credit to be transferred; ( )

**e.** Date of intended transfer; ( )

**f.** Signature of authorized individual for transferor or intermediary; and ( )

**g.** A copy of the Idaho Form 68, Idaho Broadband Equipment Investment Credit and required schedules for each tax year the credit being transferred was earned. ( )

**792. (RESERVED)**

**793. TRANSFER OF CREDIT: TRANSFEREE (RULE 793).**

Sections 63-3029I Idaho Code

**01. Tax Year Credit Available.** A transferee may first claim the transferred credit on an income tax return originally filed during the calendar year in which the transfer takes place. However, if the transferee did not claim the transferred credit on his original return filed during the calendar year in which the transfer takes place, he may not amend such return to claim the credit for that tax year. ( )

**02. Carryover Period.** If a credit is transferred, the transferee is entitled to any remaining carryover period that would have been allowed to the transferor or intermediary had the credit not been transferred. The Tax Commission is to verify the carryover period. The carryover period approved applies to the taxable year of the transferee that begins in the calendar year in which the transferor's taxable year begins. ( )

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**794. -- 798. (RESERVED)**

**799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).**

Section 63-3029P, Idaho Code

**01. Tax Liability.** Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. ( )

**02. Nonrefundable Credits.** A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: ( )

- a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; ( )
- b. For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; ( )
- c. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; ( )
- d. Investment tax credit as authorized by Section 63-3029B, Idaho Code; ( )
- e. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; ( )
- f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; ( )
- g. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; ( )
- h. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; ( )
- i. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and ( )
- j. Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. ( )
- k. Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. ( )
- l. Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. ( )
- m. Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. ( )
- n. Idaho child tax credit as authorized by Section 63-3029L, Idaho Code. ( )
- o. Credit for employer contributions to employee's Idaho college savings program account as authorized by Section 63-3029M, Idaho Code. ( )

**03. Adjustments to Credits.** ( )

a. Adjustments to the amount of a credit earned is determined pursuant to the law applicable to the taxable year in which the credit was earned. ( )

b. Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit also applies to any taxable years to which the credit was carried over. ( )

c. If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned does not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. ( )

**800. VALID INCOME TAX RETURNS (RULE 800).**  
Section 63-3030, Idaho Code



**01. Requirements of a Valid Income Tax Return.** In addition to the requirements set forth in IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules,” Rule 150, an income tax return is to meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. ( )

**02. Copy of Federal Return Required.** A taxpayer is to include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. ( )

**03. Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld is to attach appropriate Forms W-2 and 1099 and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically is to include the W-2 and 1099 information in the electronic record transmitted. ( )

**801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).**  
Section 63-3030, Idaho Code

**01. In General.** Persons who meet the filing requirements under Section 63-3030, Idaho Code, will file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law. ( )

**02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code.** For taxable years beginning prior to January 1, 2012, if an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual will not be required to file an Idaho individual income tax return for that taxable year. ( )

**03. Corporations Included in a Unitary Group.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. ( )

**04. Taxpayers Protected Under Public Law 86-272.** A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it will be included in the combined report although it is exempt from the income tax. The taxpayer’s property, payroll, and sales will be included in the computation of the group factor denominators and its business income will be included in the computation of apportionable income for the unitary group. ( )

**802. -- 804. (RESERVED)**

**805. JOINT RETURNS (RULE 805).**  
Sections 63-3031, 32-201, and 32-209, Idaho Code

**01. In General.** ( )

**a.** If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. ( )

**02. Resident Aliens or United States Citizens Married to Nonresident Aliens.** A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election is to be attached to the return for the first taxable year for which the election is to apply. In addition, the statement will include the name, address, and taxpayer identification number of each spouse, and is to be signed by both individuals making the election. ( )

**03. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**806. -- 809. (RESERVED)**

**810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).**

Section 63-3032, Idaho Code

A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. ( )

**811. -- 819. (RESERVED)**

**820. CORPORATE ESTIMATED PAYMENTS: IN GENERAL (RULE 820).**

Section 63-3036A, Idaho Code

**01. Estimated Tax.** The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho income tax credits, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. ( )

**02. Computation of Estimated Payments.** ( )

**a.** The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of income tax credits, less income tax credits excluding estimated payments. ( )

**b.** An estimated payment is not required if an Idaho return was not required for the previous taxable year. ( )

**03. Revised Income Estimate.** If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it recomputes its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. ( )

**04. Net Operating Loss or Capital Loss Carryover.** The allowable net operating loss carryover or capital loss carryover is to be deducted from income for the period before the estimated tax is computed. ( )

**821. CORPORATE ESTIMATED PAYMENTS: PAYMENTS (RULE 821).**

Section 63-3036A, Idaho Code

**01. Underpayments.** A payment of estimated tax is to be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it applies to the estimated payment then due. ( )

**02. Overpayments.** ( )

**a.** If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit against the next payment only to the extent it exceeds all underpayments of prior estimated payments. ( )

**b.** The overpayment is to be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. ( )

**c.** A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. ( )

**03. Obligation to File Returns.** The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not

relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. ( )

**822. CORPORATE ESTIMATED PAYMENTS: ANNUALIZED INCOME INSTALLMENT METHOD (RULE 822).**

Section 63-3036A, Idaho Code

**01. In General.** ( )

**a.** If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. ( )

**b.** See Section 6655, Internal Revenue Code, for the determination of annualized income. ( )

**02. Required Installment.** The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: ( )

**a.** Twenty-two and one-half percent (22.5%) for the first period; ( )

**b.** Forty-five percent (45%) for the second period; ( )

**c.** Sixty-seven and one-half percent (67.5%) for the third period; and ( )

**d.** Ninety percent (90%) for the fourth period. ( )

**03. Computation of Tax.** The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. ( )

**823. CORPORATE ESTIMATED PAYMENTS: SHORT TAXABLE YEAR (RULE 823).**

Section 63-3036A, Idaho Code

If a short taxable year ends before an estimated payment due date, remaining estimated payments is to be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**824. CORPORATE ESTIMATED PAYMENTS: MISCELLANEOUS PROVISIONS (RULE 824).**

Section 63-3036A, Idaho Code

**01. Unitary Groups Filing Group Returns.** ( )

**a.** Each corporation included in a group return that is required to make estimated payments separately computes its estimated tax. ( )

**b.** Estimated payments is to be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. ( )

**02. S Corporations.** An S corporation is subject to Section 63-3036A, Idaho Code, limited to its tax on net recognized built-in gains, excess net passive income and from recapture of Idaho income tax credits. ( )

**03. Tax-Exempt Organizations.** A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. ( )

**825. CORPORATE ESTIMATED PAYMENTS: INTEREST ON UNDERPAYMENT (RULE 825).**

Section 63-3046A, Idaho Code

**01. In General.** If a taxpayer is required to pay estimated taxes as provided in Section 63-3036A, Idaho Code, and fails to pay the amount of estimated taxes due, interest is due on the underpaid estimated taxes. ( )

**02. Net Operating Loss and Capital Loss Carrybacks.** If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the interest on underpayment of estimated tax will not be recomputed. ( )

**826. -- 829. (RESERVED)**

**830. INFORMATION RETURNS (RULE 830).**

Section 63-3037, Idaho Code

**01. In General.** Information returns are not required to be filed with the Tax Commission except as follows: ( )

**a.** Form 1098, Mortgage Interest Statement, if the property was located in Idaho. ( )

**b.** Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. ( )

**c.** Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. ( )

**d.** Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. ( )

**e.** Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. ( )

**f.** Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. ( )

**g.** Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. ( )

**h.** Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. ( )

**i.** Form 1099-NEC, Nonemployee Compensation, if it was issued for services performed in Idaho. ( )

**j.** Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, if the income is from Idaho sources. ( )

**02. Submitting Returns.** Information returns must be submitted to the Tax Commission through electronic filing or on a paper copy of federal Form 1099. ( )

**03. Due Date of Information Returns.** Information returns are made on a calendar year basis. The due date for information returns submitted through electronic filing or on paper is the last day of February following the close of the calendar year. ( )

**04. Voluntary Withholding.** Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: ( )

**a.** Obtain an Idaho withholding account number as required by Rule 870 of these rules; and ( )

b. Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of January. ( )

**831. -- 854. (RESERVED)**

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

Sections 63-3082 through 63-3087, Idaho Code

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

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

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

**856. -- 859. (RESERVED)**

**860. DONATIONS TO TRUST ACCOUNTS (RULE 860).**

Sections 63-3067A, 63-3067B, and 63-3067D, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. ( )

**861. -- 869. (RESERVED)**

**870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).**

Sections 63-3035 and 63-3036, Idaho Code

If a business is sold, the new employer is to apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity is to apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. ( )

**871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).**

Sections 63-3035 and 63-3036, Idaho Code

**01. Services Performed Within and Without Idaho.** An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. ( )

**02. Exceptions to Withholding Requirements.** Withholding is not required if: ( )

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. ( )

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; ( )

c. The compensation is paid to an interstate transportation employee of a rail carrier covered by Title

49, Section 11502, United States Code, who is a nonresident of Idaho; or ( )

**d.** The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or ( )

**e.** The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or ( )

**f.** The compensation is paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 46, Section 11108, United States Code; or ( )

**g.** The compensation is exempt from federal withholding. ( )

**872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).**  
 Sections 63-3035 and 63-3036, Idaho Code

**01. Payment of State Income Tax Withheld.** ( )

**a.** In General. An employer must remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. ( )

**b. Semimonthly Filers.** ( )

**i.** An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, will remit the tax withheld based on semimonthly withholding periods. The first semimonthly withholding period begins on the first day of the month and ends on the 15th day of the same month with payment made no later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. ( )

**ii. Threshold amounts:**

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
On or After July 1, 2005	\$20,000	\$240,000
On or After July 1, 2019	\$25,000	\$300,000

**iii.** An employer who meets the threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii. of this rule, but only has one (1) monthly pay period, may request approval by the Tax Commission to pay and report monthly. The request should include verification of monthly payroll. ( )

**c.** Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer will remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. ( )

**02. Filing of Annual Reconciliation Returns.** ( )

**a.** In General. An employer must file an annual reconciliation return for any calendar year in which

the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return will: ( )

i. Report payroll paid during the preceding calendar year; and ( )

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

**b.** Due Date of Reconciliation Returns. The annual reconciliation return must be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. ( )

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. ( )

**03. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. ( )

**a.** The employer must file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment must be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. ( )

**b.** The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. ( )

**04. Valid Returns.** All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule will be filed using the proper forms as prescribed by the Tax Commission. The forms will include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. ( )

**873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).**  
Section 63-3035, Idaho Code

**01. Verification.** The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on federal Form W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission will issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. ( )

**02. Notification.** The Tax Commission is to notify the employer of the order. The order is effective immediately on receipt by the employer and is to remain in effect the rest of the calendar year, unless the employee files federal Form W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. ( )

**03. Petition for Changes.** An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission will issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. ( )

**874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).**  
Sections 63-3035 and 63-3036, Idaho Code

**01. Form and Information Required.** Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or altered forms are not acceptable and may be returned to the employer for correction. ( )

**02. Furnishing Forms W-2 to Employees.** The employer must furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. ( )

**03. Filing Forms W-2 With the Tax Commission.** On or before the last day of January, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. ( )

**04. Corrected Forms W-2.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. ( )

**05. Employers With Fifty or More Idaho Employees.** Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. ( )

**06. Services Performed Within and Without Idaho.** If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. ( )

**07. Extension of Time to File Form W-2.** The Tax Commission may allow a one (1) month extension of time to file the W-2s. ( )

**a.** The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. ( )

**b.** The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. ( )

**875. -- 876. (RESERVED)**

**877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES (RULE 877).**  
Sections 63-3022L and 63-3036B, Idaho Code

**01. In General.** A pass-through entity that is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity that is required to be included in the individual's Idaho taxable income unless exempt from backup withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. ( )

**02. Exceptions to Backup Withholding.** Backup withholding by a pass-through entity is not required on the income of the following pass-through owners and beneficiaries: ( )

**a.** Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. ( )



**b.** Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: ( )

i. Is treated as a partnership for purposes of the Internal Revenue Code; and ( )

ii. Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year. ( )

**c.** Resident individuals and part-year resident individuals who have income other than from a pass-through entity. ( )

**d.** Nonresident individuals if: ( )

i. The pass-through entity has reported and paid the tax relating to the individual on a composite return pursuant to Section 63-3022L, Idaho Code. ( )

ii. Such individual's share of income and guaranteed payments of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the income is subject to tax; ( )

iii. The income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code; or ( )

iv. The individual has signed and the pass-through entity has approved an Idaho nonresident owner agreement. ( )

**03. Idaho Nonresident Owner Agreement.** When an individual signs an Idaho nonresident owner agreement, he agrees to file and pay tax on his share of Idaho income from a pass-through entity. The signed agreement must be the proper form prescribed by the Tax Commission and must be submitted to the pass-through entity each year. The pass-through entity must sign and approve the nonresident owner agreement for it to be valid. Their approval will signify their acknowledgment that they are liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the pass-through entity does not approve the nonresident owner agreement, the pass-through entity must withhold or include the individual in the composite return. The pass-through entity must retain the forms for three years following the end of the taxable year for which it is to apply. ( )

**04. Payment of Backup Withholding.** ( )

**a.** The pass-through entity must withhold amounts from the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld for a taxable year must be remitted to the Tax Commission annually on or before the fifteen day of the fourth month following the end of the taxable year, unless one of the exceptions under Subsection 877.02 of this rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. ( )

**b.** Amounts remitted as backup withholding for a taxable year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his taxable year in which the pass-through entity's taxable year ends. ( )

**05. Backup Withholding Returns.** A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ( )

**a.** The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; ( )

**b.** The amount of tax withheld; ( )

- c. Name, address, filing option, and social security number of each owner or beneficiary; ( )
- d. The pass-through entity's name, and federal employer identification number. ( )

**06. Failure to File Returns or Remit Backup Withholding.** Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of backup withholding by the due date may cause interest and penalties to be imposed. ( )

**878. -- 879. (RESERVED)**

**880. CREDITS AND REFUNDS (RULE 880).**

Section 63-3072, Idaho Code

- 01. Overpayment.** The term overpayment includes: ( )
- a. A voluntary and unrequested payment greater than an actual tax liability. ( )
  - b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. ( )
  - c. An excessive amount that a pass-through entity withholds pursuant to Section 63-3036B, Idaho Code. ( )
  - d. All amounts erroneously or illegally assessed or collected. ( )
  - e. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. ( )

**02. Requirements of a Valid Refund Claim.** Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: ( )

- a. The basis for the credit or refund claim, and ( )
- b. The amount of the overpayment. ( )

**03. Timely Claim Required for Refund.** ( )

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. ( )

b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. ( )

c. If a claim for credit or refund relates to an overpayment attributable to an Idaho net operating loss carryback incurred in taxable years beginning on and after January 1, 2013, an amended return carrying the loss back must be filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. ( )

**04. Amended Returns Required as Refund Claims.** The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer is declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. ( )

**05. Closed Issues.** The Tax Commission will deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. ( )

**06. Limitations on Refunds of Withholding and Estimated Payments.** As provided by Section 63-3072(c), Idaho Code, the Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. ( )

**07. Reduction or Denial of Refund Claims.** If the Tax Commission determines that a refund claim is in error, the Tax Commission will deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission will give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. ( )

**08. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. ( )

**09. Combined Reports -- Final Federal Determination and Change of Filing Method.** If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. ( )

**10. Duplicate Returns.** If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer must submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. ( )

**881. -- 884. (RESERVED)**

**885. INTEREST ON REFUNDS (RULE 885).**

Sections 63-3073 and 63-3045, Idaho Code

**01. Computation.** Except as provided in Subsection 885.03, the Tax Commission is to compute interest on a net refund as follows: ( )

**a.** Refunds of income tax withheld. The Tax Commission will pay interest on refunds of withholding if the refund is paid more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. For purposes of this rule, the refund is considered paid on the date it is postmarked. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine whether interest is to be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return. ( )

**b.** Tentative payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment. ( )

**02. Refunds from Net Operating Loss and Capital Loss Carrybacks.** Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year. ( )

**886. -- 889. (RESERVED)**

**890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (RULE 890).**  
Section 63-3069, Idaho Code

**01. Written Notice.** ( )

**a.** Written notice will include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. ( )

**b.** Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment does not constitute the required notification. ( )

**891. NOTICE OF ADJUSTMENT OF STATE OR TERRITORY TAX LIABILITY (RULE 891).**  
Sections 63-3069 and 63-3069A, Idaho Code

**01. Final Determination.** The term final determination of any deficiency or refund of income tax due to another state or territory as used in Section 63-3069, Idaho Code, means the final resolution of all issues that were adjusted by the other state or territory. ( )

**02. Written Notice.** ( )

**a.** Written notice is to include copies of all reports issued by the other state or territory, and any other documents and schedules required to clarify the adjustments to taxable income of the state or territory. If the final determination results in a refund of Idaho taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. ( )

**b.** Written notice included with an income tax return for a year or years other than the year subject to the adjustment by the state or territory does not constitute the required notification. ( )

**892. -- 894. (RESERVED)**

**895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (RULE 895).**  
Sections 63-3068 and 63-3069A, Idaho Code

**01. Federal Determination.** The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. ( )

**02. State or Territory Determination.** The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. ( )

**03. Protest of a Notice of Deficiency.** If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. ( )

**04. Waiver of the Period of Limitation.** If a taxpayer executes a waiver to extend the period of limitation, the waiver will state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver applies to each corporation included in the combined group. ( )

**05. Duplicate Returns.** If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer is to submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3068, Idaho Code. ( )

**896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (RULE 896).**  
Section 63-3068(e), Idaho Code

**01. Requirements of a Valid Request for Prompt Action.** The personal representative, executor, administrator, or other fiduciary representing the estate of a decedent is to file the request for prompt action in writing with the Tax Commission. The request must meet the following qualifications: ( )

- a.** It must be filed after the applicable return has been filed; ( )
- b.** It must be filed separately from any other document; ( )
- c.** It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and ( )
- d.** It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code. ( )

**02. Applicable Returns.** A request for prompt action does not apply to any return filed after the request has been filed. The request applies only to returns reflecting income earned or other activities and transactions occurring during the lifetime of the decedent or by his estate during the period of administration. ( )

**897. -- 899. (RESERVED)**

**900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (RULE 900).**  
Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals are to have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. ( )

**901. -- 939. (RESERVED)**

**940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – DEFINITIONS (RULE 940).**

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 944 of these rules, the following definitions apply: ( )

**01. Buildings and Structural Components.** Buildings and structural components means buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ( )

**02. New Plant and Building Facilities.** New plant and building facilities are facilities where employees are physically employed. ( )

**03. Investment in New Plant.** Investment in new plant means new plant and building facilities:( )

- a. That are constructed or erected by the taxpayer, or ( )
- b. That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition does not qualify as new plant. ( )
- c. That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ( )
- 04. Making Capital Investments.** The date capital investments are considered made will be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ( )
- 05. New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ( )
- 06. Project Period.** The project period is a period of time that begins and ends as follows: ( )
  - a. The project period may begin on one (1) of the following dates, but not prior to January 1, 2006: ( )
    - i. The date of a physical change to the project site; or ( )
    - ii. The date new employees begin providing personal services at the project site. ( )
  - b. The project period ends at the earliest of: ( )
    - i. The conclusion of the project, ( )
    - ii. Ten (10) years after the beginning of the project; or ( )
    - iii. December 31, 2030. ( )
- 07. Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria is to be located at one (1) contiguous site. ( )
- 08. Small Employer Investment Tax Credit.** Small employer investment tax credit means the additional income tax credit allowed by Section 63-4403, Idaho Code. ( )
- 09. Small Employer New Jobs Tax Credit.** Small employer new jobs tax credit means the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ( )
- 10. Small Employer Real Property Improvement Tax Credit.** Small employer real property improvement tax credit means the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ( )
- 11. Small Employer Tax Incentive Criteria.** Small employer tax incentive criteria means the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. ( )
- 12. Small Employer Tax Incentives.** Small employer tax incentives means the tax incentives allowed

by Title 63, Chapter 44, Idaho Code. ( )

**941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: IN GENERAL (RULE 941).**  
Sections 63-4401 and 63-4406, Idaho Code

**01. Pass-Through Entities.** The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ( )

**02. Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits are subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies will not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. ( )

**03. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. ( )

**04. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ( )

**942. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION: SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 942).**  
Section 63-4402, Idaho Code

**01. In General.** The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: ( )

**a.** Making capital investment in new plant and building facilities totaling five hundred thousand dollars (\$500,000) or more; ( )

**b.** Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code; ( )

**c.** Employment increases more than the ten (10) new employees described in Paragraph 942.01.b. of this rule will meet the requirements of Section 63-4402(2)(j)(ii)(2), Idaho Code; and ( )

**d.** Once the increase in employment has been reached, maintaining that increased employment in Idaho for the remainder of the project period. ( )

**02. Certification.** A taxpayer is to certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification is accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form includes the following information

- and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ( )
- a. A description of the qualifying project; ( )
  - b. The estimated or actual start date of the project; ( )
  - c. The estimated or actual end date of the project; ( )
  - d. The location of the project site or sites; ( )
  - e. The estimated or actual number of new jobs created during the project period; and ( )
  - f. The estimated or actual cost of capital investment in new plant and building facilities for each year in the project period. ( )

**03. Copy of Certification Form Required.** A copy of the certification form will be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ( )

**943. (RESERVED)**

**944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION – SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944).** Sections 63-4404 and 63-4406, Idaho Code

**01. Buildings and Structural Components of Buildings.** ( )

**a.** To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ( )

i. The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. ( )

ii. The buildings and structural components of buildings must be placed in service at the project site. ( )

**b.** Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, will not qualify for the small employer real property improvement tax credit. ( )

**945. -- 999. (RESERVED)**



**IDAPA 35 – IDAHO STATE TAX COMMISSION**  
**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-2202 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

This docket was created by extracting Sections 300-699 that were originally negotiated under companion docket 35-0101-2201 published in this bulletin and are part of the agency’s ZBR chapter rewrite. This was determined to be in the interest of the public and done under the direction of the Executive Office of the Governor. These sections were affected by 2022 HB563, which changed the way business income is apportioned from a three-factor method to a single-sales factor method. It also changed the way Idaho taxes multistate income from using a cost-of-performance method to market-based sourcing.

As a result of feedback from stakeholder participation during agency-held rules committee meetings, it was determined that the provisions in proposed Rule 571 would be difficult to administer and audit. The rule was designed to address a very unique scenario; the stakeholders were very doubtful that this unique scenario would regularly occur in Idaho. The conclusion was to remove Rule 571 from the pending rule with the knowledge that if the Commission ever comes across this unique situation it can be dealt with on a case-by-case basis using the alternative apportionment authority found in Section 63-3027(17), Idaho Code.

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 5, 2022 Idaho Administrative Bulletin, [Volume 22-10, pages 810-863](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian at (208) 332-6691.

DATED this 7th day of December.

Cynthia Adrian, Income Tax Specialist  
Idaho State Tax Commission, Governmental Affairs  
(20820 (20811321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36, Boise ID 83722-0036  
[cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov)  
(208) 334-6691

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

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

**PUBLIC HEARING SCHEDULE:** 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 19, 2022.

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:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

This docket was created by extracting Sections 300-699 that were originally negotiated under companion docket 35-0101-2201 published in this bulletin and are part of the agency's ZBR chapter rewrite. This was determined to be in the interest of the public and done under the direction of the Executive Office of the Governor. These sections were affected by 2022 HB563, which changed the way business income is apportioned from a three-factor method to a single-sales factor method. It also changed the way Idaho taxes multistate income from using a cost-of-performance method to market-based sourcing.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket number 35-0101-2201. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, page 47](#). The Tax Commission has held three public meetings, and all public comments received will be considered in the formulation and adoption of the pending rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-6691.

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 26, 2022.

DATED this October 5th, 2022.

**Substantive changes have been made to the pending rule.**  
*Italicized red text* indicates changes between the text of the proposed rule as adopted in the pending rule.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 35-0101-2202**

**35.01.01 – INCOME TAX ADMINISTRATIVE RULES**

***(BREAK IN CONTINUITY OF SECTIONS)***

***[The following Sections 300-699 were originally negotiated under companion docket 35-0101-2201 and are part of the agency’s ZBR chapter rewrite]***

**300. TAX ON CORPORATIONS (RULE 300).**

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

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

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

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

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

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

**301. -- 309. (RESERVED)**

**310. APPORTIONMENT ELECTIONS FOR MULTISTATE CORPORATIONS (RULE 310).**

Section 63-3027, Idaho Code

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

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

**b.** Apportionment and allocation pursuant to Article III, Section 1 of the Multistate Tax Compact. However, if this option is elected, in any case in which the provisions of Article III, Section 1 of the Multistate Tax Compact are inconsistent with the provisions of Section 63-3027, Idaho Code, the provisions of Section 63-3027, Idaho Code, shall control. Because of Subsection 63-3027(3), Idaho Code, this option is indistinguishable from the standard apportionment option identified above in Subsection 01.a. of this rule. ( )

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

**02. Three-Factor Apportionment Election for Certain Taxpayers.** The default apportionment factor for taxpayers under Section 63-3027, Idaho Code, is sales factor only. However, multistate taxpayers subject to Section 63-3027(23), Idaho Code, are an exception to the default provision of apportioning income and are subject separate accounting where required. Pursuant to Section 63-3027(10)(b), Idaho Code, an electrical corporation, a telephone corporation, a communications company, or a taxpayer subject to a special industry regulation pursuant to Rule 580 may elect to apportion all apportionable income of the taxpayer to Idaho by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). ( )

**03. Electing an Option.** A multistate corporation is to file pursuant to Section 63-3027, Idaho Code, unless it elects to report and pay income tax pursuant to one (1) of the options specified in Subsections 310.01.b., 310.01.c., or 310.02. The election must be made on the return by checking the applicable box if provided, otherwise, by attaching a written statement of the election to the return. After the election has been made, the election may not be changed for a taxable year thereafter without permission of the Tax Commission. A petition to change the election must include an explanation of the legal or factual basis for requesting the change and a computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. The written petition requesting the change of apportionment method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. ( )

**04. Election for Members of a Combined Group.** The elections identified in this Rule apply at the entity level, not to the entire combined group. For example, if an entity in a combined group is one (1) of the types of corporations allowed to make the three-factor election, and chooses to do so, but the other entities in the group are not the types of corporations allowed to make the three-factor election, these other entities will still use single sales factor. If mixing entities using different apportionment methods within a combined group produces apportionment results that do not fairly represent the business activity in Idaho of any of the taxpayers, then, pursuant to Section 63-3027(17), Idaho Code, the taxpayer may petition for or the Tax Commission may require, a reasonable alternative apportionment. A written statement must be attached to the combined return specifying which entities have or are electing to use three-factor apportionment. ( )

**311. -- 319. (RESERVED)**

**320. APPLICATION OF MULTISTATE RULES (RULE 320).**

Section 63-3027, Idaho Code

**01. Prologue.** Rules 320 through 699 of these rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code. The only exceptions to these allocation and apportionment rules are those set forth in these rules pursuant to the authority of Sections 63-3027(18) and 63-3027(23), Idaho Code. ( )

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

**321. -- 324. (RESERVED)**

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

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

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

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

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

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

**05. Combined Group.** Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(22) or 63-3027B, Idaho Code, if the water's edge election is made. ( )

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

**07. Gross Receipts.** ( )

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

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

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

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

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

- v. Property acquired by an agent on behalf of another; ( )
- vi. Tax refunds and other tax benefit recoveries; ( )
- vii. Pension reversions; ( )
- viii. Contributions to capital; ( )
- ix. Income from forgiveness of indebtedness; or ( )
- x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. ( )

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

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

**09. MTC.** The Multistate Tax Commission. ( )

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

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

**326. -- 329. (RESERVED)**

**330. APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED: APPORTIONMENT AND ALLOCATION (RULE 330).**

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

**331. APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED: APPORTIONABLE INCOME (RULE 331).**

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

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

**02. Terms Used in Definition of Apportionable Income and in Application of Definition.** As used in the definition of apportionable income and in the application of the definition. ( )

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

Idaho. ( )

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

**332. APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED: TRANSACTIONAL TEST (RULE 332).**

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

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

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

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

**333. APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED: FUNCTIONAL TEST (RULE 333).**

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

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

**02. Terms.** ( )

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

**b.** “Acquisition” refers to the act of obtaining an interest in property. ( )

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

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

**e.** “Integral part” refers to property that constituted a part of the composite whole of the trade or

business, each part of which gave value to every other part, in a manner that materially contributed to the production of apportionable income. ( )

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

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

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

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

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

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

**334. APPORTIONABLE AND NONAPPORTIONABLE INCOME DEFINED: RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).**  
Section 63-3027(1)(a), Idaho Code



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

**335. NONAPPORTIONABLE INCOME (RULE 335).**

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

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

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

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

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

**336. APPOINTIONABLE AND NONAPPORTIONABLE INCOME: APPLICATION OF DEFINITIONS (RULE 336).**

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

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

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

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

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

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

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

**337. -- 339. (RESERVED)**

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

Section 63-3027, Idaho Code

**01. The Concept of a Unitary Business.** ( )

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

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

**02. Constitutional Requirement for a Unitary Business.** ( )

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

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

**03. Separate Trades or Businesses Conducted Within a Single Entity.** A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income

attributable to each separate unitary business as well as its nonapportionable income, which is specifically allocated. The apportionable income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned.

( )

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

( )

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

Section 63-3027, Idaho Code

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

( )

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

( )

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

Section 63-3027, Idaho Code

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

( )

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

( )

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

determining the existence of economies of scale and centralization of management.) ( )

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

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

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

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

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

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

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

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

**a. Centralized Purchasing.** Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business

engaging in the purchasing provides evidence of economies of scale. ( )

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

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

Section 63-3027, Idaho Code

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

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

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

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

Section 63-3027, Idaho Code

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

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

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

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

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

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

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

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

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

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

**03. Elections and Terminations.** ( )

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

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

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

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

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

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

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

i. The individual’s spouse. ( )

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

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

b. Stock owned by a corporation, or a member of a controlled group of which the corporation is the

parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. ( )

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

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

**e.** In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. ( )

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

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

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

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

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

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

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

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

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

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

**345. -- 349. (RESERVED)**

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

**01. In General.** In most cases a taxpayer's allowable deduction applies only to the apportionable income arising from a particular trade or business or to a particular item of nonapportionable income. In some cases

an allowable deduction applies to the apportionable income of more than one trade or business, to several items of nonapportionable income, or to both. In these cases the deduction is to be prorated among the trades or businesses and the items of nonapportionable income in a manner that fairly distributes the deduction among the classes of income to which it applies. ( )

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

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

**351. -- 354. (RESERVED)**

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

Section 63-3027, Idaho Code. If a corporation has business activity both within and without Idaho, and is taxable in another state as a result of this business activity, the portion of the net income or net loss derived from sources in Idaho will be determined by apportionment pursuant to Section 63-3027, Idaho Code. ( )

**356. -- 359. (RESERVED)**

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

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

**361. -- 364. (RESERVED)**

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

Section 63-3027, Idaho Code

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

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

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

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

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

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

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



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

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

**07. Dividends and Other Intangible Income.** Dividends and other intangible income is to be included in income subject to apportionment to the extent they constitute apportionable income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. ( )

**366. -- 369. (RESERVED)**

**370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (RULE 370).**

Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho allocates all of its nonapportionable income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. ( )

**371. -- 374. (RESERVED)**

**375. CONSISTENCY AND UNIFORMITY IN REPORTING (RULE 375).**

Section 63-3027, Idaho Code

**01. Year to Year Consistency.** If a taxpayer departs from or modifies the method used for classifying income as apportionable income or nonapportionable income in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ( )

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

**376. -- 384. (RESERVED)**

**385. TAXABLE IN ANOTHER STATE: IN GENERAL (RULE 385).**

Section 63-3027(4), Idaho Code

**01. In General.** A taxpayer is subject to the allocation and apportionment provisions of Section 63-3027, Idaho Code, if it has income from business activity that is taxable both within and without Idaho. A taxpayer's income from business activity is taxable without Idaho if the taxpayer is taxable in another state within the meaning of Section 63-3027(4), Idaho Code, as a result of that business activity. A taxpayer is taxable in another state if it meets either of the following tests: ( )

**a.** The taxpayer is subject to one (1) of the taxes specified in Section 63-3027(4)(a), Idaho Code, as a result of its business activity in another state; or ( )

**b.** Another state has jurisdiction to subject the taxpayer to a net income tax as a result of its business activity, regardless of whether the state imposes the tax on the taxpayer. ( )

**02. Not Taxable in Another State.** A taxpayer is not taxable in another state with respect to a

particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonapportionable income or business activities relating to a separate trade or business. ( )

**386. -- 389. (RESERVED)**

**390. TAXABLE IN ANOTHER STATE: WHEN A TAXPAYER IS SUBJECT TO TAX (RULE 390).**

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

**01. Subject to Tax.** A taxpayer is subject to one of the taxes specified in Section 63-3027(4)(a), Idaho Code, if it carries on business activity in a state and that state imposes one of those taxes on it. A taxpayer that claims it is subject to one (1) of the taxes specified in Section 63-3027(4)(a), Idaho Code, is to furnish the Tax Commission, at its request, evidence to support this claim. The Tax Commission may request that evidence include proof the taxpayer has filed the required tax return in the other state and has paid any taxes imposed by the law of that state. The taxpayer's failure to provide proof may be considered in determining whether the taxpayer is subject to one of the taxes specified in Section 63-3027(4)(a), Idaho Code. ( )

**02. Concept of Taxability.** The concept of taxability in another state is based on the premise that every state in which the taxpayer transacts business may impose an income tax even though every state does not do so. A state may impose other types of taxes as a substitute for an income tax. Only those taxes specified in Section 63-3027(4)(a), Idaho Code, that are revenue producing rather than regulatory in nature is to be considered in determining taxability in another state. ( )

**03. Examples of Taxability. ( )**

**a.** State A requires each corporation that qualifies or registers in State A to pay the Secretary of State an annual license fee or tax for the privilege of doing business in the state, regardless of whether it exercises the privilege. The amount paid is determined according to the total authorized capital stock of the corporation; the rates progressively increase. The statute sets a minimum fee of fifty dollars (\$50) and a maximum fee of five hundred dollars (\$500). Failure to pay the tax bars a corporation from using the state courts to enforce its rights. State A also imposes a corporation income tax. Corporation X is qualified in State A and pays the required fee to the Secretary of State, but does not transact business in State A, although it may use the courts of State A. Corporation X is not taxable in State A. ( )

**b.** Assume the same facts as in Subsection 390.03.a., except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is subject to the net income tax of State A and is taxable in State A. ( )

**c.** State B requires all corporations qualified or registered in State B to pay the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of: outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3) factor apportionment formula. Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is taxable in State B. ( )

**d.** State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state, but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax. ( )

**04. Voluntary Tax Payment.** A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(4)(a), Idaho Code, if the taxpayer voluntarily files and pays the tax when not required to do so by the laws of that state. ( )

**05. Minimum Tax or Fee.** A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(4)(a), Idaho Code if it pays a minimal fee for qualification, organization, or the privilege of doing business in that state, but: ( )

**a.** Does not transact business in that state; or ( )

**b.** Engages in business activity not sufficient for nexus, and the minimum tax bears no relationship to the taxpayer's business activity within that state. ( )

**c.** Example. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty dollar (\$50) minimum tax, although it does not transact business in State A. Corporation X is not taxable in State A. ( )

**391. -- 394. (RESERVED)**

**395. TAXABLE IN ANOTHER STATE: WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (RULE 395).**

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

**01. In General.** The test in Section 63-3027(4)(b), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity pursuant to the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax due to Public Law 86-272, Title 15, Sections 381 through 385, United States Code. ( )

**a.** When determining if a state has jurisdiction to subject a taxpayer to a net income tax, the jurisdictional standards applicable to a state of the United States is to also apply to the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. ( )

**b.** The provisions of a treaty between a state and the United States are not considered when determining jurisdiction to tax. ( )

**02. Example.** Corporation X is engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B. ( )

**396. -- 449. (RESERVED)**

**450. APPORTIONMENT FORMULA (RULE 450).**

Section 63-3027(10), Idaho Code

**01. Apportionment Factors.** All of a taxpayer's apportionable income is to be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(10), Idaho Code. Generally, a taxpayer's apportionment formula consists of the sales factor only. Pursuant to Section 63-3027(10)(b), however, certain taxpayers may elect an apportionment formula that includes the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. ( )

**02. Intercompany Transactions.** Intercompany transactions are to be eliminated to the extent necessary to properly compute the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. ( )

**03. Rounding.** The individual factors and the average apportionment factor is to be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. ( )

**04. Verification of Factors.** The taxpayer is to make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence

penalty provided by Section 63-3046(a), Idaho Code. ( )

**451. -- 459. (RESERVED)**

**460. PROPERTY FACTOR: IN GENERAL (RULE 460).**

Section 63-3027(16)(a), Idaho Code

**01. In General.** The property factor of the apportionment formula for each trade or business of the taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the taxable year in the regular course of its trade or business. The term real and tangible personal property includes land, buildings, fixtures, inventory, equipment, and other property of a tangible nature, but does not include coin or currency. ( )

**02. Nonapportionable Income.** Property used in connection with the production of nonapportionable income is to be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonapportionable income is to be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. ( )

**03. Average Value.** The property factor is to reflect the average value of property includable in the factor. See Rule 490 of these rules. ( )

**04. Denominator.** The denominator of the factor may not exceed the sum of all the numerators. ( )

**461. -- 464. (RESERVED)**

**465. PROPERTY FACTOR: PROPERTY USED FOR THE PRODUCTION OF APPORTIONABLE INCOME (RULE 465).**

Section 63-3027(16)(a), Idaho Code

**01. In General.** ( )

**a.** Property is to be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials is to be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. ( )

**b.** Property or equipment under construction during the taxable year, except inventoriabile goods in process, is to be excluded from the factor until the property is used in the regular course of the taxpayer's trade or business. ( )

**c.** If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property is to be included in the property factor to the extent used. ( )

**d.** Property used in the regular course of the taxpayer's trade or business is to remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or business. ( )

**02. Examples.** ( )

**a.** A taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold. ( )

**b.** Assume the same facts as in Subsection 465.02.a., except the property was rented until the plant

was sold. The plant is included in the property factor until the plant is sold. ( )

**466. -- 469. (RESERVED)**

**470. PROPERTY FACTOR: CONSISTENCY IN REPORTING (RULE 470).**

Section 63-3027(16)(a), Idaho Code

**01. Year to Year Consistency.** If a taxpayer departs from or modifies the method used for valuing property, or for excluding or including property in the property factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ( )

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

**471. -- 474. (RESERVED)**

**475. PROPERTY FACTOR: NUMERATOR (RULE 475).**

Section 63-3027(16)(a), Idaho Code

**01. In General.** The numerator of the property factor is to include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. ( )

**02. Property in Transit.** Property of the taxpayer that is in transit between locations is to be considered to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it is to be included in the numerator according to the state of destination. ( )

**03. Mobile or Movable Property. ( )**

**a.** The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year will be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. ( )

**b.** An automobile assigned to a traveling employee is to be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. ( )

**c.** The value of aircraft used within and without Idaho during the taxable year will be determined by multiplying the value of the aircraft by the ratio of departures from locations in Idaho to total departures. ( )

**476. -- 479. (RESERVED)**

**480. PROPERTY FACTOR: VALUATION OF OWNED PROPERTY (RULE 480).**

Section 63-3027(16)(b), Idaho Code

**01. In General.** Property owned by a taxpayer is to be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments at the time of acquisition and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property is to be included in the property factor whether or not they have been expensed for either federal or state tax purposes. ( )

**02. Examples. ( )**

**a.** A taxpayer acquired a factory building in Idaho at a cost of five hundred thousand dollars (\$500,000). Eighteen (18) months later the taxpayer remodeled the building for a cost of one hundred thousand dollars (\$100,000). The taxpayer files its return on the calendar year basis. The taxpayer claimed a depreciation deduction of twenty-two thousand dollars (\$22,000) on its current year return. The value of the building included in the numerator and denominator of the property factor is six hundred thousand dollars (\$600,000). The depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. ( )

**b.** During the current taxable year, X Corporation merged into Y Corporation in a tax-free reorganization pursuant to the Internal Revenue Code. At the time of the merger, X Corporation owned a factory that it built five (5) years earlier at a cost of one million dollars (\$1,000,000). X has been depreciating the factory at the rate of two percent (2%) per year. Its basis in X's hands at the time of the merger is nine hundred thousand dollars (\$900,000). Since Y acquired the property in a tax-free transaction, Y includes the property in its property factor at X's original cost of one million dollars (\$1,000,000). ( )

**03. Unknown Original Cost.** If the original cost of property cannot be determined, the property is included in the factor at its fair market value on the date it was acquired. ( )

**04. Inventory.** Inventory is to be included in the factor according to the valuation method used for federal income tax purposes. ( )

**05. Gifts or Inheritance.** Property acquired by gift or inheritance is to be included in the factor at its basis pursuant to the Internal Revenue Code. ( )

**481. -- 484. (RESERVED)**

**485. PROPERTY FACTOR: VALUATION OF RENTED PROPERTY (RULE 485).**

Section 63-3027(16)(b), Idaho Code

**01. In General.** Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute apportionable income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. ( )

**02. Examples of Subrents.** ( )

**a.** A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are apportionable income, they are not deducted from rent paid by the taxpayer for the food market. ( )

**b.** A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business. The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business. Since the subrents are apportionable income, they are not deducted from the rent paid by the taxpayer. ( )

**03. Annual Rental Rate.** Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year is to be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. ( )

**04. Examples of Annual Rental Rate.** ( )

**a.** Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or  $(\$2,500 \times 12)$ . ( )

**b.** Assume the same facts as in Paragraph 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or  $(\$2,500 \times 8)$ . ( )

**05. Annual Rent.** Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: ( )

**a.** Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. ( )

**b.** Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent is to be determined by considering the relative values of the rent and the other items. ( )

**06. Examples of Annual Rent.** ( )

**a.** Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or  $(\$12,000 + (1\% \times \$400,000))$ . ( )

**b.** Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). ( )

**c.** A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). ( )

**07. Exclusions.** Annual rent does not include any of the following: ( )

**a.** Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. ( )

**b.** Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. ( )

**08. Leasehold Improvements.** Leasehold improvements is to be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements is to be included in the lessee's factor. ( )

**09. Safe Harbor Lease.** Property subject to a safe harbor lease will be reported in the factor of the actual user of the property at original acquisition cost. ( )

**486. -- 489. (RESERVED)**

**490. PROPERTY FACTOR: AVERAGING PROPERTY VALUES (RULE 490).**

Section 63-3027(16)(c), Idaho Code

**01. In General.** The average value of property owned by a taxpayer is to be determined by averaging the values at the beginning and end of the taxable year. ( )

**02. Monthly Averaging.** The Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the taxable year. Averaging by monthly values generally applies if there are substantial fluctuations in the property values during the taxable year or if property is acquired or disposed of during the taxable year. ( )

**03. Rented Property.** Rented property is averaged automatically by determining the net annual rental rate of the property as set forth in Rule 485 of these rules. ( )

**491. -- 499. (RESERVED)**

**500. PAYROLL FACTOR: IN GENERAL (RULE 500).**

Section 63-3027(16)(d), Idaho Code

**01. In General.** The payroll factor of the apportionment formula for each trade or business of the taxpayer includes the total amount paid for compensation during the taxable year by the taxpayer in the regular course of its trade or business. ( )

**02. Compensation.** For purposes of the payroll factor, compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. ( )

**a.** Compensation includes the value of board, rent, housing, lodging, and other benefits or services the taxpayer furnished to employees in return for personal services if the amounts constitute income to the recipient pursuant to the Internal Revenue Code. ( )

**b.** If employees are not subject to the Internal Revenue Code, for example, those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees is made as if the employees were subject to the Internal Revenue Code. ( )

**c.** If wages paid to employees are capitalized into the cost of an asset that is used in the regular course of the taxpayer's trade or business, these wages are included in the payroll factor. ( )

**03. Amount Paid.** The total amount paid to employees is determined by the taxpayer's accounting method. If the taxpayer uses the accrual method of accounting, all compensation properly accrued is deemed to have been paid. At the election of the taxpayer, compensation paid to employees may be included in the payroll factor by using the cash method if the taxpayer is required to use that method to report compensation for unemployment insurance purposes. ( )

**04. Employee.** For purposes of the payroll factor, employee means any officer of a corporation, or any individual who, pursuant to the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person is considered an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term employees in the FICA who would not be employees pursuant to the usual common-law rules, it may be established that a person who is included as an employee for purposes of the FICA is not an employee for purposes of this rule. ( )

**05. Exclusions.** The following are excluded from the payroll factor: ( )

**a.** Compensation paid to an employee for services connected with the production of nonapportionable income; ( )



b. Payments to an independent contractor or a person not properly classifiable as an employee. ( )

**06. Year to Year Consistency.** If a taxpayer departs from or modifies the method used for treating compensation paid in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ( )

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

**501. -- 504. (RESERVED)**

**505. PAYROLL FACTOR: DENOMINATOR (RULE 505).**  
Section 63-3027(16)(d), Idaho Code

**01. In General.** The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. The denominator may not exceed the sum of all numerators. ( )

**02. Example.** A taxpayer has employees in States A, B, and C. However, in State C the taxpayer is immune from taxation by Public Law 86-272. The compensation paid to employees for services performed in State C is assigned to that state. This compensation is included in the denominator even though the taxpayer is not taxable in State C. ( )

**506. -- 509. (RESERVED)**

**510. PAYROLL FACTOR: NUMERATOR (RULE 510).**  
Section 63-3027(16)(d), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(16)(e), Idaho Code, apply in determining whether compensation is paid in Idaho. It will be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. ( )

**511. -- 514. (RESERVED)**

**515. PAYROLL FACTOR: COMPENSATION PAID IN IDAHO (RULE 515).**  
Section 63-3027(16)(e), Idaho Code

**01. In General.** Compensation is paid in Idaho if one of the tests in Section 63-3027(16)(e), Idaho Code, is met. ( )

**02. Definitions.** The following definitions are to be used for purposes of the payroll factor: ( )

**a.** Incidental means a service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction. ( )

**b.** Base of operations means the place of a more or less permanent nature where the employee starts his work and where he customarily returns to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to his trade or profession. ( )

**c.** Place from which the service is directed or controlled means the place where the power to direct or control is exercised by the taxpayer. ( )

**516. -- 524. (RESERVED)**

**525. SALES FACTOR: IN GENERAL (RULE 525).**

Section 63-3027(10)(a), Idaho Code

**01. In General.** Sales means all gross receipts of a taxpayer not allocated as nonapportionable income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business or otherwise required to be included as apportionable income. ( )

**02. Examples.** ( )

**a.** If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if these taxes are passed on to the buyer or included in the product's selling price. ( )

**b.** In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost plus the fee. ( )

**c.** If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items. ( )

**d.** If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property. ( )

**e.** If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions. ( )

**f.** If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. ( )

**g.** If a taxpayer derives receipts from foreign source dividends that are apportionable income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales. ( )

**03. Disregarding Gross Receipts.** In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules. ( )

**04. Year to Year Consistency.** If a taxpayer departs from or modifies the basis used for excluding or including gross receipts in the sales factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. ( )

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

**526. -- 529. (RESERVED)**

**530. SALES FACTOR: DENOMINATOR (RULE 530).**

Section 63-3027(10)(a), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business or otherwise required to be included as apportionable income, except receipts excluded by Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators. ( )

**531. -- 534. (RESERVED)**

**535. SALES FACTOR: NUMERATOR (RULE 535).**

Section 63-3027(10)(a), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business or otherwise required to be included as apportionable income. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. ( )

**536. -- 539. (RESERVED)**

**540. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 540).**

Section 63-3027(12), Idaho Code

**01. Gross Receipts.** Gross receipts from sales of tangible personal property, except sales to the United States Government as discussed in Rule 545 of these rules, are in Idaho if: ( )

**a.** The property is delivered or shipped to a purchaser in Idaho regardless of the f.o.b. point or other conditions of sale; or ( )

**b.** The property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho and the taxpayer is not taxable in the state of the purchaser. ( )

**02. Destination Sales.** ( )

**a.** Property is deemed to be delivered or shipped to a purchaser in Idaho if the recipient is in Idaho even though the property is ordered from outside Idaho. Example: A taxpayer, with inventory in State A, sold one hundred thousand dollars (\$100,000) of its products to a purchaser with branch stores in several states including Idaho. The order for the purchase was placed by the purchaser's central purchasing department in State B. Twenty-five thousand dollars (\$25,000) of the purchase order was shipped directly to purchaser's branch store in Idaho. The branch store in Idaho is the purchaser in Idaho with respect to twenty-five thousand dollars (\$25,000) of the taxpayer's sales. ( )

**b.** Property is delivered or shipped to a purchaser in Idaho if the shipment terminates in Idaho, even if the property is subsequently transferred to another state by the purchaser. Example: A taxpayer makes a sale to a purchaser who maintains a central warehouse in Idaho where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Idaho constitute property delivered or shipped to a purchaser in Idaho. ( )

**03. Purchaser.** The term purchaser in Idaho includes the ultimate recipient of the property if at the request of the purchaser the taxpayer in Idaho delivers to or has the property shipped to the ultimate recipient in Idaho. Example: A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Idaho according to the purchaser's instructions. The sale by the taxpayer is in Idaho. ( )

**04. Diverted Shipment.** If a seller ships property from the state of origin to a consignee in another state, and the property is diverted while en route to a purchaser in Idaho, the sales are in Idaho. Example: The taxpayer, a produce grower in State A, begins shipping perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in Idaho where the taxpayer is subject to tax. The sale by the taxpayer is in Idaho. ( )

**05. Throwback Sales.** If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example: A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. ( )

**06. Third-Party Throwback Sales.** If a taxpayer's salesman operating from an office in Idaho makes a sale to a purchaser in another state where the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: ( )

**a.** If the taxpayer is taxable in the state from which the third-party ships the property, the sale is in that state. ( )

**b.** If the taxpayer is not taxable in the state from which the property is shipped, the sale is in Idaho. ( )

**c.** Example. A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer is not taxable in State A. On direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Idaho. ( )

**541. -- 544. (RESERVED)**

**545. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (RULE 545).**

Section 63-3027(12), Idaho Code

**01. In General.** Gross receipts from sales of tangible personal property to the United States Government are in Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. For purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Generally, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, are not sales to the United States Government. ( )

**02. Examples.** ( )

**a.** A taxpayer contracts with the General Services Administration to deliver a truck that was paid for by the United States Government. The sale is a sale to the United States Government. ( )

**b.** A taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a rocket component for one million dollars (\$1,000,000). The sale by the subcontractor to the prime contractor is not a sale to the United States Government. ( )

**546. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE – GENERAL RULES (RULE 546).**

Section 63-3027(13), Idaho Code

**01. Definitions.** For the purposes of this Rules 546 through 551, these terms have the following meanings: ( )

**a.** Billing address. The location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes. ( )

**b.** Business customer. A customer that is a business operating in any form, including a sole

proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales. ( )

c. Individual customer. A customer that is not a business customer. ( )

d. Intangible property. Generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in these rules, computer software. ( )

e. Place of order. The physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer. ( )

f. Population. The most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period. ( )

g. Related Party. ( )

i. A stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; ( )

ii. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or ( )

iii. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met. ( )

h. State where a contract of sale is principally managed by the customer. The primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer. ( )

**02. General Principles of Application – Contemporaneous Records. ( )**

a. A taxpayer shall apply the principles set forth in Rules 546 through 551 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including the taxpayer's books and records kept in the normal course of the taxpayer's business. A taxpayer shall determine its method of assigning receipts in good faith and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the Tax Commission upon request. ( )

b. Rules 546 through 551 provide various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer

to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states. ( )

c. A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the standards set forth in Rules 546 through 551, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts. ( )

**03. Rules of Reasonable Approximation. ( )**

a. In General. In general, Rules 546 through 551 establish uniform provisions for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. These rules also set forth provisions of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific provisions of approximation prescribed in these rules. In other cases, the applicable provision in these rules permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable provisions or standards set forth in these rules. ( )

b. Approximation Based Upon Known Sales. In an instance where, applying the applicable provisions set forth in Rule 548 (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its sales factor in the same proportion as its assigned receipts. This provision also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. See Rule 549.05 and 550.01.c. ( )

c. Related-Party Transactions – Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to these rules from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer, unless the taxpayer shows that imputing such knowledge is unreasonable. ( )

**547. SALES FACTOR: RENTAL, LEASE, OR LICENSE OF TANGIBLE PERSONAL PROPERTY (RULE 547).**

Section 63-3027(13)(b), Idaho Code. In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under Rule 475.03 (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year). ( )

**548. SALES FACTOR: SALE OF A SERVICE (RULE 548).**

Section 63-3027(13)(c), Idaho Code

**01. General Rule.** The receipts from a sale of a service are in this state if and to the extent that the service is delivered to a location in this state. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth below in Subsections 548.02 through 548.04. ( )

**02. In-Person Services. ( )**

a. In General. Except as otherwise provided in this Subsection 548.02, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are

performed. This Rule 548 includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays and mental health care and treatment; childcare; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in Subsection 548.04 of this rule, although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this Subsection 548.02. ( )

**b.** Assignment of Receipts, Rule of Determination. Except as otherwise provided in this paragraph (b.), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows: ( )

i. If the service is performed with respect to the body of an individual customer in this state (e.g. hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g. live entertainment or athletic performances), the service is received in this state. ( )

ii. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state. ( )

iii. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state. ( )

**c.** Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. ( )

**03. Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.** ( )

**a.** In General. If the service provided by the taxpayer is not an in-person service within the meaning of Subsection 548.02 of this rule or a professional service within the meaning of Subsection 548.04 of this rule), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For purposes of this Subsection 548.03, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience (see Subparagraph 548.03.b.i. below and the Example under 548.03.b.i.(3)(d) below). A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient. ( )

**b.** Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this Subsection 548.03, a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this Subsection 548.03 depends on whether the customer is an individual

or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. ( )

i. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this Subparagraph 548.03.b.i. apply whether the taxpayer's customer is an individual customer or a business customer. ( )

(1) Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states. ( )

(2) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states. ( )

ii. Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following provisions apply. ( )

(1) Services Delivered By Electronic Transmission to an Individual Customer. ( )

(a) Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states. ( )

(b) Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address. ( )

(2) Services Delivered By Electronic Transmission to a Business Customer. ( )

(a) Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this subpart (548.03.b.ii.(2)), it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer. ( )

(b) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. ( )



(c) **Secondary Rule of Reasonable Approximation.** In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in Rules 546 through 551. In these cases, unless the taxpayer can apply the safe harbor set forth in Subsection 548.03.b.ii.(2)(d) below, the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than five percent (5%) of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer. ( )

(d) **Safe Harbor.** In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under Subsection 548.03.b.ii.(2)(b) above, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at Subsection 548.03.b.ii.(2)(c) above, apply the safe harbor stated in this subpart. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than two hundred fifty (250) customers, whether business or individual, and (2) does not derive more than five percent (5%) of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise. ( )

(e) **Related Party Transactions.** In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in Subsection 548.03.b.ii.(2)(c) above, but may use the rule of reasonable approximation in Subsection 548.03.b.ii.(2)(b) above, and the safe harbor in Subsection 548.03.b.ii.(2)(d) above, provided that the Tax Commission may aggregate sales to related parties in determining whether the sales exceed five percent (5%) of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion. ( )

iii. **Services Delivered Electronically Through or on Behalf of an Individual or Business Customer.** A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients. ( )

(1) **Rule of Determination.** In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. The rules in this part (548.03.b.iii.(1)) apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses. ( )

(2) **Rule of Reasonable Approximation.** If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states. ( )

(3) **Select Secondary Rules of Reasonable Approximation.** ( )

(a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area. ( )

(b) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area. ( )

(c) When using the secondary reasonable approximation methods provided above, the relevant specific geographic area [of delivery] include only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States. ( )

**04. Professional Services.** ( )

a. In General. Except as otherwise provided in this Subsection 548.04, professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services. ( )

b. Overlap with Other Categories of Services. ( )

i. Certain services that fall within the definition of "professional services" set forth in this Subsection 548.04 are nevertheless treated as "in-person services" within the meaning of subsection 548.02 above, and are assigned under the rules of that subsection. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this Subsection 548.04, notwithstanding the fact that these services may involve some amount of in-person contact. ( )

ii. Professional services may in some cases include the transmission of one (1) or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this Subsection (548.04), and not those set forth in subsection 03 above, pertaining to services delivered to a customer or through or on behalf of a customer. ( )

c. Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which

will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services. ( )

i. General Rule. Receipts from sales of professional services other than those services described in Subparagraph 04.c.ii. below (architectural and engineering services), subparagraph 04.c.iii. below (services provided by a financial institution) and Subparagraph 548.04.c.iv. below (transactions with related parties) are assigned in accordance with this Subparagraph (548.04.c.i.). ( )

(1) Professional Services Delivered to Individual Customers. Except as otherwise provided in this Subsection 548.04 (see in particular Subparagraph 548.04.c.iv.), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in part 548.04.c.i.(1) of this rule. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five percent (5%) of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state. ( )

(2) Professional Services Delivered to Business Customers. Except as otherwise provided in this Subsection 548.04, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth at part 548.04.c.i.(3) below, the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five percent (5%) of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer. ( )

(3) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in parts 548.04.c.i.(1) and (2) above, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than two hundred fifty (250) customers, whether individual or business, and (2) does not derive more than five percent (5%) of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of this Subparagraph (548.04.c.i., Professional Services General Rule) and not otherwise. ( )

ii. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this Subsection 548.04. However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this Subparagraph (548.04.c.ii.), the receipts from a sale of these services must be assigned under the general rule for professional services. See Subparagraph 548.04.c.i. above. ( )

iii. Services Provided by a Financial Institution. The apportionment rules that apply to financial institutions are set forth in Rule 582. Rule 582 includes specific rules to determine a financial institution's sales

factor. However, the Financial Institutions Rule also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are not otherwise apportioned under the Financial Institutions Rule [see section 3(o) of the 1995 MTC version of the regs or section 3(n) of the 1994 version], are to be assigned pursuant to Section 63-3027, Idaho Code, and these rules. In any instance in which a financial institution performs services that are to be assigned pursuant to Section 63-3027, Idaho Code, and these rules including, for example, financial custodial services, those services are considered professional services within the meaning of this Subsection(548.04, and are assigned according to the general rule for professional service transactions as set forth at Subparagraph 548.04.c.i. above. ( )

iv. **Related Party Transactions.** In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in part 548.04.c.i.(2) above, the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states. The taxpayer may use the safe harbor provided by part 548.04.c.i.(3) provided that Tax Commission may aggregate the receipts from sales to related parties in applying the five percent (5%) rule if necessary or appropriate to avoid distortion. ( )

**05. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**549. SALES FACTOR: LICENSE OR LEASE OR INTANGIBLE PROPERTY (RULE 549).**  
Section 63-3027(13)(d)(i)

**01. General Rules.** ( )

a. The receipts from the license of intangible property are in this state if and to the extent the intangible is used in this state. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth at Subsections 549.02 through 05 of this rule. For purposes of the rules set forth in this Rule 549, a lease of intangible property is to be treated the same as a license of intangible property. ( )

b. In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of Section 63-3027, Idaho Code, and these rules. See Rule 550. Note, however, that for purposes of this Rule 549 and Rule 550, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property. ( )

c. Intangible property licensed as part of the sale or lease of tangible property is treated under Section 63-3027, Idaho Code, and these rules as the sale or lease of tangible property. ( )

d. Nothing in this Rule 548 shall be construed to allow or require inclusion of receipts in the sales factor that are not included in the definition of "receipts" pursuant to Section 63-3027(1)(i), Idaho Code, or related rules. ( )

**02. License of a Marketing Intangible.** Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to this state to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended

to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from this state consumers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the this state population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the this state population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States. ( )

**03. License of a Production Intangible.** If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to this state to the extent that the use for which the fees are paid takes place in this state. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the Tax Commission can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used. ( )

**04. License of a Mixed Intangible.** If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Tax Commission will accept that separate statement for purposes of Section 63-3027, Idaho Code, and these rules. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the [tax administrator] can reasonably establish otherwise. ( )

**05. License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.** ( )

**a.** In general. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the provisions set forth in Subsection 548.03.b.ii. and .iii., as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this Subsection 549.05 include, without limitation, the license of database access, the license of access to information, the license of digital goods (see Rule 551.02), and the license of certain software (e.g., where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property, see Rule 551.01. ( )

**b.** Sublicenses. Pursuant to Paragraph 549.05.a. above, the provisions of Rule 548.03.b.iii. may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth in Rule 548.03.b.iii. that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with

respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property. ( )

**06. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**550. SALES FACTOR: SALE OF INTANGIBLE PROPERTY (RULE 550).**  
Section 63-3027(13)(d)(ii)

**01. Assignment of Receipts.** The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Rule (550), a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, see Subsection 549.01. ( )

**a. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area.** In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in Idaho the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or is authorized to be used in this state and one or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation. ( )

**b. Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property).** In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in Rule 549 (pertaining to the license or lease of intangible property). ( )

**c. Sale that Resembles a Sale of Goods and Services.** In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in Subsection 549.05 (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in Subsection 549.05. ( )

**02. Examples.** Examples available at <https://tax.idaho.gov/i-2076.cfm>. ( )

**551. SALES FACTOR: SPECIAL RULES (RULE 551).**  
Section 63-3027(13), Idaho Code

**01. Software Transactions.** ( )

**a.** A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in this state as determined under the rules for the sale of tangible personal property set forth under Section 63-3027(12), Idaho Code, and related rules. In all other cases, the receipts from a license or sale of software are to be assigned to this state as determined otherwise under Rules 546 through 551 (e.g., depending on the facts, as the development and sale of custom software, see Rule 548.03, as a license of a marketing intangible, see Rule 549.02, as a license of a production intangible, see Rule 549.03, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see Rule 549.05, or as a sale of intangible property, see Rule 550. ( )

**02. Sales or Licenses of Digital Goods or Services. ( )**

**a.** In general. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in Subsection 548.03.b.ii. or iii., as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. See Subsections 549.05 and 550.01.c. ( )

**b.** Telecommunications Companies. In the case of a taxpayer that provides telecommunications or ancillary services, receipts from the sale or license of digital goods or services are assigned by applying the rules set forth in Subsection 548.03.b.ii. or iii. as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product it may reasonably approximate this location using the customer's "place of primary use" of the purchased product. ( )

**i.** "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider. ( )

**552. – 557. (RESERVED)**

**558. SALES FACTOR: COSTS OF PERFORMANCE ELECTION FOR COMMUNICATIONS COMPANIES (RULE 558).**

Section 63-3027(15), Idaho Code

**01. Election.** A communications company as defined in Section 63-3027(1)(e), Idaho Code, shall source gross receipts from transactions other than sales of tangible personal property pursuant to Section 63-3027(13), Idaho Code, and Rules 546, 548, 549, as applicable, unless it elects to source such gross receipts pursuant to Section 63-3027(15), Idaho Code, and Rule 559. The election is made by attaching a written statement of the election to the return. The statement must affirmatively state whether (1) all the income-producing activity is performed in this state, or (2) the income-producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance. This election may not be changed for a taxable year after the return for that year has been filed. An election under Section 63-3027(15), Idaho Code, and Rule 559 is independent from any election made pursuant to Section 63-3027(10)(b), Idaho Code, and Subsection 310.03. ( )

**02. Election Binding for Future Years.** The election is binding for all years thereafter; a change off election in future years may only occur with the written permission of the tax commission. A petition to change the election must include an explanation of the legal or factual basis for requesting the change and a computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. ( )

**559. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO FOR COMMUNICATIONS COMPANIES ELECTING TO USE COSTS OF PERFORMANCE (RULE 559).**

Section 63-3027(15), Idaho Code

**01. In General.** Communications companies as defined in Section 63-3027(1)(e), Idaho Code, may elect to source gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government, under the provisions of Section 63-3027(15), Idaho Code, and this Rule 559. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income

producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. ( )

**02. Income Producing Activity.** The term income producing activity applies to each separate item of income and means the transactions and activity engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of producing that item of income. The activity includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. ( )

**a.** Income producing activity includes the following: ( )

**i.** The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the use of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service; ( )

**ii.** The sale, rental, leasing, licensing or other use of real property; ( )

**iii.** The rental, leasing, licensing or other use of tangible personal property; and ( )

**iv.** The sale, licensing or other use of intangible personal property. ( )

**b.** The mere holding of intangible personal property is not, by itself, an income producing activity. ( )

**03. Costs of Performance.** Costs of performance are the direct costs determined in a manner consistent with generally accepted accounting principles and according to accepted conditions or practices of the taxpayer's trade or business to perform the income producing activity that gives rise to the particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property that give rise to the particular item of income. ( )

**04. Application.** In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: ( )

**a.** The income producing activity is performed wholly in Idaho; or ( )

**b.** The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. ( )

**05. Special Rules.** The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: ( )

**a.** Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. ( )

**b.** Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho will be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. ( )

**c.** Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) / (ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. ( )

**d.** Gross receipts for the performance of personal services are attributable to Idaho to the extent the



services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. ( )

**e.** Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. ( )

**f.** Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000):  $(200 \text{ man hours} / 600 \text{ man hours}) \times \$9,000$ . ( )

**06. Services on Behalf of the Taxpayer.** An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to Idaho if such income producing activity is in Idaho. ( )

**a.** Such income producing activity is in Idaho: ( )

**i.** When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in Idaho by the agent or independent contractor. However, if the activity occurs in more than one state, the location where the income producing activity is actually performed will be deemed to be not reasonably determinable at the time of filing under Subparagraph 559.06.a.i. of this rule. ( )

**ii.** If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract. ( )

**iii.** If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or ( )

**iv.** If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile. ( )

**b.** If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under Subparagraphs 550.06.a.i. through 559.06.a.iii. of this rule, or the taxpayer's customer's domicile cannot be determined under Subparagraph 559.06.a.iv. of this rule, or, although determinable, such income producing activity is in a state in which the taxpayer is not taxable, such income producing activity is to be disregarded. ( )

**560. SPECIAL RULES (RULE 560).**  
Section 63-3027(17), Idaho Code

**01. In General.** A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases where the apportionment and allocation provisions

contained in Section 63-3027, Idaho Code, produce incongruous results. ( )

**02. Alternate Methods.** If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: ( )

**a.** Separate accounting; ( )

**b.** The exclusion of one (1) or more of the factors; ( )

**c.** The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or ( )

**d.** The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. ( )

**03. Special Industry Methods.** Section 63-3027(18), Idaho Code, authorizes the Tax Commission to establish appropriate procedures for determining the apportionment factors for each of these industries. These procedures will be applied uniformly. See Rule 580 of these rules for the list of the special industries. ( )

**561. -- 564. (RESERVED)**

**565. SPECIAL RULES: PROPERTY FACTOR (RULE 565).**

Section 63-3027(18), Idaho Code

**01. Subrents.** ( )

**a.** In General. If the subrents taken into account in determining the net annual rental rate pursuant to Rule 485 of these rules produce a negative or clearly inaccurate value for any item of property, another method that properly reflects the value of rented property may be required by the Tax Commission or requested by the taxpayer. The value may not be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. ( )

**b.** Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars (\$1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars (\$1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand dollars (\$200,000). ( )

**02. Market Rental Rate.** If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property is determined based on a reasonable market rental rate for the property. ( )

**566. -- 569. (RESERVED)**

**570. SPECIAL RULES: SALES FACTOR (RULE 570).**

Section 63-3027(18), Idaho Code

**01. Net Gains.** If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses are treated as provided in Subsection 570.02 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce apportionable income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.02 of this rule, each treasury function is considered separately. ( )

**a.** For purposes of Subsection 570.02 of this rule, a liquid asset is an asset, other than functional

currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. ( )

**b.** For purposes of Subsection 570.02 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. ( )

**c.** Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. ( )

**d.** Examples. ( )

**i.** A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. ( )

**ii.** A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.02 of this rule does not operate to classify those sales as attributable to a treasury function. ( )

**571. -- 579. (RESERVED)**

**580. SPECIAL RULES: SPECIAL INDUSTRIES (RULE 580).**  
Section 63-3027(18), Idaho Code

**01. Adoption of MTC Special Industry Regulations.** This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 003.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries are to apportion income in accordance with the applicable MTC regulation: ( )

**a.** Construction Contractors. The apportionment of income derived by a long-term construction contractor is to be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; ( )

**b.** Airlines. The apportionment of income derived by an airline is to be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; ( )

**c.** Railroads. The apportionment of income derived by a railroad is to be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; ( )

**d.** Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others is to be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. ( )

**e.** Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting is to be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. ( )

**f.** Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material is to be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. ( )

**g.** Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. ( )

**02. References.** See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. ( )

**581. SPECIAL RULES: REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (RULE 581).**

Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations means the following: ( )

- 01. Article IV.** Of The Multistate Tax Compact. ( )
- a.** Article IV. means Section 63-3027, Idaho Code. ( )
- b.** Article IV.1 means Section 63-3027(1), Idaho Code. ( )
- c.** Article IV.2 means Section 63-3027(2), Idaho Code. ( )
- d.** Article IV.3 means Section 63-3027(3), Idaho Code. ( )
- e.** Article IV.4 means Section 63-3027(4), Idaho Code. ( )
- f.** Article IV.5 means Section 63-3027(5), Idaho Code. ( )
- g.** Article IV.6 means Section 63-3027(6), Idaho Code. ( )
- h.** Article IV.7 means Section 63-3027(7), Idaho Code. ( )
- i.** Article IV.8 means Section 63-3027(8), Idaho Code. ( )
- j.** Article IV.9 means Section 63-3027(10)(a), Idaho Code. ( )
- k.** Article IV.10 means Section 63-3027(16)(a), Idaho Code. ( )
- l.** Article IV.11 means Section 63-3027(16)(b), Idaho Code. ( )
- m.** Article IV.12 means Section 63-3027(16)(c), Idaho Code. ( )
- n.** Article IV.13 means Section 63-3027(16)(d), Idaho Code. ( )
- o.** Article IV.14 means Section 63-3027(16)(e), Idaho Code. ( )
- p.** Article IV.15 means Section 63-3027(10)(a), Idaho Code. ( )
- q.** Article IV.16 means Section 63-3027(12), Idaho Code. ( )
- r.** Article IV.17 means Section 63-3027(13), Idaho Code. ( )
- s.** Article IV.18 means Section 63-3027(17), Idaho Code. ( )

- 02. MTC Regulations.** ( )
  - a.** Regulation IV.1 means Rules 330 through 354 of these rules. ( )
  - b.** Regulation IV.2 means Rule 325 and Rules 355 through 384 of these rules. ( )
  - c.** Regulation IV.3 means Rules 385 through 399 of these rules. ( )
  - d.** Regulation IV.9 means Rules 450 through 459 of these rules. ( )
  - e.** Regulation IV.10 means Rules 460 through 479 of these rules. ( )
  - f.** Regulation IV.11 means Rules 480 through 489 of these rules. ( )
  - g.** Regulation IV.12 means Rules 490 through 499 of these rules. ( )
  - h.** Regulation IV.13 means Rules 500 through 514 of these rules. ( )
  - i.** Regulation IV.14 means Rules 515 through 524 of these rules. ( )
  - j.** Regulation IV.15 means Rules 525 through 539 of these rules. ( )
  - k.** Regulation IV.16 means Rules 540 through 545 of these rules. ( )
  - l.** Regulation IV.17 means Rules 546 through 559 of these rules. ( )
  - m.** Regulation IV.18.(a) means Rules 560 through 564 of these rules. ( )
  - n.** Regulation IV.18.(b) means Rules 565 through 569 of these rules. ( )
  - o.** Regulation IV.18.(c) means Rules 570 through 574 of these rules. ( )
- 03. Tax Administrator.** Tax Administrator means Tax Commission. ( )
- 04. This State.** This state means Idaho. ( )
- 05. The Apportionment Percentage.** ( )
  - a.** The default apportionment method in Idaho is sales factor only. If any MTC special industry regulation adopted by Idaho includes a property and payroll factor, by default, those provisions will be ignored, and the taxpayer will only use the sales factor provisions to calculate an apportionment percentage. However, pursuant to Section 63-3027(10)(b), Idaho Code, taxpayers subject to special industry regulations may elect to use the property, payroll, and sales factors, if the special industry regulation applicable to them provides for a property and/or payroll factor. See Rule 310 for instructions on making the election. ( )

**582. SPECIAL RULES: FINANCIAL INSTITUTIONS (RULE 582).**  
Section 63-3027(s), Idaho Code

- 01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.** This rule incorporates by reference the MTC “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions” as adopted in Subsection 003.02 of these rules. A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. ( )
- 02. Definition of Financial Institution.** “Financial institution” means: ( )
  - a.** Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan

holding company under the Federal National Housing Act, as amended; ( )

**b.** A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; ( )

**c.** A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; ( )

**d.** Any bank or thrift institution incorporated or organized under the laws of any state; ( )

**e.** Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; ( )

**f.** Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; ( )

**g.** A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired; ( )

**h.** Any corporation or other business entity that is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Paragraphs 582.02.a. through 582.02.g. ( )

**i.** A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. This includes any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. ( )

**j.** Any corporation or business entity that derives more than fifty percent (50%) of its gross income from activities that a person described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. of this rule is authorized to transact. For purposes of this subsection, the computation of gross income does not include income from non-recurring, extraordinary items. ( )

**03. Exclusion from Paragraph 582.02.j.** The Tax Commission is authorized to exclude any person from the application of Paragraph 582.02.j. upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. ( )

**04. Act Defined.** For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. ( )

**583. -- 584. (RESERVED)**

**585. EXCEPTIONS TO APPORTIONMENT FORMULA: SEPARATE ACCOUNTING (RULE 585).** Section 63-3027(17), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. This determination is based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. ( )

**586. -- 594. (RESERVED)**

**595. EXCEPTIONS TO APPORTIONMENT FORMULA: ADDITIONAL OR SUBSTITUTE FACTORS (RULE 595).**

Section 63-3027(17), Idaho Code. A factor other than the sales factor may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. ( )

**596. -- 599. (RESERVED)**

**600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).**

Section 63-3027(22), Idaho Code

**01. Combined Report.** Each corporation that is a member of a unitary business transacting business within and without Idaho is to allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. ( )

**02. Domestic International Sales Corporations.** If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. ( )

**03. Foreign Sales Corporations.** If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. ( )

**04. Intercompany Transactions.** If a return is filed on a combined basis, the intercompany transactions are to be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. ( )

**a.** Dividends received from a real estate investment trust or a regulated investment company and not included in the pre-apportionment tax base as a result of the federal deduction for dividends paid allowed to the dividend payor are not eliminated as intercompany transactions in computing combined income. ( )

**b.** Internal Revenue Code Section 1248 Dividends. ( )

**i.** Taxpayers Using the Worldwide Filing Method. A corporation included in a worldwide combined group is to treat Section 1248 dividends as dividends for Idaho income tax purposes. An intercompany dividend elimination is allowed to the extent dividends received are paid from current or prior year earnings previously included in income subject to apportionment. ( )

**ii.** Taxpayers Using the Water's Edge Filing Method. A corporation included in a water's edge combined group is to treat Section 1248 dividends as dividends that qualify for the dividend exclusion allowed by Section 63-3027C(c)(1), Idaho Code. ( )

**c.** Dividends received from a stock insurance subsidiary and deducted by a mutual insurance holding company or an intermediate holding company pursuant to Section 41-3821, Idaho Code, are not eliminated as intercompany transactions in computing combined income. ( )

**05. Insurance Companies.** Pursuant to Section 41-405, Idaho Code, payment of an Idaho tax upon an insurance company's premiums will be in lieu of an income tax. ( )

**a.** If an insurance company is a member of a unitary business and pays the Idaho premium tax, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The income tax attributable to the insurance company is to be deducted from the total tax computed in the combined report. Income tax credits that the insurance company may have earned may not be shared with other members of the unitary group. ( )

**b.** If an insurance company is a member of a unitary business and pays a premium tax to a state other than Idaho, or does not pay a premium tax to any state, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The insurance company is liable for the Idaho income tax computed on its activity in Idaho and is not exempt from the income tax as a result of Section 41-405, Idaho Code. ( )

**601. -- 604. (RESERVED)**

**605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (RULE 605).**  
Section 63-3027(22), Idaho Code

**01. Income: In General.** Income for the worldwide combined group is to be computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. ( )

**02. Income: Foreign Corporations Included in a Federal Consolidated Return.** Corporations incorporated outside the United States that are included in a federal consolidated return is to include in the combined report the taxable income reported on the federal consolidated return. ( )

**03. Income: Foreign Corporations Not Included in a Federal Consolidated Return.** Corporations incorporated outside the United States that are not included in a federal consolidated return, is to include in the combined report either the amount in Subsection 605.03.a. or 605.03.b. as the equivalent of taxable income. The option chosen must be used for all unitary foreign corporations not included in a federal consolidated return. ( )

**a.** The taxpayer may use the financial net income before income taxes as reported to the United States Securities and Exchange Commission (SEC) if required to file with the SEC. If not required to file with the SEC, the taxpayer may use the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. ( )

**b.** The taxpayer may use the financial net income of each foreign corporation adjusted to conform to tax accounting standards as would be required by the Internal Revenue Code if the corporation were a domestic corporation required to file a federal income tax return. ( )

**04. Consistent Application of Book to Tax Adjustments.** If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations is to be made for each unitary foreign corporation included in the combined report and is to be consistently applied in each year for which the worldwide method applies. These adjustments are subject to the record-keeping requirements of the Internal Revenue Code and Treasury Regulations for domestic corporations. ( )

**05. Apportionment Factors.** The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used. ( )

**606. -- 619. (RESERVED)**

**620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).**  
Section 63-3027, Idaho Code

**01. In General.** If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation is to report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. ( )



**02. Transacting Business.** A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. ( )

**03. Multistate Partnerships.** If a partnership operates in more than one state, its income is to be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. ( )

**04. Partnership Income as Apportionable Income of the Partner.** ( )

**a.** Income. If the income or loss of a partnership is apportionable income or loss to a corporate partner, its share of this net apportionable income or loss is to be apportioned together with all other net apportionable income or loss of the corporation. Apportionable income or loss is defined by Section 63-3027(1)(a), Idaho Code, and Rules 330 through 336 of these rules. ( )

**b.** Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, is to be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Sections 63-3027(12) and (13), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. ( )

**05. Partnership Income as Nonapportionable Income of Partner.** ( )

**a.** Income. If the partnership income or loss is not apportionable income to a corporate partner, the income is nonapportionable income as defined in Section 63-3027(1)(h), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner is to allocate the nonapportionable income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, is to specifically allocate to Idaho its share of the nonapportionable income attributable to Idaho. ( )

**b.** Factors. If the partnership income or loss is nonapportionable income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation. ( )

**621. -- 639. (RESERVED)**

**640. WATER'S EDGE: MAKING THE ELECTION (RULE 640).**  
Section 63-3027B, Idaho Code

**01. In General.** Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. ( )

**02. The Election.** The water's edge election is made for purposes of determining which corporations are included in a combined group for Idaho income tax purposes. If a corporation is not part of a unitary group for which a combined report is required, the corporation cannot make the water's edge election. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ( )

**a.** The election may be made for a year beginning on or after January 1, 1993. The election must be filed with the original tax return for the first year of the election. If the water's edge group changes in a subsequent year through the acquisition or disposition of a corporation with an Idaho filing requirement, a copy of the election is to be attached to the tax return for such taxable year and the changes to the water's edge group is to be noted on the

form. See Rule 643 of these rules for Change of Election. ( )

**b.** Any corporation included in the unitary group that files with Idaho a consent to the reasonable production of documents may make the election on behalf of the group. An election made by any member of a unitary group binds all other members regardless of any changes in the unitary group in later taxable years. ( )

**c.** The election must be made on a form provided by the Tax Commission and include a list of each corporation required to file an Idaho income tax return. The election must be signed by an individual authorized to bind all companies to the election. ( )

**d.** Idaho taxpayers having a valid water's edge election is to compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ( )

**03. Failure to Include Election.** Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. ( )

**641. WATER'S EDGE: ELEMENTS OF A COMBINED REPORT (RULE 641).**

Section 63-3027B, Idaho Code

**01. Income.** Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group is to be eliminated to the extent necessary to properly reflect combined income. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation will be included in the computation of the income of the water's edge combined group. ( )

**02. Factors.** The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the group is to be eliminated to the extent necessary to properly compute the apportionment factors of the water's edge combined group. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation is to be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, is to be included in the sales factor computation. ( )

**03. Foreign Corporations Filing Protective Returns.** A foreign corporation filing a protective Form 1120-F return will not be deemed to be filing a federal income tax return for purposes of taking into account the income and apportionment factors of affiliated corporations in a unitary relationship with the taxpayer solely on the basis of filing this federal return. If subsequent to the filing of the protective 1120-F return it is determined that the foreign corporation had income effectively connected with the United States and was required to file a federal income tax return, the income and apportionment factors of the foreign corporation is required to be included in the combined report of the unitary group for such taxable year and an Idaho return or amended return may be required. ( )

**642. WATER'S EDGE: LEGAL AND PROCEDURAL REQUIREMENTS (RULE 642).**

Section 63-3027B, Idaho Code

**01. Required Form.** Proper filing of the water's edge election and consent for production of records must be made on the form provided by the Tax Commission and included in the original income tax return for the first tax year to which the election applies. ( )

**02. Required Information.** The following information must be included with each year's tax return for which a water's edge election applies: ( )

**a.** A complete list of all affiliated corporations, foreign and domestic, of which more than twenty percent (20%) of the voting stock is, directly or indirectly, owned or controlled by a common owner; ( )

**b.** Identifying information for each member of the water's edge combined group, including: federal identification number, primary business activities, percent of ownership by members of the combined group, and dates of acquisition or disposition of interest; ( )

**c.** A copy of the federal consolidated return, if applicable; and ( )

**d.** A schedule of taxable income for each possession corporation excluded from the water's edge group pursuant to Section 63-3027B(a), Idaho Code. ( )

**643. WATER'S EDGE: CHANGE OF ELECTION (RULE 643).**

Section 63-3027C, Idaho Code

**01. In General.** Except as provided in Section 63-3027C(a) (1), Idaho Code, the taxpayer must submit a written petition to the Tax Commission and be granted written permission to change its reporting method from water's edge for any subsequent tax year. ( )

**a.** A change in the reporting method includes conversion from the water's edge filing method to the worldwide filing method as well as the addition of companies previously omitted or the exclusion of companies previously included in the water's edge combined group, except in the case of companies acquired or disposed of during the taxable year. ( )

**b.** The Tax Commission may determine that one or more affiliated corporations should be included or excluded from the water's edge combined group. Income and apportionment factors is to be modified accordingly. ( )

**02. Written Petition.** A written petition must include the following: ( )

**a.** An explanation of the legal or factual basis for requesting the change of reporting method; and ( )

**b.** A computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. ( )

**03. Due Date for Filing the Written Petition.** The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. ( )

**04. Failure to Provide Required Information.** Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. ( )

**05. Approval Attached to Original Return.** A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. ( )

**06. Appeal Rights.** A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer is to continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. ( )

**644. WATER'S EDGE: DISREGARDING THE ELECTION (RULE 644).**

Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. ( )

**645. WATER'S EDGE: TREATMENT OF DIVIDENDS (RULE 645).**

Section 63-3027C, Idaho Code

**01. Dividends Received from Payors Incorporated Outside the United States.** ( )

**a.** Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as apportionable income. ( )

**b.** As provided in Section 63-3027C(e)(1), Idaho Code, amounts included in income under sections 951 and 951A of the Internal Revenue Code are treated as dividends from payors outside the fifty (50) states and District of Columbia. ( )

**c.** In order to avoid taxing income that had previously been included in Idaho apportionable income in a prior tax year, the remaining portion of the dividend that was not excluded from Idaho apportionable income under Section 63-3027C(c)(3), Idaho Code, is excluded from Idaho apportionable income if the taxpayer can prove that the income was previously included in Idaho apportionable income in a prior tax year. ( )

**02. Dividends Received from Payors Incorporated in the United States.** Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be apportionable income of the water's edge combined group. ( )

**03. Deemed Dividends from Possession Corporations.** The income of a possession corporation, excluded in Section 63-3027B(a), Idaho Code, shall be included in apportionable income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. ( )

**04. Dividends from Foreign Sales Corporations.** ( )

**a.** As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which the dividend was paid bears to the total FSC income before taxes for that year. For purposes of computing the dividend elimination, total FSC income before taxes means book income before the deduction of federal income taxes. ( )

**b.** For example, a FSC paid one million dollars (\$1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars (\$10,000,000) and total FSC income before taxes of twenty million dollars (\$20,000,000). The dividends eliminated would be five hundred thousand dollars (\$500,000) computed as follows:  $(\$10,000,000 \text{ federal taxable income} / \$20,000,000 \text{ total FSC income before taxes}) \times \$1,000,000 \text{ FSC dividend paid} = \$500,000 \text{ dividend elimination}$ . ( )

**05. Interest Expense Offset.** The interest expense offset provided in Section 63-3022M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. ( )

**646. WATER'S EDGE: DOMESTIC DISCLOSURE SPREADSHEET (RULE 646).**

Section 63-3027E, Idaho Code

**01. Filing Requirements.** The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed no later than six (6) months after filing the original return unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year-by-year basis. ( )

**02. Spreadsheet Information.** The spreadsheet information must be submitted using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet" or on identically formatted forms that disclose the same information. ( )

**647. -- 699. (RESERVED)**



**IDAPA 35 – IDAHO STATE TAX COMMISSION**  
**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0109-2201 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

Subsection 011.01.e. was changed to reference a statutory definition. Proposed Subsection 014.02 was deleted in the pending rule due to it being an outdated reference.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the August 8, 2022, Idaho Administrative Bulletin, [Volume 22-8, pages 60-65](#).

**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 Elena Gonzalez at (208) 334-7855.

DATED this 7th day of December.

Elena Gonzalez, Product Taxes Specialist  
Idaho State Tax Commission, Governmental Affairs  
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36, Boise ID 83722-0036  
[elena.gonzalez@tax.idaho.gov](mailto:elena.gonzalez@tax.idaho.gov)  
(208) 334-7855

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

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

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<p><b>Thursday, August 18, 2022</b> <b>1:00 p.m. MT</b></p>
<p><i>In-person participation is available at:</i> <b>Idaho State Tax Commission</b> <b>Turquoise Conference Room</b> <b>11321 W. Chinden Blvd., Bldg. 2</b> <b>Boise, Idaho 83714</b></p> <p><b>Join by phone:</b> <b>+1-720-279-0026 US Toll</b> <b>When prompted please enter Guest Code: 382472</b></p>

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

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

Changes include deletions to sections that restated statute, unnecessary examples, and text that could be communicated on the Tax Commission's website instead.

**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 as a result of 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 49](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Elena Gonzalez 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 August 24, 2022.

DATED this August 3rd, 2022.

**Substantive changes have been made to the pending rule.**  
*Italicized red text* indicates changes between the text of the proposed rule as adopted in the pending rule.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 35-0109-2201**

**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (RULE 000).**

Sections 63-105, 23-1051, 23-1323, Idaho Code, authorize the State Tax Commission (Tax Commission) to adopt the provisions of the Idaho Beer Act and the Idaho County Option Kitchen and Table Wine Act (the Acts). ( )

**001. SCOPE (RULE 001).**

These rules are to be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on: ( )

**a.** All barrels or fractional amounts of beer sold or disposed of by a wholesaler and used or consumed in Idaho. ( )

**b.** All gallons of wine sold or disposed of by a distributor and used or consumed in Idaho. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Sections 23-1001, 23-1303, Idaho Code

Definitions provided by statute, including the definitions in Sections 23-1001 and 23-1303, Idaho Code, apply to these rules. The following definitions apply for the purpose of these rules. ( )

**01. Disposition.** A disposition is any decrease of beer or wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. ( )

**02. Taxpayer.** A taxpayer is a person liable to report and pay the beer tax or wine tax according to the Acts and these rules. ( )

**03. Wine Direct Shipper.** A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. ( )

**011. BEER AND WINE SALES SUBJECT TO TAX (RULE 011).**

Sections 23-1001, 23-1003, 23-1006, 23-1008, 23-1303, 23-1309A, 23-1314, 23-1319, Idaho Code

**01. In General.** Sections 23-1008 and 23-1319, Idaho Code, impose an excise tax on beer sales by beer wholesalers and wine sales by wine distributors for use or consumption in Idaho. ( )

**a.** Every disposition of beer by a wholesaler or wine by a distributor to a retailer or consumer constitutes a sale for resale or use. Beer wholesalers or wine distributors are liable for the payment of taxes on the



sales. Any person making sales or dispositions of beer or wine, whether licensed or not, is liable for the taxes. ( )

**b.** Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code, as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code, on all shipments of wine to Idaho. ( )

**c.** Any brewer, brewery, producer, or manufacturer of beer within Idaho will be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(f), Idaho Code. However, to ensure payment of tax on beer, any entity holding a brewery license will be considered a wholesaler to the extent of any disposition from the brewery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the brewery's premises. ( )

**d.** Any vintner, winery, producer, or manufacturer of wine within Idaho will be considered a wine importer within the meaning of the definitions provided in Section 23-1303(1)(g), Idaho Code. However, to ensure payment of tax on wine, any entity holding a winery license will be considered a distributor to the extent of any disposition from the winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. ( )

**e.** Ales, beer, new beer, or any alcoholic beverage *that meets the definition in Section 23-1001(a), Idaho Code*, containing more than five percent (5%) alcohol by volume are imposed an excise tax by Section 23-1008(1), Idaho Code. ( )

**f.** Premixed cocktails with an alcoholic content of fourteen percent (14%) or less by volume are taxed at the wine tax rate. ( )

**g.** **Illegal Sales or Dispositions.** In addition to the remedies of Sections 23-1055 and 23-1309, Idaho Code, the Tax Commission may assess taxes against persons making illegal sales of beer or wine who otherwise would be liable for payment of taxes. ( )

**02. Supplementing Inventory.** If a brewery or winery supplements inventory, adequate records are required to support any tax paid. The Tax Commission will presume no tax is paid on beer or wine in the inventory of a brewery or winery without evidence of the payment of tax. Wineries are not supplementing their inventory when purchasing wine or grape juice from other wineries to blend and produce wine. ( )

**03. All Sales Presumed Taxable.** Every sale or disposition from inventory is presumed to be a taxable sale unless the sale or disposition is exempt from tax by the Acts or these rules. ( )

**012. EXEMPTIONS (RULE 012).**  
Sections 23-1048, 23-1051, 23-1319, 23-1323, Idaho Code

**01. Burden of Proof.** The burden of proving any exemption, deduction, credit, or refund allowed by the Acts and these rules is upon the person claiming it. ( )

**02. Wholesale Exports.** Every resale of beer or wine by a beer wholesaler, brewery, wine distributor, or winery for the purpose of and resulting in an export of beer or wine from this state for resale outside this state is exempt from beer or wine tax. ( )

**03. Sales By Wine Direct Shippers Outside This State.** When an Idaho wine direct shipper is licensed as a wine direct shipper in another state, they are licensed to sell wine to residents of the other state. Sales of wine by the Idaho wine direct shipper, using another state's wine direct shipper license, to a resident of that state and delivered to a location in that state are exempt from Idaho wine tax. ( )

**04. Sales to Purchasers on Military Reservations.** Sales to authorized purchasers on military reservations for the purpose of and resulting in sales or consumption on the reservation are exempt from beer or wine tax. ( )

**05. Sales to Idaho State Liquor Dispensary.** Sales of beer or wine to the Idaho State Liquor Dispensary are exempt from beer or wine tax. ( )

**06. Dispositions From One Distributor or Wholesaler to Another.** Any disposition of beer or wine by transfer or sale or any other means from one (1) distributor or wholesaler to another is exempt from beer or wine tax. ( )

**013. BREAKAGE OR SPOILAGE (RULE 013).**  
Sections 23-1051, 23-1319, Idaho Code

**01. Percentage Method.** When a beer or wine container is damaged, contents spoiled, or is otherwise unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. ( )

**a.** The Tax Commission may revoke the use of the percentage method for any taxpayer at any time. The Tax Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Tax Commission. ( )

**b.** Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Tax Commission. ( )

**02. Reporting Destruction or Spoilage.** Taxpayers will report the destruction or spoilage in the manner and form required by the Tax Commission when claiming breakage or spoilage exceeding the maximum percentages allowed or the Tax Commission revokes the percentage method. ( )

**03. Deduction for Breakage or Spoilage.** A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. ( )

**014. FINANCIAL SECURITY (RULE 014).**  
Sections 23-1049, 23-1320, Idaho Code

**01. Financial Security for Payment of Tax.** Any person required to pay tax under the Acts must have an acceptable amount of security on file and in acceptable form with the Tax Commission unless excused or waived by the Tax Commission. The security is conditioned upon payment of all taxes imposed on beer or wine by this state for which the person is liable, including any penalty and interest. ( )

**02. Security for a New Taxpayer.** When a new taxpayer applies for a tax account the security required is one thousand dollars (\$1,000) unless one of the following conditions applies: ( )

**a.** If a beer or wine tax reporting history is available from a previous ownership, the security required may be based on the most recent twelve (12) month filing history of the prior ownership. ( )

**b.** If an out-of-state wine direct shipper is applying for an initial account, they may request a bond waiver. ( )

**c.** If the taxpayer can establish a lesser amount should apply based on the average monthly amount payable according to Section 23-1049, Idaho Code. ( )

**015. BEER OR WINE TAX ACCOUNTS (RULE 015).**  
Sections 23-1051, 23-1323, Idaho Code

**01. Tax Accounts.** Before engaging in business, taxpayers need to have a beer tax or wine tax account from the Tax Commission to report and pay tax. As evidence of the tax account, a tax permit is issued. The terms tax account and tax permit are used interchangeably in this section. ( )

**02. Tax Accounts Are Non-transferable.** Where there is a change of ownership, it is the responsibility of the tax account holder to cancel the tax account by giving written notice to the Tax Commission. ( )

**a.** Notice requirements include the date of closure or last date of operation, date of sale or lease, and the name of the new owner or lessee. ( )

**b.** If the new owner or lessee uses the previous owner's tax account, the registered tax holder may be responsible for all tax, penalty, and interest incurred during that period. ( )

**03. Tax Account Cancellation.** The Tax Commission may cancel an inactive tax account. A tax account is considered inactive when returns are filed with no reportable beer or wine activity for twelve (12) consecutive months. The Tax Commission will provide notice of cancellation to the last known address of the tax account holder. ( )

**016. BEER OR WINE TAX RETURNS (RULE 016).**

Sections 23-1047, 23-1051, 23-1322, 23-1323, Idaho Code

**01. Reporting Periods.** Returns are due on or before the 15th day of the month following the end of the reporting period, or the next business day when the due date is a Saturday, Sunday, or legal holiday. All returns must be filed monthly unless the Tax Commission approves an alternate reporting period. ( )

**a.** Request to File Quarterly or Semiannually. Taxpayers owing six hundred dollars (\$600) or less per quarter with a timely filing and payment history may request a quarterly or semiannual reporting period. ( )

**b.** Request to File Annually. Wine direct shippers, taxpayers with seasonal activities, and other taxpayers with minimal activity may request an annual reporting period. ( )

**c.** Final Return. A taxpayer will mark cancel on the last return filed. Tax, penalty, and interest will apply if the taxpayer continues business activity after filing a final return and canceling the tax account. ( )

**02. Prescribed Forms.** All sales or other dispositions of beer or wine in Idaho must be reported on forms provided or approved by the Tax Commission. ( )

**03. Inventory Reporting.** Taxpayers, excluding out-of-state direct shippers, are to report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt. ( )

**04. Requirements of a Valid Return.** A valid return includes the fully completed and signed tax return. The return must meet the requirements of these rules and the information must be legible. ( )

**017. -- 018. (RESERVED)**

**019. RECORDS REQUIRED (RULE 019).**

Sections, 23-1006, 23-1051, 23-1314, 23-1323, Idaho Code

**01. In General.** Every person liable for the payment of taxes on beer or wine must keep and preserve the following records: ( )

**a.** A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. ( )

**b.** A record of the amount of all merchandise purchased, including all bills of lading, invoices, sales receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. ( )

**c.** Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ( )

d. True and complete physical counts of the beer and wine inventory taken at the end of each reporting period. ( )

e. True and complete records of breakage and spoilage claimed as a deduction from inventory. ( )

f. Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order so they can be balanced with the corresponding return. ( )

**02. Record Retention.** These records are to be kept for a minimum of four (4) years. If a taxpayer appeals an assessment, all records are to be legible and kept on the business premises until final disposition of the appeal. ( )

**020. -- 999. (RESERVED)**

## IDAPA 35 – IDAHO STATE TAX COMMISSION

### 35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-2201

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

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

35.02.01.410: The deadline in rule is outdated and being deleted and reverted to statutory authority.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 8, 2022, Idaho Administrative Bulletin, [Volume 22-8, pages 66-68](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cynthia Adrian at (208) 332-6691.

DATED this 7th day of December.

Cynthia Adrian, Income Tax Specialist  
Idaho State Tax Commission, Governmental Affairs  
(208)20 (208)11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36. Boise ID 83722-0036  
[cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov)  
(208) 334-6691

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** 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 17, 2022.

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:

35.02.01.410: The deadline in rule is outdated and being deleted and reverted to statutory authority.

**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 this rulemaking is being done to make the rule in alignment with the statute.

**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) 334-6691).

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 24, 2022.

DATED this August 3rd, 2022.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-2201**

**410. NEGLIGENCE PENALTIES.**

Section 63-3046(a), Idaho Code

**01. Negligence Defined.** Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-15-22)

**02. Imposition of Penalty.** A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Situations that justify the penalty include but aren't limited to the following: (3-15-22)

**a.** Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. (3-15-22)

**b.** Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or

- substantial errors. (3-15-22)
- c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-15-22)
  - d. Taxpayer fails to offer any explanation for understating taxes. (3-15-22)
  - e. Unreported taxable income is a material amount as compared with the reported income. (3-15-22)
  - f. Taxpayer exhibits a careless disregard of his tax obligations. (3-15-22)
  - g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-15-22)
  - h. Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-15-22)
  - i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination ~~within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules according to Section 63-3069, Idaho Code.~~ ~~(3-15-22)~~ ( )
  - j. Taxpayer fails to file an Idaho amended return ~~within sixty (60) days after filing a federal amended return according to Section 63-3069, Idaho Code.~~ ~~(3-15-22)~~ ( )
  - k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-15-22)
  - l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. (3-15-22)
- 03. Negligence Penalty for Sales and Use Tax Deficiencies.** For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.02.b. or material amount in Subsection 410.02.e., might include the following: (3-15-22)
- a. The ratio of untaxed sales that should have been taxed to total taxable sales; (3-15-22)
  - b. The ratio of untaxed sales that should have been taxed to total sales; (3-15-22)
  - c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; (3-15-22)
  - d. Other computations bearing on negligence. (3-15-22)
- or
- 04. Waiver of Negligence Penalty.** The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One (1) factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. (3-15-22)
- 05. Circumstances Precluding Waiver of Penalty.** The following circumstances do not constitute sufficient cause to waive the penalty: (3-15-22)
- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-15-22)
  - b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-15-22)
  - c. Inability to pay the tax. (3-15-22)

## IDAPA 36 – IDAHO STATE BOARD OF TAX APPEALS

DOCKET NO. 36-0101-2200

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

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of, or date specified in, the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-3808, Idaho Code.

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

This pending rule adopts and publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 36, rules of the Idaho State Board of Tax Appeals:

**IDAPA 36**

- 36.01.01, *Idaho Board of Tax Appeals Rules.*

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 July 6, 2022, Idaho Administrative Bulletin, [Vol. 22-7, pages 230 – 246](#). The change to Rule 30 is necessary to conform with the provisions of Section 63-3810A, Idaho Code, regarding third-party representation in proceedings before the Idaho Board of Tax Appeals.

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

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cindy Pollock at 208-334-3354.

DATED this 23rd day of August, 2022.

Cindy Pollock, Director  
Idaho Board of Tax Appeals  
1673 W. Shoreline Drive, Suite 120, Boise, ID 83702  
P.O. Box 36, Boise, ID 83720-0088  
Phone: 208-334-3354  
Fax: 208-334-4060  
Email: [cindy.pollock@bta.idaho.gov](mailto:cindy.pollock@bta.idaho.gov)



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

**EFFECTIVE DATE:** The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2022.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-3808, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code. If scheduled, the hearing site(s) will be accessible to persons with disabilities and requests for accommodation are made not later than five (5) days prior to the hearing, to the agency address below.

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

This temporary and proposed rulemaking adopts and publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 36, rules of the Idaho State Board of Tax Appeals:

**IDAPA 36**

- 36.01.01, *Idaho Board of Tax Appeals Rules.*

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

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule chapter without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2023 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rule chapter being reauthorized by this rulemaking.

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cindy Pollock at 208-334-3354.

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

DATED this July 1, 2022.

**THE FOLLOWING IS THE TEXT OF OMNIBUS PENDING DOCKET NO. 36-0101-2200**

**Substantive changes have been made in the pending rule.**  
*Italicized red text* indicates changes between the text of the proposed rule as adopted in the pending rule.

**36.01.01 – IDAHO BOARD OF TAX APPEALS RULES**

**000. LEGAL AUTHORITY (RULE 0).**

These rules are promulgated in accordance with Section 63-3808, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules are titled IDAPA 36.01.01, “Idaho Board of Tax Appeals Rules.” ( )

**02. Scope.** These rules govern procedures before the Idaho Board of Tax Appeals (hereinafter “Board”). ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

As used in this chapter: ( )

**01. Appellant.** A party filing an appeal with the Board. ( )

**02. Board.** The Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. ( )

**03. Case File.** The official record maintained by the Board regarding an appeal. ( )

**04. Comparable Sales.** Recently sold properties that are similar in locational and physical characteristics to the property being appraised. “Recently sold property” is property with a sale date prior to the effective date of valuation. ( )

**05. De Novo.** The Board decides questions of fact and of law based on the evidence and legal arguments presented before the Board. A de novo review means the parties must present anew any previously submitted evidence or argument they wish to have considered. New evidence and argument may also be presented. ( )

**06. Ex Parte.** A communication on behalf of one (1) party with the Board where the other side is not

present or included. ( )

**07. Parcel.** Each separate property ownership as represented by the county assessment rolls. ( )

**08. Party.** A person or governmental subdivision or agency authorized to appear before the Board. ( )

**09. Presiding Officer or Hearing Officer.** A member of the Board or other person assigned to conduct a conference or hearing for the Board. ( )

**10. Respondent.** A party answering or otherwise responding to an appeal. ( )

**11. Subject Property.** The property under discussion. ( )

**12. Substantive Issue.** An issue where a right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matter. ( )

**011. ABBREVIATIONS (RULE 11).**

**01. BTA.** Idaho Board of Tax Appeals. ( )

**02. BOE.** County Board of Equalization. ( )

**03. STC.** Idaho State Tax Commission. ( )

**012. ORGANIZATION (RULE 12).**

The Chairman of the Board serves as the administrative officer. ( )

**01. Election.** The Chairman will be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. ( )

**02. Power.** The Chairman will oversee the issuance of acknowledgment letters and notices, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. ( )

**013. -- 019. (RESERVED)**

**020. PROCEDURE GOVERNED (RULE 20).**

**01. Procedure.** These rules govern all practice and procedure before the Board. Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General". ( )

**02. Purpose.** The purpose for the establishment of the Idaho Board of Tax Appeals is to provide a fully independent, fair, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. ( )

**021. LIBERAL CONSTRUCTION (RULE 21).**

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. ( )

**022. -- 029. (RESERVED)**

**030. REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).**

To the extent authorized by law the right to appear and practice before the Board is limited as follows: ( )

**01. Taxpayers.** *A taxpayer has the right to appear or to be represented by another person of his choosing in any hearing or rehearing held on the taxpayer's appeal.* ( )

**02. Authorized Attorneys.** Attorneys duly authorized and qualified to practice in the courts of the state of Idaho; ( )

**03. Public Officers.** Public officers or designated representatives when representing the governmental agency; ( )

**031. INITIAL PLEADING -- LISTING OF REPRESENTATIVES (RULE 31).**

The initial pleading of each party must name the party's qualified representative for service of documents and include the representative's address for receiving documents. Service of documents on the named representative is valid service upon the party. If no person is explicitly named as representative, the person signing the initial pleading will be considered the representative. ( )

**032. SUBSTITUTION OF REPRESENTATIVE (RULE 32).**

A party's representative may be changed by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of a representative at hearing. ( )

**033. PARTICIPATION BY TAXING AUTHORITY (RULE 33).**

In proceedings where a taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of a party or upon the Board's motion, an informed representative of the taxing authority shall appear at hearing and be available for examination. When such a representative is summoned, the taxing authority may further participate in the hearing as a party. ( )

**034. (RESERVED)**

**035. CONDUCT (RULE 35).**

A party, representative or witness shall conduct themselves in all Board proceedings in an ethical, respectful, and courteous manner. ( )

**036. ENFORCEMENT (RULE 36).**

The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for delays, the failure to comply with a subpoena or discovery order, for discovery procedure abuses, and for any other matter regarding conduct of the appeal. Board sanctions include, but are not limited to, dismissal of an appeal or the granting of default judgment. ( )

**037. EX PARTE COMMUNICATIONS (RULE 37).**

**01. Prohibited Ex Parte.** Unless permitted by law, the Board shall not communicate regarding any substantive issue with any party, except upon notice and opportunity for all parties to participate in the communication. ( )

**02. Permitted Ex Parte.** The Board may communicate ex parte with a party concerning a procedural or administrative matter. ( )

**038. -- 044. (RESERVED)**

**045. NOTICE OF APPEAL: CONTENTS (RULE 45).**

**01. Basic Contents.** An appeal must be in writing and contain clear and concise statements of the matters that lay foundation for the relief claim that may be granted by the Board. ( )

**02. Additional Contents.** The appeal shall further contain: ( )

- a. Appellant’s full name, mailing address and telephone number; ( )
- b. The tax year(s) associated with the appeal; and ( )
- c. A signed statement by a natural person/appellant or by a qualified representative that the notice of appeal contents are correct. ( )

**03. Appeal Filed by an Attorney or Representative.** An appeal filed by a qualified representative shall contain: ( )

- a. The representative’s name, official title, mailing and street addresses, telephone number; and ( )
- b. If the representative is an attorney, the Idaho State Bar License number. ( )

**04. Change in Address or Phone Number.** A party or representative must provide written notice to the Board and other parties of any change in contact information. ( )

**046. NOTICE OF APPEAL: BOE APPEALS (RULE 46).**

**01. Separate Notice.** Each parcel assessment appealed must use a separate Board Appeal Form or separate notice of appeal. ( )

**02. BOE Appeal.** An appeal brought under Section 63-511, Idaho Code, the notice of appeal shall contain: ( )

- a. A legal description of the property relating to the appeal; ( )
- b. A copy of the county board of equalization’s final decision, and when available, the decision’s postmarked mailing envelope or any accompanying certificate of service; ( )
- c. For a valuation appeal, a clear declaration of the alleged market value for the subject property. For a property tax exemption claim, the Idaho Code section(s) associated with the claim and a summary of the factual basis supporting why exempt status should be granted or denied; and ( )
- d. A copy of the final tax assessment notice for the assessment appealed. ( )

**03. Filing Place.** A BOE appeal must be filed with the county auditor in the county in which the property assessment originated. ( )

**047. NOTICE OF APPEAL: STC APPEALS (RULE 47).**

An appeal brought under Section 63-3049 or 63-707, Idaho Code, shall contain: ( )

- 01. Attachment.** A copy of the written decision being appealed; ( )
- 02. Objections.** A list of objections to the STC’s decision and the basis for said objections; ( )
- 03. Amount in Dispute.** A statement of the amount in dispute for each applicable tax year or period; and ( )

**04. Security Deposit.** When applicable, proof of compliance with the deposit requirements in Section 63-3049(b), Idaho Code, in the form of a receipt or documented acknowledgment from the STC. ( )

**048. ACKNOWLEDGMENT (RULE 48).**

**01. Acknowledgment Letter.** An acknowledgment letter will be mailed within fourteen (14) days of the receipt of an appeal in the Board’s office. The Board may acknowledge multiple appeals by the same party with a

single letter. Such acknowledgment does not constitute a formal consolidation of the appeals. ( )

**02. Defective Appeal.** If an appeal is found to be materially defective, untimely, or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal. ( )

**049. (RESERVED)**

**050. ANSWER TO APPEAL (RULE 50).**

A respondent or intervenor may file with the Board an answer to a notice of appeal. The answer shall be filed at least fifteen (15) days prior to hearing. ( )

**051. (RESERVED)**

**052. COUNTY AUDITOR REQUIREMENT (RULE 52).**

**01. Contents.** Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor shall transmit to the Board: ( )

**a.** A copy of the notice of appeal including the date of receipt, and if received by mail, a copy of the mailing envelope; ( )

**b.** The exhibits or other evidence considered by the BOE; ( )

**c.** A copy of the initial appeal to the BOE; ( )

**d.** A copy of any decision made or action taken by the BOE together with the mailing date of the notice of decision or other proof of service; ( )

**e.** A copy of the certified minutes for related BOE proceedings, or a verbatim record provided on its own distinct storage device; and ( )

**f.** When applicable, a certificate that the BOE failed to act on the appeal in the time required. ( )

**02. Minutes.** The minutes should include at a minimum: ( )

**a.** The full name of persons appearing before the BOE in the appeal; ( )

**b.** Clear identification of the parcel number associated with the assessment appealed; and ( )

**c.** The decision made by the BOE specifying the value determined or exempt status decided for each parcel. ( )

**053. -- 054. (RESERVED)**

**055. CONSOLIDATION (RULE 55).**

Whenever two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues and the same or similar property, or where the same or similar issues exist in other tax type cases, the Board may issue a written or verbal order consolidating the cases. There shall be no consolidation of cases where the rights of any party would be prejudiced. Parties may also request a consolidation. Prior to issuing a consolidation order, the Board will consider whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in judging whether consolidation would likely be beneficial. ( )

**056. -- 059. (RESERVED)**

**060. FORM OF PLEADINGS (RULE 60).**

**01. Form.** Pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record should be double-spaced: ( )

**a.** State the title of the pleading and the appeal number at the top of the cover page; ( )

**b.** Include the name, mailing and street address, and if available, the telephone and FAX number of the person filing the document; and ( )

**c.** Be signed by a qualified representative. ( )

**061. SERVICE OF DOCUMENTS (RULE 61).**

**01. Service.** A notice, motion, brief, or other document submitted to the Board will be served upon all other parties' representatives of record. Service by regular mail is adequate service. A Board notice, order, or final decision is served upon a party's representative of record. The Board may direct documents be served on persons who are not parties. ( )

**02. Proof of Service.** Every document filed with the Board must be accompanied by a certificate of service. The following is an example:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this      day of      , 20XX I caused to be served a true copy of the foregoing attached document by the method indicated below and addressed to each of the following:

(representative's name)

\_\_\_\_\_ U.S. Mail, Postage Prepaid

(mailing address)

\_\_\_\_\_ Hand Delivered

\_\_\_\_\_ Overnight Mail

\_\_\_\_\_ Certified Mail

(Signature)

\_\_\_\_\_  
(printed name of person signing)

( )

**062. DEFECTIVE, INSUFFICIENT OR LATE PLEADING (RULE 62).**

A defective, insufficient, or untimely pleading may be returned, denied, or dismissed. ( )

**063. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 63).**

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw an appeal should file a notice of withdrawal and serve all parties with a copy. ( )

**064. (RESERVED)**

**065. COMPUTATION OF TIME (RULE 65).**

In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a weekend or legal holiday, in which event the period runs until the end of the next business day. ( )

**066. FILING (RULE 66).**

**01. Document Filing Place.** A document filed with the Board shall be filed at the Board's mailing address or street address. ( )

**02. Number of Copies.** Unless otherwise indicated by the Board, one (1) copy shall be filed. ( )

**03. Fax Filing.** A filing by facsimile (fax) transmission is permitted for a notice of withdrawal or settlement, and for a notice or motion requiring an immediate response by the Board. Except for a notice of withdrawal, an original must be mailed to the Board and served on all other parties the same day. ( )

**a.** The transmission must be legible and received in its entirety during office hours for it to be considered filed on the transmission date. ( )

**b.** When making a filing by fax, if another party to the case is equipped with fax facilities, the service on that party should include fax service. ( )

**c.** The originating party shall assume the risk in fax filing and retain proof of filing by fax. ( )

**067. -- 069. (RESERVED)**

**070. PREHEARING CONFERENCE (RULE 70).**

**01. Subject of Conference.** The Board may direct parties to appear before it to consider: ( )

**a.** Any and all matters that can be agreed upon. ( )

**b.** Formulating or simplifying the issues. ( )

**c.** Stipulations which will avoid unnecessary proof. ( )

**d.** Preliminary motions to be made prior to the hearing. ( )

**e.** Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. ( )

**f.** The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. ( )

**g.** The scheduling of discovery, hearings, or other time sensitive matters. ( )

**h.** Discussing settlement. ( )

**i.** Fair hearing procedures. ( )

**j.** Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. ( )

**02. Notice of Prehearing Conference.** Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference contain the same information as notices of hearing regarding the Board's obligations under the American with Disabilities Act. ( )

**03. Failure to Appear.** Failure of either party to appear at the time and place appointed by the Board under Rule 70 may result in a dismissal of the appeal or the granting of said appeal. ( )



**04. Prehearing Order.** The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. A prehearing order will control the course of subsequent proceedings unless modified by the Board for good cause. ( )

**05. Determination Upon Results of Conference.** If, after the prehearing conference provided for in Rule 70, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may determine the appeal without conducting a hearing. ( )

**071. (RESERVED)**

**072. MOTIONS (RULE 72).**

**01. Form and Contents.** A motion should: ( )

**a.** Fully state the facts upon which it is based; ( )

**b.** Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and ( )

**c.** State the relief sought. ( )

**02. Oral Argument.** If the moving party desires oral argument on the motion it must state so in the motion. ( )

**03. Prehearing Motions.** Unless otherwise provided in these rules, a prehearing motion must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. ( )

**04. Answer to Motion.** An answer to a motion, or a request for additional time to respond, may be filed within ten (10) days after the filing of the motion. ( )

**073. (RESERVED)**

**074. BRIEFS (RULE 74).**

The Board may order briefs from the parties prior to the hearing of the evidence or after said hearing. ( )

**075. DISCOVERY (RULE 75).**

**01. Written Permission.** A party to a pending appeal may engage in discovery limited to a single discovery request upon the written order of the Board. The following procedures govern discovery: ( )

**a.** The request for discovery must be filed within twenty (20) days of the mailing date of the Board's appeal acknowledgment letter. ( )

**b.** The request should contain a statement covering the reasons the discovery is useful to the preparation of the appeal. ( )

**c.** The request must include a complete copy of the discovery request. ( )

**d.** Discovery must be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the Board. ( )

**e.** The Board may deny a discovery request that does not comply with the requirements of this chapter. ( )

**f.** Discovery responses shall be served simultaneously on all other parties. At the same time, the responding party shall file with the Board a notice stating when and on whom the response was served. The actual

contents of discovery responses will not be filed with the Board unless the order so directs. Discovery responses shall be signed by a qualified representative, and in the instance of interrogatory answers, the response shall also be signed by the person answering. Such signatures constitute a certification that the signer has reviewed the responses or answers and attests to their completeness and accuracy. ( )

**g.** The discovery order may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. ( )

**02. Scope and Method of Discovery: BOE Appeals.** The method of discovery is limited to production requests and written interrogatories. The scope of discovery must pertain to the subject property, comparable sale, or a comparable rental. ( )

**a.** The scope of discovery also includes: ( )

**i.** Information or records concerning an appraisal, assessment, financial statement or related schedule, a completed study or report, and contracts including a sale agreement; ( )

**ii.** The identity of individuals who will be called to testify as witnesses and a summary of their expected testimony; and ( )

**iii.** For an exemption appeal, information or documents relating to the claimed exemption. ( )

**b.** In a valuation case the request for production of documents or written interrogatories is limited to information from the last three (3) years preceding the assessment date unless otherwise specified by the Board. ( )

**c.** The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. ( )

**d.** The Board may limit or expand the above scope and method of discovery when it deems such action is appropriate. ( )

**03. Scope and Method of Discovery: STC Appeals.** ( )

**a.** Production requests, requests for admissions and written interrogatories are permissible methods of discovery. The Board may limit the scope and method of discovery when it deems such action appropriate. ( )

**b.** A deposition may be taken when allowed by the Board. ( )

**04. Supplementation of Response.** The party responding to a discovery order is under a continuing duty to promptly supplement an earlier response upon the availability of new information. ( )

**05. Special Case.** The Board may order additional or reciprocal discovery not provided by this rule. ( )

**06. Sanctions.** Failure to substantially comply with Board ordered discovery in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeals. ( )

**076. -- 084. (RESERVED)**

**085. INTERVENTION (RULE 85).**

**01. Intervention of Right.** Upon written application received fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal when: ( )

**a.** The applicant demonstrates in writing an interest relating to the property or transaction which is the subject of the action that is not adequately represented by existing parties; and ( )

**b.** The Idaho State Tax Commission may intervene as a matter of right. ( )

**02. Permissive Intervention.** Upon written application received at least fifteen (15) days prior to the hearing of an appeal a person may be permitted to intervene: ( )

**a.** In an appeal brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the BOE decision; ( )

**b.** When an applicant's claim or defense and the main action have a question of law or fact in common; or ( )

**c.** When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency may be permitted to intervene in the action. ( )

**d.** The Board may deny or conditionally grant a petition to intervene for untimely filing that fails to state good cause for the late filing, to prevent disruption or undue delay, due to prejudice to existing parties or undue broadening of the issues, or for other reasons. An intervener who does not file a timely petition is bound by orders and notices earlier entered as a condition of granting the untimely petition. ( )

**086. -- 099. (RESERVED)**

**100. FAIR HEARING (RULE 100).**

**01. Hearing Opportunity.** All parties shall be afforded an opportunity for a fair hearing to present evidence and argument. ( )

**02. Purpose of Hearing.** The Board's goal in conducting hearings is the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues on appeal. ( )

**03. Notice of Hearing -- Mailing.** A notice of hearing shall be mailed at least twenty (20) days before the date set for hearing. ( )

**04. Setting of Hearing.** The Board will schedule a reasonably convenient time and place where each party may appear and offer evidence and argument in support of their position. ( )

**05. Telephonic Hearing.** The Board may conduct a telephonic hearing wherein each participant has an opportunity to participate in the entire hearing. ( )

**06. Notice of Hearing -- Contents.** The notice of hearing shall include: ( )

**a.** A statement of the place, date, and time of the hearing; ( )

**b.** A statement of the legal authority under which the hearing is to be held; ( )

**c.** A reference to the sections of statute or rule concerning the conduct of the hearing; ( )

**d.** The name of the hearing officer who is scheduled to conduct the hearing; and ( )

**e.** A short and simple statement of the matters asserted or the issues involved. ( )

**07. Conference or Recess.** The presiding officer may convene the parties before hearing or recess the

hearing to discuss formulation of issues, admissions of fact or identification of documents to avoid unnecessary proof, exchange of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite an orderly hearing. ( )

**101. FAILURE TO APPEAR (RULE 101).**

**01. Default or Dismissal.** Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. ( )

**02. Waiver of Appearance.** Upon written stipulation of parties that no facts are at issue, an appeal may be submitted to the Board without oral argument. However, the Board may require appearance for argument or presentation of evidence. ( )

**102. WITHDRAWAL (RULE 102).**

An appellant may withdraw the notice of appeal in writing, by electronic filing, or on the record at hearing. ( )

**103. -- 104. (RESERVED)**

**105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).**

Any appeal may be dismissed by the Board by stipulation, agreed settlement, consent order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such order. ( )

**01. Formalizing Agreements.** An agreement by the parties may be put on the record or may be reduced to writing and filed with the Board. ( )

**02. Confidentiality.** Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations are not part of the record. ( )

**03. Consideration of Settlement.** The Board may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. ( )

**04. Burden of Proof.** Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. ( )

**106. PRESIDING OFFICER (RULE 106).**

Any member of the Board or assigned hearing officer may preside at the hearing and shall have power to: ( )

**01. Oath or Affirmation.** Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence; ( )

**02. Hearing.** Regulate the course of the hearing and maintain an orderly proceeding; ( )

**03. Motions.** Dispose of procedural requests, motions or similar matters; ( )

**04. Certification by Board.** Make decisions or proposals for decisions subject to certification by a majority of the Board; ( )

**05. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board; and ( )

**06. Other Action.** Take any other appropriate action reasonable under the circumstances. ( )

**107. PROCEDURE AND TESTIMONY (RULE 107).**

**01. Preliminary Procedure.** The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion. Parties may then make opening statements. ( )

**02. Testimony.** All testimony, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. ( )

**03. Order of Procedure.** The appellant shall present first with the respondent and any intervenor then presenting. Parties may then make closing statements. The presiding officer may require the submission of briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks is normally allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided. ( )

**04. Presentation of Evidence.** Evidence may be presented in the following order: ( )

**a.** Evidence is presented by appellant. ( )

**b.** Evidence is presented by any intervening or opposing party. ( )

**c.** Rebuttal evidence is presented by appellant. ( )

**d.** Surrebuttal evidence is presented by any intervening or opposing party. ( )

**05. Examination of Witness.** Regarding any witness who testifies, the following examination may be conducted: ( )

**a.** Direct examination by the party who called the witness. ( )

**b.** Cross-examination by any intervening or opposing party. ( )

**c.** Redirect examination by the party who called the witness. ( )

**d.** Recross-examination by any intervening or opposing party. ( )

**e.** Examination by the presiding officer. ( )

**108. -- 109. (RESERVED)**

**110. STIPULATIONS (RULE 110).**

With the approval of the presiding officer the parties may stipulate as to any fact at issue. The stipulation may be filed, or offered through an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation. ( )

**111. CONTINUANCE (RULE 111).**

**01. Continuances.** A continuance may be ordered by the Board upon filing of a timely and written motion containing the stipulated agreement and signature of all parties. Timely means at least fifteen (15) days prior to a noticed hearing date. The motion shall show a detailed good cause and contain the specific time extension requested. ( )

**02. Consideration.** Continuances are disfavored by the Board. The Board may grant a single continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance may a second continuance be granted. ( )

**112. -- 114. (RESERVED)**

**115. OFFICIAL NOTICE (RULE 115).**

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the information sought to be noticed. ( )

**116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).**

**01. Public Hearings.** Hearings conducted by the Board are open to the public except where confidential evidence is being taken under a protective order. ( )

**02. Closed Deliberations.** The Board may recess to closed deliberations for the limited purpose of deciding the matter before it. ( )

**117. RULES OF EVIDENCE (RULE 117).**

**01. Evidence, Admissibility and Evaluation.** Evidence should be taken by the Board to assist the parties' development of the record. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates evidence. The presiding officer may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any privilege recognized in Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the parties' interests not substantially prejudiced, evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in the evaluation of evidence. ( )

**02. Documentary Evidence.** Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. ( )

**03. Prepared Testimony.** The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. ( )

**04. Objections.** Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time of objection and before the start of closing statements. ( )

**05. Evidentiary Rulings.** The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board. An evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. ( )

**06. Offer of Proof.** An Offer of Proof for the record consists of a statement of the substance of the evidence to which objection has been sustained. Where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence makes an Offer of Proof to have such evidence considered by the Board. ( )

**07. Failure to Produce Evidence -- Adverse Inference.** The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witness's control. ( )

**08. Post-Hearing Evidence.** Unless allowed by the presiding officer, no post-hearing evidence will be accepted. ( )

**118. EXHIBIT (RULE 118).**

**01. Custody.** The Board shall keep all original exhibits unless otherwise provided by law. ( )

**02. Marking.** Exhibits will be marked to indicate the sponsoring and offering party. ( )

**03. Form.** An exhibit prepared for hearing should be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except a map, chart, photograph or non-documentary exhibit may be introduced on the size or kind of medium customarily used for them. ( )

**04. Copies.** A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. ( )

**05. Objection.** An exhibit identified at hearing is subject to appropriate and timely objection before the start of closing statements. A presented exhibit to which no objection is made is automatically admitted into evidence without motion. ( )

**119. -- 124. (RESERVED)**

**125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).**

The decisions and official records in appeals before the Board are public records and are subject to disclosure unless otherwise provided by Title 74, Chapter 1, Idaho Code, or when a protective order, consistent with Title 74, Chapter 1, Idaho Code, is issued. A party may file a motion for a protective order showing good cause why specific information should remain confidential. The motion must include an affidavit as to the truthfulness of the contents. If another party opposes the request, that party must file a written objection within ten (10) days. ( )

**126. -- 138. (RESERVED)**

**139. SCOPE OF APPEAL IN AD VALOREM CASE (RULE 139).**

In an appeal brought under Section 63-511, Idaho Code, where the appellant challenges only the value or exempt status upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status over the entire property. The Board shall have the power to increase or decrease the value of property in a market value appeal. If the Board finds that a property classification is in error, it shall determine the correct classification. ( )

**140. DECISIONS AND ORDERS (RULE 140).**

**01. Submission for a Decision.** The proceeding will stand submitted for decision after the record is closed by the presiding officer or as otherwise prescribed by the Board. ( )

**02. Proposed Orders.** Prior to a final decision on the merits the Board may request proposed findings of fact and conclusions of law from each party. ( )

**03. Notice.** Parties' representatives shall be notified by mail of any final decision or order. ( )

**04. Decisions.** A decision of the Board will be based on the official record for the case. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain factual findings and conclusions of law upon which the Board's determination is based. ( )

**141. -- 144. (RESERVED)**

**145. RECONSIDERATION -- REHEARING (RULE 145).**

**01. Time for Filing and Service.** A party adversely affected by a final decision may move for reconsideration or rehearing within ten (10) days of the time the decision is mailed. Service on other parties is required. The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or rehearing should be granted. Where the presentation of additional evidence is sought, the motion shall include the reason why such evidence was not presented previously. ( )

**02. Consideration.** Reconsideration or rehearing may be granted if, in reaching the decision the Board

has overlooked or misconceived some material fact or statement of law; misconceived a material question in the case; found insufficient evidence in the record; or a party is found to have been denied the opportunity for a fair hearing. ( )

**03. Answer.** Within ten (10) days after a motion for reconsideration or rehearing is filed, another party may file a response in support of or in opposition to said motion. ( )

**04. Disposition.** A motion for reconsideration or rehearing shall be deemed denied if, within thirty (30) days from the date the petition is received by the Board, no response is made by the Board. ( )

**146. -- 150. (RESERVED)**

**151. OFFICIAL RECORD (RULE 151).**

- 01. Content.** The record shall include: ( )
  - a.** All notices of proceedings; ( )
  - b.** All appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; ( )
  - c.** All intermediate or interlocutory rulings; ( )
  - d.** All evidence received; ( )
  - e.** All offers of proof, however made; ( )
  - f.** All briefs, memoranda, proposed orders of the parties, statements of position or support, and objections, but not discovery responses; ( )
  - g.** All evidentiary rulings on testimony, exhibits, or offers of proof; ( )
  - h.** All taxing authority data submitted in connection with the consideration of the proceeding; ( )
  - i.** A statement of matters officially noticed; ( )
  - j.** All preliminary orders, final orders, and orders on reconsideration or rehearing; and ( )
  - k.** The recording or transcript specified in Rule 151.02. ( )

**02. Verbatim Record.** The official recording of hearings will be taken by means of a recorder. A party requesting a court reporter shall bear the expense of the reporter's fees. If the reporter's transcript is deemed by the Board to be the official transcript, the party requesting the reporter shall furnish the Board a transcript free of charge. ( )

**152. -- 154. (RESERVED)**

**155. SUBPOENA (RULE 155).**

- 01. Issuance of Subpoena.** Upon a motion in writing, or upon the Board's own initiative without motion, the Board may issue a subpoena requiring: ( )
  - a.** The attendance of a witness from any place in Idaho; ( )
  - b.** The production of documents from any place in Idaho; or ( )



**c.** The production of any book, paper, document, or tangible thing kept within or without Idaho to any designated place of deposition or hearing for the purpose of taking testimony or examining a document before the Board. ( )

**02. Motion Contents and Timing.** The motion shall be in writing and include a showing of relevance and the reasonable scope of the testimony or specific items sought. The motion for subpoena shall be filed at least fifteen (15) days before the date and time set forth in the subpoena, exceptions may be granted upon a showing of good cause. ( )

**03. Service.** Service, and the filing of the proof of such service with the Board, shall be the responsibility of the requesting party. ( )

**04. Fees.** A witness summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. ( )

**05. Motion to Quash.** The Board, upon motion to quash may: ( )

**a.** Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or ( )

**b.** Condition denial of the motion upon reasonable conditions. ( )

**156. REQUEST FOR TRANSCRIPT (RULE 156).**  
The party requesting a written transcript shall make the arrangements for preparation of transcript and payment of the fee directly with the transcriber. ( )

**157. -- 999. (RESERVED)**