

Table of Contents

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (Rule 000).	5
001. TITLE AND SCOPE (Rule 001).	5
002. WRITTEN INTERPRETATIONS (Rule 002).	5
003. ADMINISTRATIVE APPEALS (Rule 003).	5
004. PUBLIC RECORDS (Rule 004).	5
005. -- 009. (RESERVED).	5
010. DEFINITIONS (Rule 010).	5
011. INTERNAL REVENUE CODE (Rule 011).	6
012. CORPORATION (Rule 012).	6
013. TAXABLE YEAR AND ACCOUNTING PERIOD (Rule 013).	6
014. RESIDENT (Rule 014).	7
015. PART-YEAR RESIDENT (Rule 015).	8
016. NONRESIDENT (Rule 016).	9
017. WAGES (Rule 017).	10
018. NET OPERATING LOSS. (Rule 018).	10
019. IDAHO ADJUSTMENTS TO TAXABLE INCOME (Rule 019).	11
020. DEDUCTIONS OF CERTAIN RETIREMENT BENEFITS (Rule 020).	14
021. INSULATION OF RESIDENCE (Rule 021).	15
022. ALTERNATIVE ENERGY DEVICES (Rule 022).	15
023. HOUSEHOLD AND DEPENDENT CARE SERVICES (Rule 023).	16
024. ADDITIONAL HOUSEHOLD DEDUCTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (Rule 024).	17
025. IDAHO CAPITAL GAIN (Rule 025).	17
026. BUSINESS SITUS (Rule 026).	20
027. GROCERY CREDIT (Rule 027).	21
028. GASOHOL TAX CREDIT (Rule 028).	21
029. TAX ON CORPORATE INCOME (Rule 029).	22
030. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (Rule 030).	23
031. (RESERVED).	23
032. S CORPORATIONS AND PARTNERSHIPS OPERATING IN MORE THAN ONE STATE. (Rule 032).	23
033. TAXPAYER OPTION AND ELECTION (Rule 033).	24
034. PROLOGUE (Rule 034).	24
035. BUSINESS INCOME (Rule 035).	24
036. NONBUSINESS INCOME DEFINED (Rule 036).	24
037. TWO (2) OR MORE BUSINESSES OF A SINGLE TAXPAYER (Rule 037).	25
038. BUSINESS AND NONBUSINESS INCOME: APPLICATION OF DEFINITIONS (Rule 038).	25
039. PRORATION OF DEDUCTIONS	27

040. UNITARY BUSINESS (Rule 040).	27
041. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: APPORTIONMENT (Rule 041).	29
042. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: COMBINED REPORT (Rule 042).	29
043. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: ALLOCATION (Rule 043).	29
044. CONSISTENCY AND UNIFORMITY IN REPORTING (Rule 044).	29
045. TAXABLE IN ANOTHER STATE (Rule 045).	29
046. TAXABLE IN ANOTHER STATE: WHEN A TAXPAYER IS SUBJECT TO A TAX UNDER SECTIONS 63-3027(C)(I) AND 63-3701, ARTICLE IVJ.(I), IDAHO CODE (Rule 046).	29
047. TAXABLE IN ANOTHER STATE: WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (Rule 047).	30
048. APPORTIONMENT FORMULA (Rule 048).	31
049. PROPERTY FACTOR (Rule 049).	31
050. PROPERTY FACTOR: PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (Rule 050).	31
051. PROPERTY FACTOR: CONSISTENCY IN REPORTING (Rule 051).	32
052. PROPERTY FACTOR: NUMERATOR (Rule 052).	32
053. PROPERTY FACTOR: VALUATION OF OWNED PROPERTY (Rule 053). ...	32
054. PROPERTY FACTOR: VALUATION OF RENTED PROPERTY (Rule 054). ..	33
055. PROPERTY FACTOR: AVERAGING PROPERTY VALUES (Rule 055).	34
056. PAYROLL FACTOR (Rule 056).	35
057. PAYROLL FACTOR: DENOMINATOR (Rule 057).	35
058. PAYROLL FACTOR: NUMERATOR (Rule 058).	36
059. PAYROLL FACTOR: COMPENSATION PAID IN THIS STATE (Rule 059).	36
060. SALES FACTOR (Rule 060).	36
061. SALES FACTOR: DENOMINATOR (Rule 061).	37
062. SALES FACTOR: NUMERATOR (Rule 062).	37
063. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE (Rule 063).	37
064. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE (Rule 064).	38
065. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE (Rule 065).	39
066. SPECIAL RULES (Rule 066).	40
067. SPECIAL RULES PROPERTY FACTOR (Rule 067).	40
068. SPECIAL RULES SALES FACTOR (Rule 068).	41
069. EXCEPTIONS TO APPORTIONMENT FORMULA; SEPARATE ACCOUNTING (Rule 069).	41
070. EXCEPTIONS TO APPORTIONMENT FORMULA; EXCLUSION OF A FACTOR (Rule 070).	41
071. EXCEPTIONS TO APPORTIONMENT FORMULA; TAX ON GROSS SALES (Rule 071).	41
072. EXCEPTIONS TO APPORTIONMENT FORMULA; MODIFIED FACTORS FOR	

CARRIERS OF FREIGHT OR PASSENGERS (Rule 072).	41
073. SPECIAL RULES: RAILROADS (Rule 073).	42
074. SPECIAL RULE: CONSTRUCTION CONTRACTORS (Rule 074).	44
075. SPECIAL RULES: AIRLINES (Rule 075).	50
076. AFFILIATED CORPORATIONS (Rule 076).	53
077. ATTRIBUTING INCOME OF CORPORATIONS WHICH ARE MEMBERS OF PARTNERSHIPS (Rule 077).	55
078. COMBINED REPORTS INCLUDING FOREIGN COUNTRY OPERATIONS (Rule 078).	57
079. (RESERVED).	57
080. PARTNERSHIPS, PART-YEAR AND NONRESIDENT INDIVIDUALS, TRUSTS, AND ESTATES FOR YEARS BEGINNING ON OR AFTER JANUARY 1, 1988 (Rule 080).	57
081. WATER'S EDGE ELECTION (Rule 081).	60
082. CHANGE OF ELECTION TREATMENT OF DIVIDENDS. (Rule 082).	62
083. DOMESTIC DISCLOSURE SPREADSHEET (Rule 083).	63
084. RETROACTIVE WORLDWIDE ELECTION (Rule 084).	63
085. DEDUCTION OF FEDERAL INCOME TAXES (Rule 085).	63
086. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY (Rule 086).	63
087. EDUCATIONAL INSTITUTIONS (Rule 087).	64
088. INVESTMENT CREDIT (Rule 088).	65
089. CREDIT FOR CONTRIBUTIONS TO YOUTH AND REHABILITATION FACILITIES (Rule 089).	73
090. (RESERVED).	73
091. DEFINITIONS FOR REVISED IDAHO NEW JOBS CREDIT FOR TAX YEARS BEGINNING IN 1983 OR AFTER (Rule 091).	73
092. (RESERVED).	74
093. REVISED NEW JOBS TAX CREDIT AMOUNT FOR TAX YEARS BEGINNING IN 1983 OR AFTER (Rule 093).	75
094. - 095. (RESERVED).	77
096. PRIORITY ORDER OF CREDITS (Rule 096).	77
097. PERSONS REQUIRED TO MAKE RETURNS OF INCOME (Rule 097).	78
098. JOINT RETURNS (Rule 098)	82
099. TIME FOR FILING INCOME TAX RETURNS (Rule 099).	83
100. EXTENSIONS OF TIME (Rule 100).	84
101. ELECTRONIC TRANSFER OF FUNDS (Rule 101).	84
102. STATE INCOME TAX WITHHOLDING ON PERCENTAGE BASIS WITHHOLDING, COLLECTION AND PAYMENT OF TAX (Rule 102).	85
103. STATE INCOME TAX WITHHOLDING ON PERCENTAGE BASIS FOR AGRICULTURAL, HOUSEHOLD, OR DOMESTIC EMPLOYERS UNDER SECTION 63-3036, IDAHO CODE (Rule 103).	88
104. CORPORATE ESTIMATED PAYMENTS (Rule 104).	89
105. INFORMATION RETURNS. (Rule 105).	92
106. PUBLICATION OF RULES (Rule 106)	93
107. EXAMINATION OF BOOKS AND WITNESSES DISCOVERY (Rule 107).	93

108. DEFICIENCY IN TAX (Rule 108).	94
109. NOTICE OF DEFICIENCY PROTEST (Rule 109).	94
110. MATHEMATICAL ERROR-ASSESSMENT OF TAX (Rule 110).	95
111. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY (Rule 111).	95
112. ADJUSTED OR COMPROMISED CASES-CLOSING AGREEMENTS (Rule 012).	97
113. JUDICIAL REVIEW (Rule 113).	98
114. ACTION TO COLLECT UNPAID TAX OR DEFICIENCY (Rule 114).	99
115. PROPERTY SUBJECT TO LIEN (Rule 115).	99
116. RELEASE OR SUBORDINATION OF TAX LIEN (Rule 116).	99
117. LEVY OR DISTRRAINT WARRANT (Rule 117).	99
118. PROCEEDINGS ON LEVY OR DISTRRAINT (Rule 118).	100
119. JEOPARDY ASSESSMENTS (Rule 119).	100
120. CONTRIBUTIONS TO TRUST ACCOUNTS (Rule 120).	100
121. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION OF TAX (Rule 121).	100
122. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (Rule 122).	101
123. CREDITS AND REFUNDS (Rule 123).	101
124. INTEREST ON REFUNDS (Rule 124).	102
125. DISCLOSURE-SCOPE (Rule 125).	103
126. INFORMATION FURNISHED TO CERTAIN OFFICIALS (Rule 126).	104
127. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (Rule 127).	104
128. ADDITIONAL TAX REQUIRED WHEN FILING INCOME TAX RETURN (Rule 128).	105
129. ELECTION CAMPAIGN FUND (Rule 129).	105
130. DESIGNATION OF SCHOOL DISTRICT (Rule 130).	105
131. DECLARATORY RULINGS (Rule 131).	105
132. INTEREST ON AMOUNTS OF TAX ACCRUING OR UNPAID. (Rule 132).	106
133. DEFINITIONS FOR PURPOSES OF "THE TAXPAYERS' BILL OF RIGHTS," CHAPTER 40, TITLE 63, IDAHO CODE (Rule 133).	106
134. ACQUISITION OF LOCATION INFORMATION (Rule 134).	106
135. COMMUNICATION IN CONNECTION WITH TAX COLLECTION (Rule 135).	106
136. SPECIAL RULES: PUBLISHING. (Rule 136).	106
137. SPECIAL RULES: TELEVISION AND RADIO BROADCASTING. (Rule 137).	107
138. APPLICATION OF PARTIAL PAYMENT. (Rule 138).	107
139. -189. (RESERVED).	107
190. MEDICAL SAVINGS ACCOUNTS (Rule 190).	107
191. -- 999. (RESERVED).	108

IDAPA 35
TITLE 01
Chapter 01

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-513 and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Income Tax Act. Many sections of the Idaho Income Tax Act and related rules also apply to other types of taxes, such as Sales Tax. (7-1-93)

001. TITLE AND SCOPE (Rule 001).

These rules shall be cited as IDAPA 35, Chapter 01, Title 01, "Income Tax Administrative Rules." These rules shall 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. (7-1-93)

002. WRITTEN INTERPRETATIONS (Rule 002).

In accordance with Section 52-5201(16)(b)(iv), Idaho Code, the Tax Commission has written statements which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that these documents are not confidential under Sections 63-3075 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the State Tax Commission. (7-1-93)

003. ADMINISTRATIVE APPEALS (Rule 003).

This chapter does allow administrative relief of the provisions outlined herein under Section 63-3049, Idaho Code. (7-1-93)

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 1, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075 or 9-340, Idaho Code. (7-1-93)

005. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

01. Employee. An employee is an individual who performs services for another individual or organization and is subject to control as to what services shall be performed and the manner of performance. (7-1-93)

02. Employer. The term employer includes any person or organization for whom an individual performs any service as an employee. (5-31-95)

03. Farming. The term farm is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges and orchards. The definition of a farm for state income tax purposes shall be consistent with the definition under applicable sections of the Internal Revenue Code. (7-1-93)

04. Mathematical Error. A mathematical error includes the following errors, omissions, or defects in a return: 1) arithmetical errors or incorrect computations, and 2) obvious entries on the wrong line. (5-31-95)

05. Negligence. Negligence is the breach of a duty or obligation, recognized by law, which requires conformance to a certain standard of conduct. (7-1-93)

06. Paid or Incurred and Paid or Accrued. The terms paid or incurred and paid or accrued shall be construed according to the method of accounting upon the basis of which the taxable income is computed. See Section 7701(a)(25), Internal Revenue Code. (7-1-93)

07. Sale. A sale is defined as a transaction in which title passes from the seller to the buyer, or the time at which 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. (7-1-93)

08. Tax Home. For income tax purposes, the term tax home refers to the taxpayer's principal place of business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a post of duty in another state would be an Idaho resident for Idaho income tax purposes, but he would not be entitled to a deduction for travel expenses incurred in the other state since that is his tax home. This rule applies regardless of whether he stays overnight in Idaho or at his place of employment in the other state. (7-1-93)

09. Terms. (7-1-93)

a. Terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meaning as is assigned to them by the Internal Revenue Code. Specific reference is made to Section 7701, Internal Revenue Code, relating to definitions of terms, and those definitions are adopted by this reference. (7-1-93)

b. Terms used in these rules shall have the meanings prescribed by Idaho or federal tax statutes and rules, or shall have meanings specifically prescribed by these rules. The more specific definition shall control over the more general. (7-1-93)

10. These Rules. The term these rules refers to this chapter, IDAPA 35.01.01, of rules relating to Idaho income tax. (5-31-95)

011. INTERNAL REVENUE CODE (Rule 011).

01. In General. For the purpose of this section, the term Internal Revenue Code means the Internal Revenue Code of 1986 of the United States, as in effect on the date adopted by the Idaho State Legislature. Effective dates for special provisions of the Internal Revenue Code are the same for Idaho as for federal purposes. (7-1-93)

02. Interpretations. Interpretations of the Internal Revenue Code may be found in various sources including decisions of the Tax Court and letters of acquiescence or nonacquiescence by the Commissioner in 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 Department income tax regulations. Such interpretations are adopted by this reference to the extent that they are not in conflict with, inconsistent with or repugnant to the Idaho Code and Administrative Rules. (7-1-93)

03. Amendment of Statute. Section 63-3004, Idaho Code, is customarily amended by the legislature each year to update the code to conform it to the Internal Revenue Code as of January 1 of the latest year. (7-1-93)

a. For calendar year taxpayers, the effective date of the legislation is clearly defined. (7-1-93)

b. For fiscal year taxpayers, the statute and rules become effective for taxable years which begin after January 1 each year unless the legislation as enacted contains a specifically stated effective date other than January 1. (7-1-93)

04. Tax Commission to Exercise Discretion in Determining Correctness of Tax Return. Discretion granted to the Secretary of the Treasury to make determinations or reallocations regarding items of income or adjustments to income, deductions, expenses, credits or other subjects of taxation, under the Internal Revenue Code adopted by reference in Title 63, Chapter 30, Idaho Code, may also be exercised by the Commission and its authorized agents, employees and deputies in the enforcement and administration of the Idaho Income Tax Act and these rules. (7-1-93)

012. CORPORATION (Rule 012).

The term corporation includes those entities incorporated under the laws of Idaho or any other state of the United States. The term also includes entities incorporated under the laws of a foreign country, and any association which is taxable as a corporation under the provisions of the Internal Revenue Code and Regulations. See generally, Section 7701, Internal Revenue Code, and Section 301.7701-1(c) of the Federal Treasury Regulations. (7-1-93)

013. TAXABLE YEAR AND ACCOUNTING PERIOD (Rule 013).

01. Accounting Period. Taxable income must be computed for a fixed period. That period is a taxable year, and means the taxpayer's annual accounting period or the period for which the federal return is made. The period will normally be twelve (12) months. See Sections 1.441-1 and 1.441-2, Treasury Regulations. For taxable years on a fifty-two, fifty-three (52-53)

week basis, the year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the fifty-two, fifty-three (52-53) week taxable year, and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the fifty-two, fifty-three (52-53) week taxable year. (7-1-93)

02. Change of Accounting Period. (7-1-93)

a. If a change in accounting is accomplished for federal income tax purposes, the same change must be accomplished at the same time and for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue is required, a copy of that approval must accompany the Idaho short-period return. (7-1-93)

b. If a change does not require prior approval of the Commissioner of Internal Revenue, a notation of the change must be made on the Idaho short-period return, together with a statement that no prior approval was required and citation of authority therefor. See 1.442-1, Treasury Regulation. (7-1-93)

014. RESIDENT (Rule 014).

01. Resident. The term resident is restricted to individuals or natural persons, however, see Subsection 014.04 of this rule. The term includes both aliens and minors, while excluding taxpayers such as corporations which are not individuals. All individuals who have been domiciled in Idaho or who have resided within the state for the entire taxable year are residents for income tax purposes. (7-1-93)

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. 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. All individuals who have been domiciled in Idaho for the entire taxable year, within the meaning of the foregoing definition of domicile, are residents for Idaho income tax purposes, even though they have actually resided outside this state during the whole or part of the taxable year, except (7-1-93)

a. An individual who is absent from Idaho for at least four hundred forty-five (445) days during any consecutive fifteen (15) month period will not be considered a resident during such period if the following conditions are met: during the fifteen (15) month period, the individual spends at least two hundred fifty (250) days in a foreign country; the individual does not maintain a permanent place of abode in this state at which a spouse, unless legally separated, or minor or dependent children are present for more than sixty (60) days during any calendar year; and the individual does not claim Idaho as his tax home for federal tax purposes. (7-1-93)

b. An individual who has been absent from this state for more than fifteen (15) consecutive months and who has not been present in this state for more than sixty (60) days during any calendar year following the end of the fifteen (15) month period shall not be considered a resident for that calendar year provided that: The individual does not hold an elective or appointive office of the Government of the United States, other than the Armed Forces of the United States or career appointment in the United States Foreign Service, and is not employed on the staff of an elective officer in the Legislative Branch of the Government of the United States; the individual does not maintain a permanent place of abode in this state at which the spouse, unless legally separated, or minor or dependent children are present for more than sixty (60) days during any calendar year; and the individual does not claim Idaho as his tax home for federal tax purposes. (7-1-93)

03. Members of the Armed Forces of the United States. (7-1-93)

a. Residents of Idaho. An individual on full-time active duty with the Armed Forces of the United States for a continuous and uninterrupted period of one hundred twenty (120) days or more is not taxed on compensation for such duty earned outside this state. The one hundred twenty (120) days of active duty need not all be in the same calendar year. Resident members of the Armed Forces must file an Idaho return. (7-1-93)

b. Nonresident of Idaho. The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 574, provides that members of the Armed Forces who are serving in Idaho, but who continue to maintain their domicile or legal residence in another state or country, shall not be deemed to be residents of Idaho. Thus, the active-service pay of such nonresident servicemen is exempt from the Idaho tax. Public Law 94-278, enacted in 1976, provides that commissioned officers of the U.S. Public Health Service are covered by the Soldiers' and Sailors' Civil Relief Act and for income tax purposes are considered to be

members of the Armed Forces of the United States.

(7-1-93)

04. Estates and Trusts. Fiduciary returns are required of estates and trusts, which may, depending on the circumstances, file either as a resident or nonresident for Idaho income tax purposes.

(7-1-93)

a. Estate. An estate where no trust is created will be treated as a resident if the fiduciary of the estate is appointed by an Idaho court or the estate is administered in Idaho. Where the fiduciary of the estate is appointed by a court outside of Idaho and the estate is administered in another state, income earned from Idaho sources must be reported to Idaho in the same manner as though the taxpayer were a nonresident individual.

(7-1-93)

b. Trust. A trust will be treated as a resident if the fiduciary of the trust is an Idaho resident or the trust is administered in Idaho. Where the fiduciary of the trusts is a nonresident of Idaho and the trust is administered in another state, income earned from Idaho sources must be reported to Idaho in the same manner as though the taxpayer were a nonresident individual. No distinction is made between living trusts, created by the grantor and funded during his lifetime, and testamentary trusts, becoming operative upon the death of the grantor.

(7-1-93)

05. Aliens. A resident alien who is present in Idaho, or domiciled in Idaho, for the whole year is a resident of Idaho for income tax purposes.

(7-1-93)

a. Income Taxable by Idaho. Income from all sources is taxable by Idaho.

(7-1-93)

b. Required Tax Form. The taxpayer will file a Form 40 or if the qualifications are met, a Form 40EZ.

(7-1-93)

c. Filing Status. The taxpayer will use the same filing status for the Idaho return as used on the federal return. Married taxpayers may file a joint return if both spouses were resident aliens for the entire tax year. A joint return is filed where the resident alien and nonresident alien spouse choose to treat the nonresident as a resident and report all income from all sources to Idaho. A resident alien with a nonresident alien spouse can qualify as head of household if the resident alien provides a household for a family member other than his spouse and the federal head of household provisions are met.

(7-1-93)

d. Deductions and Exemptions. The deductions and exemptions allowed on the federal return will be allowed on the Idaho return.

(7-1-93)

015. PART-YEAR RESIDENT (Rule 015).

Any individual who moves into or moves out of this state during the taxable year and has been neither domiciled in Idaho nor has resided herein for the full twelve (12) months of the taxable year is a part-year resident for Idaho income tax purposes.

(7-1-93)

01. Computation Requirement

(7-1-93)

a. For Taxable Years Beginning on or After January 1, 1988. Any individual who qualifies as a part-year resident and who is required to file an income tax return must file on a nonresident income tax form and apportion exemptions and deductions in the manner as required by Section 63-3027A, Idaho Code, and ISTC 80.

(7-1-93)

b. For Taxable Years Beginning After December 31, 1984, but Before January 1, 1988. Any individual who qualifies as a part-year resident and who is required to file an Idaho income tax return shall compute the tax on taxable income as required for Idaho residents under Section 63-3024, Idaho Code. The tax as computed shall be reduced to the proportion that Idaho adjusted gross income bears to total adjusted gross income. Idaho adjusted gross income includes income from Idaho sources, as well as, income from all sources for that period during which an individual is an Idaho resident. Total adjusted gross income includes income from all sources.

(7-1-93)

02. Aliens.

(7-1-93)

a. The following aliens will be considered part-year Idaho residents for income tax purposes: A resident alien who resides in Idaho for part of the tax year or a dual-status alien who has lived in Idaho a portion of the year he or she has been in the United States.

(7-1-93)

b. Income Taxable by Idaho. For the part of the year an individual is a nonresident of Idaho, only Idaho source income is taxable. Income from all sources is taxable for the part of the year an individual is a resident of Idaho.

(7-1-93)

c. Required Tax Form. The taxpayer will file a Form 43, Part-Year/Nonresident Income Tax Return, indicating the part-year residency status.

(7-1-93)

d. Filing Status. The taxpayer will use the same filing status for the Idaho return as used on the federal return. Married taxpayers may file a joint return if they elect to be taxed as resident aliens for the entire tax year. The head of household status is not available to an individual with a dual-status tax year.

(7-1-93)

e. Deductions and Exemptions. The deductions and exemptions allowed on the federal return will be prorated as provided in Section 63-3027A(d), Idaho Code. A taxpayer who has a dual-status tax year and does not elect to be treated as a U.S. resident for the entire year is not allowed to use the standard deduction. The dual-status alien must itemize any allowable deductions.

(7-1-93)

016. NONRESIDENT (Rule 016).

The term nonresident means any individual who is neither a resident nor part-year resident within the meaning of Sections 63-3013 and 63-3013A, Idaho Code, and ISTC 14 and 15.

(7-1-93)

01. Computation Requirements.

(7-1-93)

a. For Taxable Years Beginning on or After January 1, 1988. Any individual who qualifies as a nonresident and who is required to file an income tax return must file on a nonresident income tax form and apportion exemptions and deductions in the manner as required by Section 63-3027A, Idaho Code, and ISTC 80.

(7-1-93)

b. For Taxable Years Beginning After December 31, 1984, but Before January 1, 1988. Any nonresident who has income from sources within Idaho and is required to file an Idaho income tax return pursuant to the provisions of Sections 63-3030 and 63-3031, Idaho Code, shall compute the tax on taxable income as required for Idaho residents under Section 63-3024, Idaho Code. The tax as computed shall be reduced to the proportion that adjusted gross income from Idaho sources bears to adjusted gross income from all sources. Income and deductions attributable to Idaho will be allocated to Idaho to determine adjusted gross income from Idaho sources. Adjusted gross income from all sources is computed as for Idaho residents. See ISTC 79

(7-1-93)

02. Traveling Salesmen.

(7-1-93)

a. Nonresident salesmen are subject to Idaho tax regardless of the location of the post of duty or starting point on the Idaho portion of the individual's travel.

(7-1-93)

b. If these persons are paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services which the number of miles traversed in Idaho bears to the total number of miles traversed within and without the state. If they are paid on some other basis, such as hours, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Idaho that portion of total compensation which is reasonably attributable to personal services performed in this state.

(7-1-93)

03. Transportation Employees Covered Under Public Law 101-322. Enacted July 6, 1990. Compensation paid to interstate railroad and motor carrier employees who have regularly assigned duties in more than one state will be subject to income tax only in the employee's state of residence. Employee for purposes of Public Law 101-322 includes:

(7-1-93)

a. An operator of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle.

(7-1-93)

b. A mechanic.

(7-1-93)

c. A freight handler.

(7-1-93)

d. Any individual other than an employer; who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Employees of the United States, state, or local government are not included. (7-1-93)

04. Aliens. (7-1-93)

a. Income Taxable by Idaho. Alien individuals who are nonresidents of Idaho are taxable only on income from sources within Idaho. (7-1-93)

b. Required Tax Form. The taxpayer will file a Form 43, Part-Year/Nonresident Income Tax Return, indicating the nonresident status. A federal Form 1040NR, U.S. Nonresident Alien Income Tax Return, should be filed with the Form 43. (7-1-93)

c. Filing Status. The taxpayer cannot file a joint return if either spouse is a nonresident alien at any time during the tax year, unless the election to be treated as resident aliens is made. The nonresident alien taxpayer cannot qualify for head of household status. (7-1-93)

d. Deductions and Exemptions. The deductions and exemptions allowed on the federal return will be prorated as provided in Section 63-3027A(d), Idaho Code. The nonresident alien cannot use the standard deduction amount and generally is allowed to claim a personal exemption for himself. (7-1-93)

017. WAGES (Rule 017).

The term wages relates to all compensation for services regardless of the form of payment. Wages include, but are not limited to, salaries, commissions, tips, directors' fees, payment for services on the basis of a percentage of profits, and other forms of compensation. See Section 61(a), Internal Revenue Code and Section 1.61-2, Treasury Regulation. (7-1-93)

018. NET OPERATING LOSS. (Rule 018).

01. Definitions For Purposes of Net Operating Losses. (5-31-95)

a. For purposes of this rule, the term income means income as defined in Section 63-3022(d), Idaho Code. (5-31-95)

b. The term net operating loss deduction means the aggregate amount of the Idaho net operating losses carried to another taxable year and subtracted from income. (5-31-95)

c. A net operating loss is absorbed when it has been fully subtracted from income. (5-31-95)

02. Adjustments in Carryback and Carryover Years. In determining the amount of the net operating loss used in a carryback or carryover year in arriving at Idaho taxable income for a taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year. For purposes of determining the amount of net operating loss used in a carryback year, adjustments may be made even though the year is closed due to the statute of limitations, Sections 63-3068 and 63-3072, Idaho Code. (5-31-95)

03. Taxpayers Other Than Corporations. Any adjustments necessary to correct income will be made to determine the income in the year to which the net operating loss carryback is applied. A net operating loss incurred outside this state in a taxable year in which the taxpayer was not a resident of this state shall not be allowed as a carryback or carryforward deduction against Idaho income. See also Section 63-3022(d), Idaho Code. (5-31-95)

04. Corporate Taxpayers. A net operating loss incurred in a year in which a corporation has no business situs in this state, defined in Section 63-3023, Idaho Code, shall not be allowed as a carryback or carryover deduction against Idaho taxable income. See also Section 63-3022(d), Idaho Code. (5-31-95)

05. Additional Rules for 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. To its share of the apportioned loss, the corporation must add or subtract its nonbusiness income or loss allocated to Idaho. (5-31-95)

06. Net Operating Loss Carryback (5-31-95)

a. Except as provided in subsection 018.06.C., the net operating loss carryback, not to exceed one hundred thousand dollars (\$100,000) per taxpayer, is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding year. The loss not absorbed in the carryback years may be subtracted from taxable years arising in the succeeding fifteen (15) years, in order, until absorbed.

(5-31-95)

b. For a unitary group of corporations, each corporation having a net operating loss which results from its share of the Idaho apportioned loss adjusted for its nonbusiness income or nonbusiness loss shall be limited to a maximum carryback of one hundred thousand dollars (\$100,000).

(5-31-95)

c. The taxpayer may elect to forego the carryback provision of Subsection 018.06.a., and deduct the net operating loss in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed.

(5-31-95)

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date, including extensions, of the loss year return. Once the completed return is filed, the extension period expires. See Idaho Income Tax Administrative Subsection 018.100.OLb. The election referred to in this section shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of such loss. The statement must contain the following information: the name, address, and taxpayer's social security number or employer identification number; a statement that the taxpayer makes the election under Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and the amount of the net operating loss.

(5-31-95)

e. If the election is made on an amended or original return filed subsequent to the time allowed in Subsection 018.06.d., it will be considered untimely and the net operating loss will be applied as provided in Subsection 018.06.a.

(5-31-95)

07. Order in Which Losses Are Applied in a Year. Loss carryforwards shall be deducted before deducting any loss carryback applicable to the same year.

(5-31-95)

08. Documentation Required When Claiming a Net Operating Loss Deduction. Every taxpayer claiming a net operating loss deduction for any taxable year shall file with his return for such year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover.

(5-31-95)

09. Net Operating Losses Which Survive a Merger. Pursuant to Section 381, Internal Revenue Code, and the limitation provisions of Section 382, Internal Revenue Code, Idaho net operating losses incurred by all-Idaho and multistate taxpayers will survive a merger if the following criteria are met: the subject transaction meets all federal laws, criteria, and procedures; the liquidated or merged entity must have had an Idaho business activity and incurred an Idaho net operating loss; and continuity of business requirements must be met in order for the net operating loss carryover privilege to be sustained

(5-31-95)

a. Changes in the location of a loss corporation's business or its key employees will not be treated as a failure to satisfy the continuity requirements.

(5-31-95)

b. Where the pre-merger corporation conducted multistate operations, the Section 382, Internal Revenue Code, loss limitation is limited further by the pre-merger loss corporation's Idaho apportionment factor for the last tax year before the merger.

(5-31-95)

019. IDAHO ADJUSTMENTS TO TAXABLE INCOME (Rule 019).

01. General Rule. For purposes of the Idaho Income Tax Act and the Idaho Income Tax Administrative Rules, gross income, adjusted gross income, and taxable income shall be determined according to the Internal Revenue Code. This rule contains required additions to and subtractions from federal taxable income, as defined by Section 63, Internal Revenue Code, to determine Idaho taxable income. See, also, Idaho Income Tax Administrative Rules 001, 013, and 020 through 025.

(6-23-94)

02. Additions Required of All Taxpayers. The following additions of amounts excluded or deducted for federal purposes must be made by all Idaho taxpayers. (7-1-93)

a. Add all interest and dividends which are excluded from federal gross income and which are received or accrued from foreign securities or from obligations of any foreign country, or from other states or their political subdivisions, or the District of Columbia or obligations of corporations, or instrumentalities of any of the above, less applicable amortization. Interest from securities issued by the state of Idaho, its cities, and political subdivisions is exempt and need not be added to income if the securities are: Negotiable instruments, commonly bought and sold in established markets; and registered in accordance with the provisions of Sections 57-901 through 57-914, Idaho Code. Any expenses and interest not allowed under Sections 265 and 291, Internal Revenue Code, which are related to the production of this income shall reduce the amount of interest and dividends added back. The allowable expenses and interest shall not reduce the reportable amount of interest and dividends to less than zero (0). A schedule of such interest, dividends, and related expenses shall be submitted with the return filed. (7-1-93)

b. Add the exact amount of any state income taxes, or other state or local taxes measured by income, which have been deducted in arriving at taxable income for federal purposes. This provision is applicable only to the extent of the deductions actually claimed for federal tax purposes. (7-1-93)

c. Add any net operating loss deduction used in arriving at federal taxable income or loss in any taxable year to which such deduction is carried. (7-1-93)

d. Add any capital loss carryover which occurred outside this state in a taxable year when the taxpayer was not a resident of this state, as defined by Section 63-3013, Idaho Code, or in the case of a corporation, in a taxable year in which such corporation did not have business situs in this state as defined by Section 63-3023, Idaho Code. (7-1-93)

03. Additions Required of Corporations. The following additions of federal exclusions or deductions must be made by all entities defined as corporations. (7-1-93)

a. Add the deduction for dividends received from corporations which deduction is allowed on the federal return by Sections 243(a), 243(c), 244, 245, and 246A, Internal Revenue Code, as limited by Section 246(b)(1) of said code. (6-23-94)

b. Unless reasonable compensation is paid for personal services actually performed outside this state, add any salary, fee, or compensation of every officer or director who is not an Idaho resident, and who is an officer or director of a corporation with more than fifty percent (50%) of its income taxable in Idaho, and which has been deducted by the corporation in determining its federal taxable income, and which was not reported as income to Idaho by such officer or director. (7-1-93)

c. For tax years beginning on or after April 1, 1982, a portion of the corporation's interest expense may be allocable nonbusiness expense if any dividend or interest income is determined to be nonbusiness income. Such interest expense may be deducted only from nonbusiness income. Interest expense means the aggregate interest expense deductible in determining federal taxable income less reductions required by Section 63-3022(a)(1), Idaho Code. Dividend and interest income does not include income which is exempt from Idaho income tax under the provisions of Section 63-3022(g), Idaho Code. Allocable nonbusiness income and expense means amounts directly assignable to the state or other jurisdiction within which the nonbusiness activity occurs. Apportionable business income and expense means the aggregate amounts attributed under Section 63-3027, Idaho Code, to two (2) or more states or other jurisdictions within which some part of the corporation's regular business activities occur. Allocable nonbusiness interest expense shall be the lesser of: The excess of interest expense over the sum of apportionable business dividend and interest income, or the sum of allocable nonbusiness dividend and interest income. (7-1-93)

d. No deduction will be allowed corporations for interest expense or indebtedness incurred to purchase or carry obligations which produce tax exempt interest income. Interest expense on such indebtedness which is incurred or continued after January 1, 1983, or to carry these obligations acquired after January 1, 1983, will be subject to the reduction. At the option of the taxpayer, the amount will be determined by either: Calculating the ratio of the taxpayer's average adjusted basis of the obligations in question to the average adjusted basis of all assets, and applying this ratio to the total interest expense otherwise allowable. Average adjusted basis of obligations and total assets will be determined by adding the adjusted basis at the end of each month and dividing by the number of months in the taxable year. Adjusted basis will be determined under

appropriate sections of the Internal Revenue Code; or calculating the ratio that the taxpayer's interest income from the obligations identified above for the taxable year bears to the taxpayer's total income, including exempt income, for the taxable year and applying this ratio to the interest expense otherwise allowable. (7-1-93)

04. Additions Required of Individual Taxpayers. To determine Idaho taxable income or loss, an individual taxpayer must add back the taxable amount of a lump sum distribution not included in federal adjusted gross income. The taxable amount referred to in this subsection does not include employee death benefits excludable from gross income under Section 101(b), Internal Revenue Code. (7-1-93)

05. Subtractions Applicable to All Taxpayers. The items listed in this subsection may be claimed as tax benefits by any taxpayer to determine Idaho taxable income or loss. (7-1-93)

a. Subtract from taxable income in a taxable year any net operating loss deduction as defined by Section 63-3021, Idaho Code, and Idaho Income Tax Administrative Rule 18. (6-23-94)

b. Subtract the amount of any interest received on any obligations of the United States, which was previously included in taxable income as defined by Section 63, Internal Revenue Code. The deduction for income exempt from taxation by Idaho will be reduced by any expenses, including interest and taxes, related to the production of that tax-exempt income. A schedule of such exempt income and related expense shall be submitted with the return. Refer to Subsection 019.03.C. Any gain or loss resulting from the sale of negotiable obligations of the U.S. is taxable by Idaho and shall not be subtracted. (6-23-94)

06. Subtractions Applicable to Individual Taxpayers. The items listed in this subsection may be claimed as tax benefits by individual taxpayers to determine Idaho taxable income or loss. (7-1-93)

a. Contributions to the medical assistance account established by Section 56-209(b), Idaho Code, may be deducted in determining Idaho adjusted income if such contributions were not previously deducted as itemized deductions. The medical assistance account is primarily designed to receive money from families of patients receiving medical assistance under Medicaid. (7-1-93)

b. A deduction for expenditures for personal care service for a family member is allowed for qualified expenditures made after January 1, 1981. Generally, the expenditures allowed are for in home medically oriented personal care services not reimbursable by Medicare, Medicaid, or insurance. Specific criteria for the qualified expenditures are: The deductible expenditures may not exceed one thousand dollars (\$1,000) per individual recipient of the personal care services. The amount claimed must actually have been expended by the taxpayer for personal care services provided to the recipient for whom the claim is made. The expenditures for the personal care services may not be deducted elsewhere on the return in the computation of taxable income. The expenditure cannot be reimbursable by Medicare, Medicaid, or by private insurance. The expenditure must be for services which are provided to an immediate family member. An immediate family member is defined as a person who meets the member of household or relationship test for being claimed as a dependent on income tax returns. A spouse will qualify. The services must be provided in either the taxpayer's home, or the cared-for person's home. The home may not be a commercial or nonprofit hospital, nursing home, or similar health facility. The services must be provided for medically oriented tasks and not for household services such as cleaning or cooking. The services must be prescribed in accordance with a plan of treatment established by a physician for the recipient's personal care. The services must be supervised by a registered nurse. The expenditures must be made to a person who is a qualified provider of personal care services as determined by the director of the Department of Health and Welfare in accordance with Section 39-A4706, Idaho Code. The provider may not be an immediate family member unless a member of the family is determined by the director of the Department of Health and Welfare to be the best qualified person to provide services under the circumstances surrounding the recipient's need for personal care services; or the financial circumstances of the recipient's family are such that it is more advantageous to the state and to the recipient to utilize a member of the recipient's family, and payments for care are reported as income by the provider on the provider's own Idaho income tax return if the provider is required to file an Idaho return. (6-23-94)

c. Deduct teacher retirement payment paid under the Old Teachers' Retirement System, 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 deduction. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers employed by the state of Idaho include only those employed directly by a political subdivision of the state, such as a county or local school district. Teachers receiving benefits under the Public Employees Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided herein for amounts received from other states, school districts outside the

state of Idaho, or any other source where the proceeds do not relate to teaching performed within Idaho. (7-1-93)

d. Railroad retirement benefits, including Tier I, Tier II, and supplemental benefits paid by the Railroad Retirement Board, are not subject to Idaho income tax. To the extent that any of these amounts are included in federal adjusted gross income, they are subtracted to arrive at Idaho taxable income. Supplemental benefits, for purposes of this subsection, include railroad unemployment and sickness benefits. (7-1-93)

e. A self-employed individual may deduct premiums paid for Worker's Compensation Insurance. Worker's compensation means Workmen's Compensation, as defined in Section 41-506(d), Idaho Code. Premiums paid to secure Worker's Compensation insurance are those security payments, as provided by Section 72-301, Idaho Code. A self-employed individual is defined in Section 401(c)(1), Internal Revenue Code. (7-1-93)

07. Miscellaneous Provisions. (6-23-94)

a. Federal income tax shall not be allowed as a deduction. (7-1-93)

b. The depletion allowance for all taxpayers is the same as the allowance for federal income tax purposes. 7-1-93)

c. Net Income of Estates and Trusts. Section 63-3022, Idaho Code, and these rules shall be applied to adjust net income of estates and trusts for Idaho income tax purposes. Section 63-3022, Idaho Code, and these rules shall be applied to adjust net income distributed to beneficiaries of trusts or estates. If a nonresident beneficiary of an estate or trust is not required to file because his total Idaho income is less than the amount specified in Section 63-3030, Idaho Code, and Idaho Income Tax Administrative Subsection 097.06, the estate or trust will not be required to include that beneficiary's income in the computation of tax due nor will it be required to pay the Permanent Building Fund Tax on such beneficiary's behalf. (6-23-94)

d. Nonresident Shareholders of S Corporations or Nonresident Partners of Partnerships. An entity which has income from Idaho sources and which has elected to file federal income tax returns pursuant to Subchapter S Sections 1361-1379, Internal Revenue Code, or Subchapter K Sections 701-761, Internal Revenue Code, shall file Idaho income tax returns as required by Section 63-3030(a)(4) and (9), Idaho Code, and Idaho Income Tax Administrative Subsection 97.06. Nonresident shareholders of S corporations or partners of partnerships with Idaho income are deemed to have Idaho source income. Reasonable compensation paid to nonresident shareholders or partners for personal services performed outside the state of Idaho shall not be included as income earned from Idaho sources. Dividends paid and other income reportable by shareholders or partners for federal tax purposes are income from Idaho sources. The Idaho income shall be determined by applying the corporation's or partnership's Idaho apportionment factor as computed pursuant to Section 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 032 through 078. The factor shall be applied to the total income reportable on the shareholder's or partner's federal return as adjusted to exclude reasonable compensation paid to the nonresident shareholder or partner for personal services performed outside the state of Idaho. The resulting amount must be included on the shareholder's or partner's individual Idaho nonresident return as Idaho taxable income, together with any other Idaho income earned by the shareholder or partner. When nonresident shareholders or partners, who are individuals, do not file Idaho income tax returns, the S corporation or partnership shall report the income to Idaho, be taxed at the corporate rate of eight percent (8.0%), and be liable for the Permanent Building Fund Tax for each such shareholder or partner required to file. If a nonresident shareholder of an S corporation or partner of a partnership is not required to file because his total Idaho income is less than the amount specified in Section 63-3030, Idaho Code, and Idaho Income Tax Administrative Subsection 97.06, the S corporation or partnership will not be required to include that shareholder's or partner's income in the computation of tax due nor will it be required to pay the Permanent Building Fund Tax on such shareholder's or partner's behalf. (6-23-94)

e. S Corporations will be taxed at the corporate rate of eight percent (8.0%) upon amounts taxable at the corporate level under subchapter S, Internal Revenue Code. (7-1-93)

020. DEDUCTIONS OF CERTAIN RETIREMENT BENEFITS (Rule 020).

01. Nonqualifying Persons. (7-1-93)

a. This subsection is not applicable to persons who are nonresidents or part-year residents of the state of Idaho. (7-1-93)

b. Retired civil service employees, retired policemen, retired firemen, and retired members of the U.S. Military Services who are under age sixty-two (62) do not qualify. (7-1-93)

c. No assignment or other function of law may qualify a person for this deduction. Example: A sixty (60) year old civil service retiree married to a sixty-six (66) year old spouse who is not a civil service retiree would not qualify for the exclusion. (7-1-93)

02. Qualifying Persons. (7-1-93)

a. Only a resident who has attained age sixty-five (65), or has attained age sixty-two (62) and is classified as disabled and who is the retiree who earned or otherwise qualifies for the retirement benefit set forth in Section 63-3022A, Idaho Code, may be eligible for this deduction. (7-1-93)

b. Unremarried widows of retired civil service employees, retired policemen, retired firemen, and retired members of the U.S. Military Services who are themselves age sixty-five (65) or older, or are age sixty-two (62) and disabled, are eligible for the exemption allowed by this section, even though the deceased spouse was not himself eligible at the time of his death. Disabled persons, for purposes of this section, are those persons who retired and receive pensions under a disability provision. (7-1-93)

03. Deduction Amounts. The Commission shall determine each calendar year the amounts to be deducted from gross income and shall publish such amounts in the instructions for preparing income tax returns. (7-1-93)

021. INSULATION OF RESIDENCE (Rule 021).

01. Authorized Persons. The deduction authorized by Section 63-3022B, Idaho Code, applies only to individuals and not to corporations, partnerships, estates or trusts. It also applies only to the residence of an individual taxpayer and does not apply to housing rented to others. (7-1-93)

02. Additional Insulation. The deduction may be taken for additional insulation installed in a residence, or existing addition to the residence but may not be taken for insulation to replace existing insulation. (7-1-93)

03. Qualifying Date. The deduction is applicable to income tax filings for years which begin on and after January 1, 1976, and the insulation must be installed in a residence or addition to the residence which existed on that date as defined in the statute. A residence or addition to the residence constructed after January 1, 1976, does not qualify (7-1-93)

04. Types of Insulation. In addition to the fiberglass insulation indicated in the statute, other types may also qualify. Some examples are: rockwool, urethane foam, polyurethane foam, styrofoam, and calcium silicate. (7-1-93)

05. Siding. Siding commonly installed in residential property for the sake of appearance is not considered to be within the meaning of the statute. This interpretation rules out siding of aluminum, steel, wood, stone, brick, asbestos shingles, stucco, and other similar products. If a layer of insulation is placed beneath siding that would not qualify, the layer of insulation would be deductible. There are some types of siding which consist of an outer shell for protection against the weather and an inner layer of insulating materials; siding of this type will NOT qualify under the statute. However, if the cost of the siding and the insulating material are separately identified by the seller, the cost of the insulating material will qualify under the statute. (7-1-93)

022. ALTERNATIVE ENERGY DEVICES (Rule 022).

01. Qualifying Persons and Structures. The deduction authorized by Section 63-3022C, Idaho Code, applies only to individuals and not to corporations, partnerships, estates or trusts. It also applies only to the residence of an individual taxpayer and does not apply to rental housing, unless the renter, rather than the owner, installs and pays for the device. (7-1-93)

02. Qualifying Date. The deduction may be taken only for installations completed or acquired after January 1, 1976, in existing residences and newly constructed residences and applies to income tax filings for years beginning on and after January 1, 1976. (7-1-93)

03. **Converted Rental Units.** If an alternative energy device is installed in a rental unit which is subsequently used by the owner as his primary residence or is purchased by an individual taxpayer who uses the property as his primary residence, such subsequent owner resident is entitled to the deduction. However, the amount of the deduction shall be reduced by the total amount of depreciation which has been taken by all previous owners, and by the amount of investment tax credits taken, if any. (7-1-93)

04. **Unused Allowable Deduction.** An individual taxpayer who purchases a primary residence in Idaho served by an alternative energy device for which none or less than all of the total deduction allowable has been taken may take the deduction specified in the act or the unused balance of the deduction. Any unused allowable deduction will be prorated between the buyer and the seller based on the fractional part of the year that each had ownership of the residence. Assuming the title passes from the seller to the buyer in May, the seller would be entitled to thirty-three percent (33%) (120/365) of the deduction and the buyer would be entitled to sixty-seven percent (67%) (245/365) of the deduction. No more than a five thousand dollar (\$5,000) deduction may be prorated in any one year. (7-1-93)

05. **Air-to-Air Heat Pumps.** The deduction does not apply to an air-to-air heat pump. (7-1-93)

06. **Fireplaces.** The deduction applies to a wood burning fireplace which has a metal heat exchanger, control doors and a regulated draft. Unless the fireplace has all three (3) of these accessories, the installation does not qualify. In addition, the fireplace must heat a substantial portion of the residence in order to qualify. The deduction also applies to a stove which has control doors and a regulated draft and burns wood or wood products to provide space heating to a place of residence. (7-1-93)

07. **Common Distribution System.** (7-1-93)

a. If the alternative energy device is dependent upon and a part of a common distribution system such as a common solar collector facility or a common pipeline which distributes geothermally heated water, such a common system shall be considered to be an alternative energy device if such common system is owned by the users of the facility. (7-1-93)

b. For purposes of determining the amount of the deduction allowable by this section, each common owner shall have the right to claim the cost of that portion of the alternative energy system owned solely by such owner which serves only his residence, plus the owner's pro rata share of the costs of installation of the common system. Such pro rata share of the cost shall be the actual cost charged to the residential owner for the common system if such costs are allocated by any method which is reasonably related to the actual cost of providing the alternative energy to the various residential owners. (7-1-93)

c. The person or persons developing such common system should provide a statement to all such common owners setting out their allocable cost of the common system. If no such statement is provided, the common owners may agree among themselves as to a reasonable allocation. Such a situation may occur, for example, where a developer develops a multi-unit residential development and sells the units without allocating the costs of the common system. (7-1-93)

d. If the owners of the units are unable to determine a reasonable allocation, they may petition the State Tax Commission to make the determination. (7-1-93)

023. HOUSEHOLD AND DEPENDENT CARE SERVICES (Rule 023).

01. **Household and Dependent Care Expenses.** Section 21, Internal Revenue Code, provides for a direct credit against tax of a percentage of the authorized expenses incurred for care of small children and disabled spouses, parents, and older children. The allowable household and day care service expense shall be deducted from adjusted gross income in arriving at taxable income. The provisions of the Federal Code are to be followed to determine what dependents can qualify, the maximum allowable expenses and the payees who qualify. (7-1-93)

02. **Supplemental Young Child Credit.** Section 32, Internal Revenue Code, provides for a Supplemental Young Child Credit. If a taxpayer uses this federal credit, the child for which the credit is claimed is not a qualifying dependent for purposes of the Federal Child and Dependent Care Credit. Under Section 129, Internal Revenue Code, such child is not a qualifying dependent for the federal exclusion of employer-provided dependent care benefits. These federal disallowance provisions do not apply to the Idaho return. If the child for which the federal Supplemental Young Child Credit is claimed

otherwise qualifies, the child continues to qualify for this Idaho deduction and for the exclusion of employer-provided dependent care benefits (7-1-93)

024. ADDITIONAL HOUSEHOLD DEDUCTION FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (Rule 024).

01. Developmentally disabled, for purposes of this subsection, means a chronic disability of a person which:
(7-1-93)
 - a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other condition found to be closely related to or similar to one of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairment; and (7-1-93)
 - b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-93)
 - c. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (7-1-93)
02. Immediate Member of Family. The term immediate family member shall include only such dependents as are defined in ISTC 19 of these rules. (7-1-93)
03. Fractions of Years. If a person qualifies for the additional deduction for elderly or developmentally disabled immediate family member but lives in the household for less than a full year, the deduction shall be prorated on a monthly basis, e.g., $(1/12 \times \$1,000)$ for one month's residence. A fraction of a calendar month exceeding fifteen (15) days shall be treated as a full month. (7-1-93)
04. Age at Onset of Disability Ignored. The additional deduction for a developmentally disabled person may be claimed regardless of the age of the immediate family member at the time of the disability. (7-1-93)

025. IDAHO CAPITAL GAIN (Rule 025).

For purposes of the Idaho capital gain deduction, net capital gain is defined as gains on sales of property identified in Section 63-3022H(2), Idaho Code, however, such gain shall not exceed the net capital gains as defined by the Internal Revenue Code. (7-1-93)

01. Deduction. The amount subject to the deduction shall be further limited to exclude that portion of net capital gains treated as ordinary income by the Internal Revenue Code. (7-1-93)
02. Losses. Losses from property not eligible for the capital gain deduction shall not reduce gains from eligible property for purposes of computing the deduction, except as provided by Subsection 024.03 of this rule. (7-1-93)
 - a. Example: During the year, a taxpayer sells two (2) parcels of Idaho real property which have been held the minimum of five (5) years. Parcel A with an adjusted basis of five thousand dollars (\$5,000) is sold for ten thousand dollars (\$10,000), resulting in a capital gain of five thousand dollars (\$5,000). Parcel B with an adjusted basis of ten thousand dollars (\$10,000) is sold for seven thousand five hundred dollars (\$7,500), resulting in a loss of two thousand five hundred dollars (\$2,500). The gain and loss together result in an Idaho net capital gain of two thousand five hundred dollars (\$2,500) subject to the sixty percent (60%) deduction of one thousand five hundred dollars (\$1,500). (7-1-93)
 - b. Example: During the year, the taxpayer sells Idaho real property which has been held the minimum of five (5) years. The property with an adjusted basis of twenty thousand dollars (\$20,000) sells for forty thousand dollars (\$40,000). The result is an Idaho long-term capital gain of twenty thousand dollars (\$20,000). The taxpayer also sells shares of stock with a basis of five thousand dollars (\$5,000) for two thousand five hundred dollars (\$2,500), resulting in a loss of two thousand five hundred dollars (\$2,500). The real property held five (5) years qualifies for capital gain deduction. The loss on the sale of stock does not reduce the gains from eligible property for purposes of computing the deduction. The taxpayer has a twenty thousand dollar (\$20,000) gain subject to the sixty percent (60%) Idaho capital gain deduction of twelve thousand dollars (\$12,000). (7-1-93)
03. Capital Gain Income. The Idaho capital gain deduction shall not exceed net capital gain income included in

adjusted gross income. Example: During the year, a taxpayer sells Idaho real property which has been held the minimum of five (5) years. The property, with an adjusted basis of five thousand dollars (\$5,000), sells for ten thousand dollars (\$10,000). The result is an Idaho long-term capital gain of five thousand dollars (\$5,000). The taxpayer also sells shares of stock with a basis of ten thousand dollars (\$10,000) for seven thousand five hundred dollars (\$7,500), resulting in a loss of two thousand five hundred dollars (\$2,500). Since the net capital gain income included in adjusted gross income is two thousand five hundred dollars (\$2,500), the taxpayer's Idaho capital gain deduction is limited to two thousand five hundred dollars (\$2,500), NOT sixty percent (60%) of the gain from the eligible property (7-1-93)

04. Eligible Property Includes: (7-1-93)

a. Idaho real property held by the taxpayer for a minimum of five (5) years at the date of sale; (7-1-93)

b. Tangible personal property used by a revenue-producing enterprise, as defined in Section 63- 3029E, Idaho Code. The tangible personal property must have been used in the revenue-producing enterprise in Idaho at the date of sale and must have been held for the period required for long-term capital gain or loss as defined in Section 1222(3) and (4), Internal Revenue Code. Property used in an Idaho business or which has a business situs in Idaho will be deemed eligible property. For property acquired before January 1, 1988, the holding period is six (6) months. For property acquired after December 31, 1987, the holding period is one (1) year; (7-1-93)

c. Cattle or horses held for breeding, draft, dairy, or sporting purposes in Idaho, by the taxpayer, for a period of twenty-four (24) months or more from the date of acquisition to the date of sale. To qualify for the deduction, the individual must have received one-half (1/2) of his gross income from Idaho farming or ranching operations; (7-1-93)

d. Breeding livestock, other than cattle or horses, held by the taxpayer in Idaho, for a period of twelve (12) months or more from the date of acquisition to the date of sale. To qualify for the deduction, the individual must have received one-half (1/2) of his gross income from Idaho farming or ranching operations; (7-1-93)

e. Capital gains from the sales of timber held by the owner for a period of twenty-four (24) months or more from the date of acquisition to the date of sale shall include: The sale of standing timber held as investment property which is a capital asset under Section 1221, Internal Revenue Code; treating the cutting of timber as a sale or exchange pursuant to Section 631 (a), Internal Revenue Code; and disposal of timber with a retained economic interest pursuant to Section 631 (b), Internal Revenue Code. (7-1-93)

05. Holding Periods. To qualify for the capital gains deduction, eligible property must be held for specific time periods. The holding periods for Idaho purposes will generally follow the definitions provided by the Section 1223, Internal Revenue Code. (7-1-93)

a. **Property Acquired in a Tax-free Exchange.** The holding period of the property given up is added onto the holding period of the property received, regardless of the location of the property given up. (7-1-93)

b. **Partnership Property.** A partner's holding period of partnership assets includes the partnership's holding period, limited to the partnership interest held by the partner for the holding period required in Subsection 025.04. (7-1-93)

c. **Example:** A partnership sells Idaho real property which it held for ten (10) years. The two (2) equal partners have held their equal partnership shares for ten (10) years. Each partner's one-half (1/2) of the partnership's gain is eligible for the capital gain deduction. (7-1-93)

d. **Example:** A partnership sells Idaho real property which it held for ten (10) years. One of the equal partners has held his one-half (1/2) interest in the partnership for ten (10) years. This partner's one-half (1/2) share of the partnership's gain is eligible for the capital gain deduction. The other partner acquired one-fourth (1/4) interest ten (10) years ago and acquired the other one-fourth (1/4) interest three (3) years ago. Since this partner did not hold his entire one-half (1/2) partnership interest for the required holding period, his share of the partnership's gain eligible for the capital gain deduction is limited to one-fourth (1/4). (7-1-93)

e. **Residential Property.** The holding period includes the period for which an old residence was held if the residence was acquired under conditions which resulted in nonrecognition of gain on the sale or exchange of the old residence under Section 1034, Internal Revenue Code, regardless of the location of the old residence. (7-1-93)

f. **Reacquired Property.** The holding period includes the period for which the property was held prior to the original sale from which the property was reacquired. The prior holding period is added onto the holding period after the reacquisition. The holding period does not include the time after the property was sold to the purchaser and before it was repossessed. If improved property is repossessed to satisfy an obligation that arose from the sale of unimproved property, the holding period for the improvements begins on the date of repossession. (7-1-93)

g. **Involuntary Conversions.** The holding period of the original property is added onto that of property acquired to replace property lost or damaged where gain is not recognized. (7-1-93)

h. **Inherited Property.** The holding period of property acquired from a decedent includes the period held by the decedent if the property was included in the decedent's gross estate for federal estate tax purposes and the inheritor has a basis in the property which was determined by reference to its value at the time of decedent's death or alternate valuation date. (7-1-93)

i. **Gifts.** The period held by the donor is added to the donee's holding period if the property has the same basis to donee. (7-1-93)

06. **Gains on Reacquisition.** Where the sale of property gives rise to indebtedness secured by the property sold and the seller reacquires the property in full or partial satisfaction of the indebtedness, the character of any gain on reacquisition shall be determined under Section 1.1038-1, Treasury Regulation. A gain on reacquisition which is characterized as capital gain shall qualify for the Idaho capital gain deduction. (7-1-93)

07. **Treatment of Net Capital Gains from S Corporations and Partnerships.** (7-1-93)

a. Property described in Subsection 025.04, held by S corporations and partnerships shall be eligible for Idaho capital gain treatment. The amount of gain or loss shall be computed by the S corporation or partnership. The deduction shall be claimed on the return of the shareholder or partner. (7-1-93)

b. Partnerships and S corporations subject to income tax under Section 63-3022(k), Idaho Code, shall not be allowed any capital gain deduction. (7-1-93)

c. To be allowed an Idaho capital gain deduction on the sale of eligible property owned by an S corporation or partnership, the individual shareholder or partner must have held the S corporation or partnership interest for the holding period and meet any income limitations specified in Subsection 025.04, for that type of property (7-1-93)

d. Nonresident shareholders and partners, of S corporations and partnerships required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute their Idaho net capital gain deduction on their ownership percentages of that portion of the qualifying net capital gains allocated and apportioned to Idaho. (7-1-93)

e. Example: XYZ Farms, a multi-state partnership, sold a parcel of Idaho farmland purchased seven (7) years ago. The sixty thousand dollar (\$60,000) gain is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership. Each partner may claim an Idaho capital gain deduction of nine thousand dollars (\$9,000). (7-1-93)

Gain Apportioned to Idaho ($\$60,000 \times 75\%$)= \$45,000 (7-1-93)

Each Nonresident Partner's Share Apportioned to Idaho ($\$45,000 \times 1/3$)= \$15,000 (7-1-93)

Each Nonresident Partner's Idaho Capital Gain Deduction ($\$15,000 \times 60\%$)= \$9,000 (7-1-93)

f. Example: XYZ Farms, a multi-state partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership. Each partner may claim an Idaho capital gain deduction of twelve thousand dollars (\$12,000). (7-1-93)

Gain Allocated to Idaho ($\$60,000 \times 100\%$)= \$60,000 (7-1-93)

Each Nonresident Partner's Share Allocated to Idaho ($\$60,000 \times 1/3$) = \$20,000 (7-1-93)

Each Nonresident Partner's Idaho Capital Gain Deduction ($\$20,000 \times 60\%$) = \$ 12,000 (7-1 -93)

026. BUSINESS SITUS (Rule 026).

01. Business Situs. Except where the only activity in Idaho is the solicitation of orders for sales of tangible personal property protected under Public Law 86-272, 15 U.S.C. Section 381, business situs for any nonresident person and all corporations will be established if: (7-1-93)

a. There is any business property owned or leased or business facilities operated within this state, including the management of, or furnishing services for, any subsidiary corporation operating within this state by any parent corporation or any other related corporation. Business situs is not acquired where the only contact with Idaho is as a lessor under a safe harbor lease. The term property, as used herein, includes all real property situated within the boundaries of Idaho. It also includes all tangible personal property stored within Idaho for sale in the ordinary course of business, or operated or used within the boundaries of Idaho; or (7-1-93)

b. Business is carried on within this state by: Employees, agents or other representatives including independent contractors; a subsidiary; a person engaged in farming within Idaho; a person within the state either as a resident or commuter working for salary or wages; a member of a partnership or joint venture which transacts business within the state; a shareholder of an S corporation with Idaho income; a person who is the beneficiary of any estate or trust, including a nonresident beneficiary of an Idaho trust or estate; or an individual whose post of duty is located in Idaho; or (7-1-93)

c. Professional consultations or services are performed in Idaho; any Idaho based property, product, or facility is serviced or repaired; Idaho business property or facilities are purchased or sold; franchise or royalty income is received from an Idaho source; or (7-1-93)

d. Orders are delivered by delivery equipment owned by the business regardless of where the order is accepted or where the contract of sale is entered into; or (7-1-93)

e. There is any other activity from which any Idaho income is received, realized, or derived. (7-1-93)

02. Qualified to do Business. The fact that a person has or has not qualified to do business in Idaho shall have no effect upon the establishment of business situs for income tax purposes. (7-1-93)

03. Income from Real Estate Sales. Persons who sell real estate located in Idaho thereby establish a business situs and are required to report any gains as income in Idaho. Effective for tax years beginning on or after January 1, 1991, if a gain is reported by the installment method, gain and interest are reportable to Idaho for each year in which collections are received. (7-1-93)

04. Partners and Partnerships. A partnership must engage in one of the above activities before it will be considered as transacting business within Idaho. The mere presence of a partner within the state does not subject all the partners to Idaho taxation. For example, an investment club operated as a partnership with one Idaho partner and partners in Utah and Nevada would not create Idaho income to the nonresident partners if all the income consisted of interest, dividends, or capital gains generated in the stock market. This is true even though the Idaho partner manages all the investments. On the other hand, income from amounts invested in Idaho rental property would subject all the partners to Idaho taxation. (7-1-93)

05. Income Solely from Dividends and Interest. Income derived solely from interest or dividends from Idaho sources is not sufficient to establish tax situs. The term dividend, for this purpose, includes both ordinary and capital gain dividends. A nonresident is not taxable on interest received from an Idaho-based savings account, unless coupled with another activity which creates a tax situs. Residents are taxable on interest received from all sources, both in-state and out-of-state. (7-1-93)

06. Multi-state Businesses. Multi-state businesses including corporations which have a business situs within this state are taxed in accordance with the rules set forth in Section 63-3027, Idaho Code (7-1-93)

07. Nonresident Beneficiary of an Idaho Trust or Estate. If a nonresident beneficiary receives income, other

than dividends or interest, from an Idaho trust or estate, the nonresident beneficiary has Idaho situs. (7-1-93)

a. As used in this subsection, the term income includes any amounts includable in gross income as determined pursuant to Sections 652,662, or 668, Internal Revenue Code. (7-1-93)

b. For purposes of this subsection, any amount excluded from the gross income of a beneficiary under Section 663(a)(1), Internal Revenue Code, shall be treated as property acquired by gift, bequest, devise, or inheritance. (7-1-93)

027. GROCERY CREDIT (Rule 027).

01. Residents. The credits for residents amount to fifteen dollars (\$15) per person, thirty dollars (\$30) for those sixty-five (65) and older, and are allowed on individual income tax returns to residents who are required to file returns and will serve to offset, in whole or in part, the taxpayer's income tax liability. Any part of the credits which are not so utilized will be paid to the taxpayer as a refund on his income tax return. (7-1-93)

02. Part-year Residents. Part-year residents are entitled to the appropriate credit, prorated for the number of months the taxpayer resided in the state. Part-year residents are not entitled to a refund of the unused credit. See 1977 Session Laws, Chapter 89. (7-1-93)

03. Low Income Persons. Certain low-income persons who are not required to file income tax returns are eligible for the credits which will be paid to them on approved claims. Claims for refund of credits are to be filed with the Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund of unused credit. Persons eligible are defined in the statute as residents who are: (7-1-93)

a. Senior Citizens, persons age sixty-five (65) or older; (7-1-93)

b. Persons of ages sixty-two (62), sixty-three (63) or sixty-four (64); (7-1-93)

c. Disabled Veterans; or (7-1-93)

d. Blind persons. (7-1-93)

04. Age. A person is considered to have attained age sixty-five (65) on the day before his sixty-fifth (65th) birthday. (7-1-93)

05. Armed Forces. Members of the Armed Forces of the United States who are residents of Idaho are entitled to the appropriate credit. Members of the Armed Forces of the United States, who are nonresidents by virtue of the Soldiers' and Sailors' Civil Relief Act, are not entitled to this credit. (7-1-93)

06. Spouse and Dependents of Military Person. The spouse and dependents of a military person, with a home of record outside Idaho and in Idaho solely by reason of compliance with military or naval orders, may be Idaho residents or part-year residents. To claim the grocery credit for the nonmilitary spouse and dependents who have resided in Idaho during the year, the taxpayers must meet the requirement to file an Idaho income tax return and report the number of months lived in Idaho. The residence of the dependent children will be presumed to be that of the nonmilitary spouse. (7-1-93)

07. Nonresidents. Nonresidents are not entitled to any of the credits. Even though the individual may have been employed in Idaho for the entire year, he is not entitled to a credit unless he is a resident or part-year resident. (7-1-93)

028. GASOHOL TAX CREDIT (Rule 028).

01. Qualifications. Section 63-3025, Idaho Code, provides a tax credit based upon the value of personal property used or constructed for manufacturing ethanol alcohol for use as a blend in gasohol. The ethanol alcohol must be manufactured in the state of Idaho from agricultural or forest products grown in the state of Idaho or wastes of such products. (7-1-93)

02. Value. The value of pertinent personal property or improvements upon which the tax credit is based shall be the original cost basis for depreciation purposes as allowed or allowable on taxpayers' federal income tax returns under the Internal

Revenue Code. Thus, the amount of credit allowable will not be affected even if no depreciable basis remains in the property. If the cost basis cannot be used to determine value because the property was acquired by gift, inheritance, exchange or by some other method, the basis allowed for federal income tax purposes will be allowed for state purposes in determining value. (7-1-93)

03. Limitations. The credit shall be limited as follows: (7-1-93)

a. The annual credit is a percentage of the gross value of ethanol alcohol produced during the year. Gross value is defined as the value at which the ethanol was sold or could have been sold, if it was held in inventory; (7-1-93)

b. The annual gasohol tax credit allowed in any tax year may not exceed the taxpayer's Idaho income tax as determined after any applicable nonrefundable credits which have priority over this credit. See ISTC Rule 096; (7-1-93)

c. If the tax liability is absorbed by this and any one or more of the nonrefundable credits which have priority over this credit, any unused portion of this credit will be lost. (7-1-93)

04. Flow-through of Credit. If the credit authorized by this subsection is earned by a partnership, S corporation, estate, or trust, the credit may be claimed by individual partners, shareholders or beneficiaries of the entity that earned the credit. The credit should be claimed on the taxpayer's individual tax return and may not exceed the limitations discussed in Subsection 028.03, above. (7-1-93)

a. In the case of a S corporation, the total credit should flow through to the shareholders in the same ratio as income or loss is attributed. (7-1-93)

b. In the case of a partnership, the total credit shall flow through to the partners based upon each partner's distributive share of profits or losses as reported on the partnership return. (7-1-93)

c. In the case of an estate or trust, the credit shall flow through to beneficiaries in the same ratio that income or loss is distributed to beneficiaries. (7-1-93)

029. TAX ON CORPORATE INCOME (Rule 029).

01. Multi-state Corporations. Under the Multi-state Compact, multi-state corporations doing business within Idaho may elect for taxable years beginning after April 7, 1968, to be taxed under the provisions of this Act or under the Multi-state Compact, Interstate Compact, Sections 63-3701 through 63-3707, Idaho Code. Pursuant to the provisions of Section 63-3702, Idaho Code, every multi-state taxpayer required to file a return in Idaho: (7-1-93)

a. Whose only activities within Idaho consist of sales; (7-1-93)

b. Who does not own or rent real estate or tangible personal property located in Idaho; and (7-1-93)

c. Whose dollar volume of gross sales made within this state during the tax year is not in excess of one hundred thousand dollars (\$100,000); may elect to report income and pay tax to the state of Idaho at the rate of one percent (1%) of the dollar volume of the gross sales within Idaho. The election to report and pay income tax under this section is filed by filing a written statement of the election with the return when it is filed. The election must affirmatively state each of the elements required to qualify for the election. The return must include such additional schedules as are necessary to show the computation of the tax due. (7-1-93)

02. Federal Taxes Not Deductible. For all tax years commencing on or after January 1, 1965, federal income taxes are not allowed as a deduction on Idaho state tax returns. Federal income taxes means all tax imposed pursuant to Chapter One, Internal Revenue Code, including but not limited to, the minimum tax on certain tax preference items imposed by Section 56, Internal Revenue Code. (7-1-93)

03. Excise Tax. All corporations excluded from the tax on corporate income imposed by Section 63-3025A, Idaho Code, are subject to the excise tax imposed by Section 63-3025, Idaho Code. No corporation which is subject to the excise tax imposed by Section 63-3025, Idaho Code, is subject to the tax on corporate income imposed by Section 63-3025A, Idaho Code. (7-1-93)

04. Minimum Tax. The minimum tax of twenty dollars (\$20) is required for nameholder or inactive corporations which are authorized to do business in Idaho, other than nonproductive mining corporations, even though no Idaho business activity is conducted during the taxable year. The twenty dollar (\$20) minimum tax should be paid with Idaho Form 41 or, if applicable, 41S. Those inactive or nameholder corporations filing Form 41 to pay the twenty dollar (\$20) minimum tax will also be required to pay the additional tax prescribed by Section 63-3082, Idaho Code. (7-1-93)

a. A nonproductive mining corporation neither owns any producing mines nor is engaged in any business other than mining. (7-1-93)

b. A corporation, otherwise qualifying as a nonproductive mining corporation, will be required to file and pay tax if it receives any other income. (7-1-93)

030. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (Rule 030).

01. Deductions. A deduction will be allowed against Idaho taxable income for the fair market value of technological equipment donated to public elementary or secondary schools, or public libraries or library districts located within Idaho. (7-1-93)

a. Amount of Deduction. The deduction shall be the fair market value of the property donated limited to the taxpayer's taxable income for the year. The donation will be allowed only to the extent that it reduces the taxpayer's taxable income to zero (0). Any amounts which are not allowable because of the income limitation may not be deducted in any subsequent year or carried back to any preceding year. Any amount not deductible in the year of the donation will be lost. (7-1-93)

b. Fair market value shall be determined by the provisions of Section 170, Internal Revenue Code. (7-1-93)

c. Qualified Donee. For the purposes of this deduction, a school is defined as a public elementary or public secondary school located in Idaho and receiving funds pursuant to Chapter 10, Title 33, Idaho Code. Chapter 10, Title 33, Idaho Code, refers to public schools which receive funds under the State Education Support program. Private schools and institutions of higher education do not qualify. (7-1-93)

02. Flow-Through of Deduction. If the deduction authorized by this subsection is earned by a partnership, S corporation, estate, or trust the deduction may be claimed by individual partners, shareholders, or beneficiaries of the entity that earned the deduction. The deduction should be claimed on the taxpayer's individual tax return and may not exceed the limitations discussed in Subsection 030.01, above. (7-1-93)

a. In the case of an S corporation, the total contribution shall flow through to the shareholders in the same ratio as income or loss is attributed. If the S corporation pays tax, i.e., for a nonresident shareholder who does not report that income to Idaho, the S corporation will be allowed a pro rata portion of the deduction. (7-1-93)

b. In the case of a partnership, the total contribution shall flow through to the partners based upon each partner's distributive share of profits or losses as reported on the partnership return. (7-1-93)

c. In the case of an estate or trust, the contribution shall flow through to beneficiaries in the same ratio and only to the extent that income or loss is distributed to beneficiaries. If no distributions are made, the trust or estate is not allowed the deduction. (7-1-93)

d. In no instance shall the total deduction claimed by the partners, shareholders, or beneficiaries for contributions made by a partnership, S corporation, estate, or trust exceed the income of the entity making the contribution. (7-1-93)

031. (RESERVED).

032. S CORPORATIONS AND PARTNERSHIPS OPERATING IN MORE THAN ONE STATE. (Rule 032). While Section 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 033 through 078 thereunder are concerned primarily with C corporations operating in more than one state, the basic principles of allocation and apportionment of income also apply to corporations which file income tax returns pursuant to Subchapter S of the Internal Revenue Code and to partnerships and joint ventures which operate in more than one state. (8-24-94)

033. TAXPAYER OPTION AND ELECTION (Rule 033).

Any taxpayer, as defined by ISTC 40, subject to Idaho income tax whose income is subject to apportionment and allocation may elect to apportion and allocate his income as provided by Section 63-3027, Idaho Code, or as provided by Sections 63-3701, Idaho Code, Article III, par. 2, and Section 63-3702, Idaho Code. The election by the taxpayer to file under Sections 63-3701 and 63-3702, Idaho Code, must be affirmatively declared on the income tax return filed for each year. If no election is affirmatively declared, the taxpayer will be deemed to have filed under Section 63-3027, Idaho Code. Such election may not be changed for a taxable year after the return for that year has been filed. (7-1-93)

034. PROLOGUE (Rule 034).

The following rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code, and Article IV of the Multi-state Tax Compact, Section 63-3701, Idaho Code. The apportionment and allocation rules set forth in these rules are applicable to any taxpayer conducting business within and without this state and having taxable income as defined in Section 63-3022, Idaho Code, and ISTC 19. The only exceptions to these allocation and apportionment rules contained in these rules are those set forth in ISTC 66 through 75 pursuant to the authority of Section 63-3027(r) and (t), Idaho Code, and Article IV, 18 of the Compact. (7-1-93)

035. BUSINESS INCOME (Rule 035).

01. In General. Sections 63-3027(a)(l) and 63-3701, Article IV.1.(a), Idaho Code, define business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. All transactions and activities of the taxpayer which are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of a trade or business. In essence, all income which arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of Sections 63-3027 and 63-3701, Article IV, Idaho Code, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income. (6-23-94)

02. Classification of Income. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operation income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for such investments arises in the ordinary course of a taxpayer's business, because the income from such investments is utilized in the ordinary course of the taxpayer's business and because such investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of such investments is presumptively business income. Such presumption may only be rebutted if the taxpayer can prove that such investment is an insignificant, irregular and unusual source of income. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity which are the elements of a particular trade or business. See Idaho Income Tax Administrative Rule 038 for more specific examples of the classification of income as business or nonbusiness income; see Idaho Income Tax Administrative Rules 037 and 042 for further explanation of what constitutes a trade or business. Dividends and other items of intangible income, to the extent that they constitute business income received from companies which are not included in the combined report, must be included in income subject to apportionment. However, to the extent that dividends received are paid from prior year earnings of the payor, which earnings were included in income subject to apportionment in Idaho, there will be allowed a dividend deduction from the current year apportionment base of business income and factor adjustments if needed. The federal rules under Part I, Subchapter C, Internal Revenue Code, will be applied in the determination of the taxable year in which the earnings and profits used to pay the dividend were earned. It will be the taxpayer's responsibility to prove that the dividend received, or a portion thereof, was previously included in Idaho apportionable income. (6-23-94)

036. NONBUSINESS INCOME DEFINED (Rule 036).

01. Nonbusiness Income. Section 63-3027(a)(4), Idaho Code, defines nonbusiness income as all income other than business income. All deductions relating to the production of nonbusiness income must be allocated together with the income produced. Any allowable deduction that is applicable both to business and nonbusiness income of the taxpayer shall be prorated to those classes of income in determining income subject to tax. The taxpayer shall be consistent in the proration of such deduction or deductions in filing return or reports to all income tax states to which the taxpayer reports (7-1-93)

02. Allocated to Idaho. Nonbusiness income, net of interest and other related expense offsets, which is attributable to Idaho will be allocated to Idaho. (7-1-93)

03. Allocated to Other States. Nonbusiness income, together with interest and other related expense offsets, will be allocated to other states if it is not attributable to Idaho (7-1-93)

037. TWO (2) OR MORE BUSINESSES OF A SINGLE TAXPAYER (Rule 037).

01. Apportionment. All income of a taxpayer must be reported and apportioned even though only one (1), or less than all, of the taxpayer's business divisions operated within the state of Idaho during the taxable year. The apportionment formula cannot properly be applied separately to divisions or departments of a single taxpayer. (7-1-93)

02. Single Trade or Business. The determination of whether the activities of the taxpayer constitute a single trade or business or more than one (1) trade or business will turn on the facts in each case. In general, the activities of the taxpayer will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon or contribute to each other and the operations of the taxpayer as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the taxpayer constitute a single trade or business: (7-1-93)

a. Same Type of Business. A taxpayer is generally engaged in a single trade or business when all of its activities are in the same general line. For example, a taxpayer which operates a chain of retail grocery stores will almost always be engaged in a single trade or business. (7-1-93)

b. Steps in a Vertical Process. A taxpayer is almost always engaged in a single trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer which explores for and mines copper ores; concentrates, smelts and refines the copper ores; and fabricates the refined copper into consumer products is engaged in a single trade or 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 taxpayer's executive offices. (7-1-93)

c. Strong Centralized Management. A taxpayer which might otherwise be considered as engaged in more than one trade or business is properly considered as engaged in one trade or business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered as engaged in only one trade or business when the central executive officers are normally involved in the operations of the various divisions and there are centralized offices which perform for the divisions the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (7-1-93)

038. BUSINESS AND NONBUSINESS INCOME: APPLICATION OF DEFINITIONS (Rule 038).

The following are rules and examples for determining whether particular income is business or nonbusiness income: Income, such as dividends, interest, rents, royalties, service and administrative charges, received from subsidiary or affiliated corporations, not included in a combined filing, is business income. The examples used throughout these rules are illustrative only and do not purport to set forth all pertinent facts (7-1-93)

01. Rents from Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore, is includable in the property factor under ISTC Rules 049 through 052. (7-1-93)

a. Example 1: The taxpayer operates a multi-state car rental business. The income from car rentals is business income. (7-1-93)

b. Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental is business income. (7-1-93)

c. Example 3: The taxpayer operates a multi-state chain of men's clothing stores. The taxpayer purchases a five (5) story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the

second and third floors for its general corporate headquarters. The remaining two (2) floors are leased to others. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income. (7-1-93)

d. Example 4: The taxpayer constructed a plant for use in its multi-state manufacturing business and twenty (20) years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the sale of the plant is business income. (7-1-93)

02. Gains or Losses from Sale of Assets. Gain or loss from the sale, exchange or other disposition of real and tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if such property was utilized for the production of nonbusiness income, the gain or loss will constitute nonbusiness income. See ISTC Rules 049 through 052. (7-1-93)

a. Example 1: In conducting its multi-state manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income. (7-1-93)

b. Example 2: The taxpayer constructed a plant for use in its multi-state manufacturing business and twenty (20) years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income. (7-1-93)

c. Example 3: Same as Subsection 038.02.b., except that the plant was closed and put up for sale but was not, in fact, sold until a buyer was found eighteen (18) months later. The gain is business income. (7-1-93)

d. Example 4: Same as Subsection 038.02.b., except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income. (7-1-93)

03. Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operation. (7-1-93)

a. Example 1: The taxpayer operates a multi-state chain of department stores, selling for cash or credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income. (7-1-93)

b. Example 2: The taxpayer conducts a multi-state manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business income. (7-1-93)

c. Example 3: The taxpayer is engaged in a multi-state manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, rain and storm damage, machinery replacement, etc. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state, and local tax obligations. The interest income is business income. (7-1-93)

d. Example 4: The taxpayer is engaged in a multi-state money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income. (7-1-93)

e. Example 5: The taxpayer is engaged in a multi-state manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling two hundred thousand dollars (\$200,000) which it regularly invests in short-term interest bearing securities. The interest income is business income (7-1-93)

04. Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purposes of acquiring and holding the stock is related to or incidental to such trade or business operations. (7-1-93)

a. Example 1: The taxpayer operates a multi-state chain of stock brokerage houses. During the year the

taxpayer receives dividends on stock it owns. The dividends are business income. (7-1-93)

b. Example 2: The taxpayer is engaged in a multi-state manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income. (7-1-93)

c. Example 3: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are business income. (7-1-93)

d. Example 4: The taxpayer is engaged in a multi-state heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets, cash and marketable securities, to current liabilities. In order to maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income. (7-1-93)

e. Example 5: The taxpayer receives dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income. (7-1-93)

05. Patent and Copyright Royalties. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is related to or incidental to such trade or business operations. (7-1-93)

a. Example 1: The taxpayer is engaged in the multi-state business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income. (7-1-93)

b. Example 2: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its business. Any royalties received on these copyrights are business income. (7-1-93)

039. PRORATION OF DEDUCTIONS

In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income of more than one trade or business and/or to several items of nonbusiness income. In such cases the deduction shall be prorated among such trades or businesses and such items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable. (7-1-93)

01. Filing Returns. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. (7-1-93)

02. Variance Among States. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under Section 63-3027, Idaho Code, and Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (7-1-93)

040. UNITARY BUSINESS (Rule 040).

01. Taxpayer. Taxpayer, for purposes of this rule, means any corporation, partnership, firm, association,

governmental unit or agency or person acting as a business entity in more than one state. (7-1-93)

02. Apportionment. Apportionment refers to the division of business income between states by the use of a formula containing apportionment factors. (7-1-93)

03. Allocation. Allocation refers to the assignment of nonbusiness income to a particular state. (7-1-93)

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. (7-1-93)

05. Unitary Business. Unitary business is a term applied to a concern carrying on activities through departments, divisions, subsidiaries or affiliated corporations the component parts of which are too closely connected and necessary to each other to justify division or separate consideration as independent units. A multi-state business is unitary when the operations conducted in one state benefit or are benefited by the operations conducted in another state and if its various parts are interdependent or of mutual benefit so as to form one integral business rather than several business entities. (7-1-93)

06. Activities. The determination of whether the activities of the concern constitute a single trade or business or more than one trade or business will turn on the facts in each case. In general, the activities of the concern will be considered a single business if there is evidence to indicate that the segments under consideration are integrated with, dependent upon or contribute to each other and the operations of the enterprise as a whole. The following factors are considered to be good indicia of a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the concern constitute a single trade or business. (7-1-93)

a. Same Type of Business. A concern is generally engaged in a single trade or business when all of its activities are in the same general line. For example, a company which operates a chain of retail grocery stores will almost always be engaged in a single trade or business. (7-1-93)

b. Steps in a Vertical Process. A concern is almost always engaged in a single unitary trade or business when its various divisions or segments are engaged in different steps in a large, vertically structured enterprise. For example, a company which explores for and mines copper ores; concentrates, smelts and refines the copper ores; and fabricates the refined copper into consumer products is engaged in a single trade or 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 taxpayer's executive offices. (7-1-93)

c. Strong Centralized Management. A concern which might otherwise be considered as engaged in more than one trade or business is properly considered as engaged in one trade or business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Thus, some conglomerates may properly be considered as engaged in only one trade or business when the central executive officers are normally involved in the operations of the various divisions and there are centralized offices which perform for the division the normal matters which a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (7-1-93)

07. 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. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income to be reported to Idaho by the separate corporate members of the unitary group. Since corporations included in the combined report of a unitary business maintain their own separate corporate identities, then: (6-23-94)

a. Each included corporation which is required to file an Idaho income tax return as a result of its own activities within the state shall be responsible for the computation and payment of its tax as determined by the combined report. (6-23-94)

b. For affiliated corporations filing combined returns, the Idaho net operating loss carryover or carryback is limited to that share of the combined net operating loss apportioned to Idaho for each taxable year for each separate member of the combined group. (7-1-93)

c. Each included corporation which is required to file an Idaho income tax return must separately compute any applicable Idaho tax credits and limitations. See Section 63-3029B, Idaho Code, and Idaho Income Tax Administrative Rule 088 for the computations applicable to the Idaho investment tax credit. Each included corporation must separately determine and pay the permanent building fund tax and any applicable minimum tax required by Sections 63-3082, 63-3025, and 63-3025A, Idaho Code, respectively. (6-23-94)

d. Each included corporation which is required to file an Idaho income tax return may file a separate return reporting its share of the combined net income or loss of the unitary business. In the alternative, the unitary group of corporations may elect to file a single return for all of the included corporations which are required to file Idaho returns. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements contained in Subsections 048.07.a., 07.b., and 07.c. (6-23-94)

041. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: APPORTIONMENT (Rule 041).

If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with Sections 63-3027(1) to (q) and 63-3701, Article IV.9 to IV.17., Idaho Code. (7-1-93)

042. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: COMBINED REPORT (Rule 042).

If a particular trade or business is carried on by a taxpayer and one or more affiliated corporations, nothing in Section 63-3027, Idaho Code, and Article IV or in these rules shall preclude the use of a combined report whereby the entire business income of such trade or business is apportioned in accordance with Sections 63-3027(0 to (q) and 63-3701, Article IV.9 to IV.17., Idaho Code. (7-1-93)

043. APPLICATION OF SECTION 63-3027 AND ARTICLE IV: ALLOCATION (Rule 043).

Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 63-3027(d) to (h) and 63-3701, Article IV.4 to IV.8., Idaho Code. (7-1-93)

044. CONSISTENCY AND UNIFORMITY IN REPORTING (Rule 044).

In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modifications. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under Sections 63-3027 and 63-3701, Idaho Code, or Article IV of the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (7-1-93)

045. TAXABLE IN ANOTHER STATE (Rule 045).

01. In General. Under Sections 63-3027(b) and 63-3701, Article IV.2, Idaho Code, the taxpayer is subject to the allocation and apportionment provisions of Sections 63-3027 and 63-3701, Article IV, Idaho Code, if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if such taxpayer, by reason of such business activity, i.e., the transactions and activity occurring in the regular course of a particular trade or business, is taxable in another state within the meaning of Sections 63-3027(c) and 63-3701, Article IV.3, Idaho Code. A taxpayer is taxable within another state if it meets either one of two tests: If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Sections 63-3027(c)(1) and 63-3701, Article IV.3.(1), Idaho Code, namely; a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or if by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer. (7-1-93)

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 such other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business. (7-1-93)

046. TAXABLE IN ANOTHER STATE: WHEN A TAXPAYER IS SUBJECT TO A TAX UNDER SECTIONS 63-3027(C)(1) AND 63-3701, ARTICLE IV.J.(1), IDAHO CODE (Rule 046).

01. Subject to Tax. A taxpayer is subject to one of the taxes specified in Sections 63-3027(c)(1) and 63-3701, Article IV.3.(1), Idaho Code, if it carries on business activity in such state and such state imposes such a tax thereon. Any taxpayer which

asserts that it is subject to one of the taxes specified in Sections 63-3027(c)(l) and 63-3701, Article IV.3.(1), Idaho Code, in another state shall furnish to the Tax Commission of this state upon its request evidence to support such assertion. The Tax Commission of this state may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer, in fact, is subject to one of the taxes specified in Sections 63-3027(c)(l) and 63-3701, Article IV.3.(1), Idaho Code, in such other state (7-1-93)

a. If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but does not actually engage in business activity in that state, or does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within such state, the taxpayer is not subject to one of the taxes specified within the meaning of Sections 63-3027(c)(l) and 63-3701, Article IV.3.(1), Idaho Code. (7-1-93)

b. 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 carries on no business activity in State A. Corporation X is not taxable in State A. (7-1-93)

02. Concept of Taxability. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in Sections 63-3027(c)(l) and 63-3701, Article IV.3.(1), Idaho Code, which maybe considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is subject to one of the taxes specified in Sections 63-3027(c)(l) and 63-3701, Article IV.3.(1), Idaho Code, in another state. (7-1-93)

a. Example 1: State A requires all nonresident corporations which qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. 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 utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the Secretary of State but does not carry on any business activity in State A, although it may utilize the courts of State A. Corporation X is not taxable in State A. (7-1-93)

b. Example 2: Same facts as Subsection 046.02.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. (7-1-93)

c. Example 3: State B requires all nonresident corporations qualified or registered in State B to pay to 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. Nonresident 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. (7-1-93)

d. Example 4: 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 upon 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. (7-1-93)

047. TAXABLE IN ANOTHER STATE: WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (Rule 047).

The second test, that of Sections 63-3027(c)(2) and 63-3701, Article IV.3.(2), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. Sections 381-385. In the case of any state as defined in Sections 63-3027(a)(6) and 63-3701, Article IV.1.(h), Idaho Code, other than a state of the United States or political subdivision of such state, the determination of whether such state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, such state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States. Example:

Corporation X is actively 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. (7-1-93)

048. APPORTIONMENT FORMULA (Rule 048).

01. Apportionment Factor. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 63-3027(0), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Idaho Income Tax Administrative Rules 049 through 065 for general rules applicable to these factors. See Idaho Income Tax Administrative Rules 066 through 075 for special rules and exceptions to the apportionment formula. In computing the factors of the apportionment formula, the denominator of each factor may not, in any case, exceed the sum of all the numerators of such factor. (6-23-94)

02. Intercompany Transactions. All intercompany transactions must be eliminated in the computation of the numerators and the denominators of the apportionment factors of the combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation except those whose income is included in the combined report. (6-23-94)

03. Rounding. The individual factors and the average apportionment factor must be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit will be rounded up to the next higher number. If the seventh digit is less than five (5), the sixth digit will remain unchanged and any remaining to its right will be dropped. Example: Corporation X has five million dollars (\$5,000,000) of payroll attributable to Idaho and thirteen million dollars (\$13,000,000) of payroll everywhere during the tax year. The Idaho payroll factor is calculated to six (6) digits ($\$5,000,000 / \$13,000,000 = .384615$). (6-23-94)

049. PROPERTY FACTOR (Rule 049).

01. In General. The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. (7-1-93)

02. Nonbusiness Income. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. (7-1-93)

03. Average Value. The property factor shall reflect the average value of property includable in the factor. See ISTC Rule 055. (7-1-93)

050. PROPERTY FACTOR: PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (Rule 050).

Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale, abandonment, or any event or circumstance that will render the property incapable of being used in the regular course of the taxpayer's trade or business. (7-1-93)

01. Example 1: Taxpayer closed its manufacturing plant in State X and held such 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. (7-1-93)

02. Example 2: Same as above except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold. (7-1-93)

051. PROPERTY FACTOR: CONSISTENCY IN REPORTING (Rule 051).

In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modifications. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Sections 63-3027 and 63-3701, Article IV, Idaho Code, or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance. The total property included in the denominator of the factor may not, in any case, exceed the sum of all the numerators. (7-1-93)

052. PROPERTY FACTOR: NUMERATOR (Rule 052).

The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time and use within the state as a percentage of total time and use within and without the state. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed. (7-1-93)

053. PROPERTY FACTOR: VALUATION OF OWNED PROPERTY (Rule 053).

01. In General. Property owned by the taxpayer shall 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 by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. (7-1-93)

a. Example 1: The taxpayer acquired a factory building in this state at a cost of five hundred thousand dollars (\$500,000) and eighteen (18) months later expended one hundred thousand dollars (\$100,000) for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar year basis. Depreciation deduction in the amount of twenty-two thousand dollars (\$22,000) was claimed on the building for its return for the current taxable year. The value of the building ineluctable in the numerator and denominator of the property factor is six hundred thousand dollars (\$600,000) as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. (7-1-93)

b. Example 2: During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X 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, and its basis in X's hands at the time of the merger is nine hundred thousand (\$900,000). Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., one million dollars (\$1,000,000). (7-1-93)

c. Example 3: Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Section 334(b)(2) of the 1954 Internal Revenue Code, i.e., stock possessing eighty percent (80%) control is purchased and liquidated within two (2) years. Under these circumstances, Y's costs of the assets is the purchase price of the X stock, prorated over the X assets. (7-1-93)

d. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. (7-1-93)

02. Inventory. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes. (7-1-93)

03. Gifts or Inheritance. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes. (7-1-93)

054. PROPERTY FACTOR: VALUATION OF RENTED PROPERTY (Rule 054).

01. General Rule. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See ISTC Rule 066 for special rules where the use of such net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate. (7-1-93)

a. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value. (7-1-93)

b. Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income they are not deducted from rent paid by the taxpayer for the food market. (7-1-93)

c. Example 2: The taxpayer rents a five (5) story office building primarily for use in its multi-state business, uses three (3) floors for its offices and subleases two (2) floors to various other businesses and persons such as professional people, shops and the like. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. Since the subrents are business income they are not deducted from the rent paid by the taxpayer. (7-1-93)

02. Annual Rental Rate. Annual rental rate is the amount paid as rental for property for a twelve (12) month period, i.e., the amount of the annual rent. Where property is rented for less than a twelve (12) month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of twelve (12) or more months and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve (12) months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis. (7-1-93)

a. Example 1: Taxpayer A which ordinarily files its returns based on a calendar year is merged into Taxpayer B on April 30. The net rent paid under a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the tax period 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) (\$2,500 x 12). (7-1-93)

b. Example 2: Same facts as in Subsection 054.02.a., except that the lease would have terminated on August 31. In this case, the annualized net rent is twenty thousand dollars (\$20,000) (\$2,500 x 8). (7-1-93)

03. Annual Rent. Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes: (7-1-93)

a. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise. (7-1-93)

b. Example: A taxpayer, pursuant to the terms of a lease, 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 of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) (\$12,000 plus one percent (1%) of \$400,000 or \$4,000). (7-1-93)

c. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amount paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of the rent shall be determined by consideration of the relative values of the rent and the other items. (7-1-93)

d. Example 1: A taxpayer, pursuant to the terms of a lease, pays the lessor twelve thousand dollars (\$12,000) a year rent plus taxes in the amount of two thousand dollars (\$2,000) and interest on a mortgage in the amount of one

thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). (7-1-93)

e. Example 2: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was one thousand dollars (\$1,000) of which seven hundred dollars (\$700) was for the use of storage space and three hundred dollars (\$300) for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). (7-1-93)

f. Annual rent does not include: Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc., and 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 which constitutes a sharing of current or future production of natural resources from such property, whether denominated as royalty, advance royalty, rental, or otherwise. (7-1-93)

04. Leasehold Improvements. Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor. (7-1-93)

05. Safe Harbor Lease. Property subject to the safe harbor lease should be reported in the factor of the actual user of the property and should be reported at original acquisition cost. (7-1-93)

055. PROPERTY FACTOR: AVERAGING PROPERTY VALUES (Rule 055).

01. General Rule. As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the State Tax Commission may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period. (7-1-93)

02. Fluctuations in Values. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period. (7-1-93)

a. Example: The monthly value of the taxpayer's property was as follows: (7-1-93)

i. January \$2,000 (7-1-93)

ii. February \$2,000 (7-1-93)

iii. March \$3,000 (7-1-93)

iv. April \$3,500 (7-1-93)

v. May \$4,500 (7-1-93)

vi. June \$10,000 (7-1-93)

vii. July \$15,000 (7-1-93)

viii. August \$17,000 (7-1-93)

ix. September \$23,000 (7-1-93)

x. October \$25,000 (7-1-93)

xi. November \$13,000 (7-1-93)

xii. December \$2,000 (7-1-93)

- xiii. Total \$120,000 (7-1-93)

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows: $\$120,000 / 12 = \$10,000$ (7-1-93)

03. Averaging Rented Property. Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in ISTC Rule 054. (7-1-93)

056. PAYROLL FACTOR (Rule 056).

01. Formula. The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period. (7-1-93)

02. Accounting Method. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes. (7-1-93)

a. The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor. (7-1-93)

b. Example 1: The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor. (7-1-93)

03. Compensation. The term compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code. (7-1-93)

04. The term employee means any officer of a corporation, or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be 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; except that, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule (7-1-93)

05. Filing Returns. In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Sections 63-3027 and 63-3701, Article IV, Idaho Code, or the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (7-1-93)

057. PAYROLL FACTOR: DENOMINATOR (Rule 057).

The denominator of the payroll factor is the total compensation paid everywhere during the tax period. 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, are included in the denominator of the payroll factor. In no case, however, will the denominator exceed the sum of all numerators. Example: A taxpayer has employees in its state of legal domicile, State A, and

is taxable in State B. In addition the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed, i.e., included in the denominator, but not the numerator of the payroll factor, even though the taxpayer is not taxable in State C. (7-1-93)

058. PAYROLL FACTOR: NUMERATOR (Rule 058).

The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Sections 63-3027(n) and 63-3701, Article IV.14, Idaho Code, to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under ISTC 56 to ISTC 59. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes. (7-1-93)

059. PAYROLL FACTOR: COMPENSATION PAID IN THIS STATE (Rule 059).

Compensation is paid in this state if any one of the following tests, applied consecutively, are met: (7-1-93)

01. First Test. The employee's service is performed entirely within the state. (7-1-93)
02. Second Test. The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction. (7-1-93)
03. Third Test. If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state: (7-1-93)
 - a. If the employee's base of operations is in this state; or (7-1-93)
 - b. If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or (7-1-93)
 - c. If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state. (7-1-93)
 - d. The term base of operations is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order 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 the exercise of his trade or profession at some other point or points. (7-1-93)
 - e. The term place from which the service is directed or controlled refers to the place from which the power to direct or control is exercised by the taxpayer. (7-1-93)

060. SALES FACTOR (Rule 060).

01. General Rule. Sections 63-3027(a)(5) and 63-3701, Article IV.1(g), Idaho Code, define the term sales to mean all gross receipts of the taxpayer not allocated under Sections 63-3027(d) through (h) and 63-3701, Article IV(5) through (8), Idaho Code. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of such trade or business. The following are rules for determining sales in various situations: (7-1-93)

a. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of such goods or products, or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period, held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise

taxes, including sales taxes, shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product. (7-1-93)

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. (7-1-93)

c. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, sales includes the gross receipts from the performance of such service including fees, commissions, and similar items. (7-1-93)

d. In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease, or licensing the use of the property. (7-1-93)

e. In the case of taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom. (7-1-93)

f. If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. (7-1-93)

g. In the case of a taxpayer deriving receipts from foreign source dividends which are apportionable business income, such receipts constitute sales. No other apportionment factor relief will be permitted for the inclusion of such dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up will be excluded from sales. (7-1-93)

02. Disregarding Gross Receipts. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See ISTC Rule 0688. (7-1-93)

03. Filing Returns. In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Sections 63-3027 and 63-3701, Article IV, Idaho Code, or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance. (7-1-93)

061. SALES FACTOR: DENOMINATOR (Rule 061).

The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under ISTC Rule 068. In no case, however, will the denominator exceed the sum of all the numerators. (7-1-93)

062. SALES FACTOR: NUMERATOR (Rule 062).

The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (7-1-93)

063. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE (Rule 063).

01. Gross Receipts. Gross receipts from sales of tangible personal property, except sales to the United States Government; as discussed in ISTC Rule 064 are in this state: (7-1-93)

a. If the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point or other conditions of sale; or (7-1-93)

b. If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser. (7-1-93)

02. Destination Sales. (7-1-93)

a. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state even though the property is ordered from outside this state. Example: The taxpayer, with inventory in State A, sold one hundred thousand dollars (\$100,000) of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. Twenty-five thousand dollars (\$25,000) of the purchase order was shipped directly to purchaser's branch store in this state. The branch store in this state is the purchaser within this state with respect to twenty-five thousand dollars (\$25,000) of the taxpayer's sales. (7-1-93)

b. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which 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 this state is property delivered or shipped to a purchaser within this state. (7-1-93)

03. Purchaser. The term purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state. Example: A taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is in this state. (7-1-93)

04. Diverted Shipment. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state. Example: The taxpayer, a produce grower in State A, begins shipment of 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 this state in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to this state. (7-1-93)

05. Throwback Sales. If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Example: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in this state. 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 this state for approval and are filled by shipment from the inventory in this state. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to this state, the state from which the merchandise was shipped. (7-1-93)

06. Third-Party Throwback Sales. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply (7-1-93)

a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state. (7-1-93)

b. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state. (7-1-93)

c. Example: The taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon 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 this state. (7-1-93)

064. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE (Rule 064).

Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the 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. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United State Government. (7-1-93)

01. Example 1: A taxpayer contracts with General Services Administration to deliver X number of trucks which

were paid for by the United States Government. The sale is a sale to the United States Government. (7-1-93)

02. Example 2: The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for one million dollars (\$1,000,000). A sale by the subcontractor to the prime contractor is not a sale to the United States Government. (7-1-93)

065. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE (Rule 065).

01. General Rule. Sections 63-3027(q) and 63-3701, Article IV.17, Idaho Code, provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government; under these sections gross receipts are attributed to this state if the income producing activity which give rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance. (7-1-93)

02. Income Producing Activity. The term, income producing activity, applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Income producing activity includes the following: (7-1-93)

a. The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service. (7-1-93)

b. The sale, rental, leasing, licensing or other use of real property. (7-1-93)

c. The rental, leasing, licensing or other use of tangible personal property. (7-1-93)

d. The sale, licensing or other use of intangible personal property. (7-1-93)

e. The mere holding of intangible personal property is not, of itself, an income producing activity. (7-1-93)

03. Costs of Performance. The term, costs of performance, means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer. (7-1-93)

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in this state if: The income producing activity is performed wholly within this state; or 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. (7-1-93)

05. Special Rules. The following are special rules for determining when receipts from the income producing activities described below are in this state: (7-1-93)

a. Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state. (7-1-93)

b. Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period. Example: Taxpayer is the owner of ten (10) railroad cars. During the year, the total of the days each railroad car was present in this state was fifty (50) days. The receipts attributable to the use of each of the railroad cars in this state are a separate item of income and shall be determined as follows:

Ten (10) cars x fifty (50) days / (Ten (10) cars x three hundred sixty-five (365) days) x Total Receipts = Receipts
Attributable to This State (7-1-93)

c. Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations. Example 1: Taxpayer, a road show, gave theatrical performances at various location in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state. Example 2: The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state 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 this state. The receipts attributable to this state are three thousand dollars (\$3,000). Two hundred (200) man hours divided by six hundred (600) man hours times nine thousand dollars (\$9,000). (7-1-93)

066. SPECIAL RULES (Rule 066).

01. Alternate Methods. Sections 63-3027(r) and 63-3701, Article IV.18, Idaho Code, provide that if the allocation and apportionment provisions of Sections 63-3027 and 63-3701, Article IV, Idaho Code, do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the State Tax Commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable: (7-1-93)

- a. Separate accounting; (7-1-93)
- b. The exclusion of any one (1) or more of the factors; (7-1-93)
- c. The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or (7-1-93)
- d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's business. (7-1-93)

02. Specific Industry Methods. Sections 63-3027(r) and 63-3701, Article IV.18, Idaho Code, permit a departure from the allocation and apportionment provisions of Sections 63-3027 and 63-3701, Article IV, Idaho Code, only in limited and specific cases. Sections 63-3027(r) and 63-3701, Article IV.18, Idaho Code, may be invoked only in specific cases where unusual fact situations, which ordinarily will be unique and nonrecurring, produce incongruous results under the apportionment and allocation provisions contained in Sections 63-3027 and 63-3701, Article IV, Idaho Code. In the case of certain industries such as air transportation, rail transportation, ship transportation, trucking, television, radio, motion pictures, various types of professional athletics, and so forth, the foregoing rules in respect to the apportionment formula do not set forth appropriate procedures for determining the apportionment factors. Nothing in Sections 63-3027(r) and 63-3701, Article IV.18, Idaho Code, or in ISTC Rules 066 through 075 shall preclude the State Tax Commission from establishing appropriate procedures under Sections 63-3027(j) to (q) and 63-3701, Article IV. 10 to 17, Idaho Code, for determining the apportionment factors for each such industry, but such procedures shall be applied uniformly. (7-1-93)

067. SPECIAL RULES PROPERTY FACTOR (Rule 067).

The following special rules are established in respect to the property factor of the apportionment formula. (7-1-93)

01. Subrents. If the subrents taken into account in determining the net annual rental rate under ISTC Rule 054 produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the State Tax Commission or requested by the taxpayer. In no case, however, shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such 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. Example: The taxpayer rents

a ten (10) story building at an annual rental rate of one million dollars (\$1,000,000). Taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars (\$1,000,000) a year. The net annual rental rate of the taxpayer must not be less than two-tenths (.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand (\$200,000). (7-1-93)

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 such property shall be determined on the basis of a reasonable market rental rate for such property. (7-1-93)

068. SPECIAL RULES SALES FACTOR (Rule 068).

The following special rules are established in respect to the sales factor of the apportionment formula: (7-1-93)

01. De minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. (7-1-93)

02. Gross Receipts from Intangibles. Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payment on sales of tangible property, ISTC Rule 060, and income from the sale, licensing or other use of intangible personal property, ISTC Rule 065. (7-1-93)

069. EXCEPTIONS TO APPORTIONMENT FORMULA; SEPARATE ACCOUNTING (Rule 069).

Separate accounting is to be used only with prior approval of the State Tax Commission. A written petition must be filed with the State Tax Commission at least thirty (30) days prior to the due date for filing the return, not including extensions. An order approving or rejecting the petition forthwith will be issued by the Commission. In issuing the order, the Commission will determine whether or not the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately will reflect the taxpayer's income. (7-1-93)

070. EXCEPTIONS TO APPORTIONMENT FORMULA; EXCLUSION OF A FACTOR (Rule 070).

The prescribed three (3) factor formula procedure contained in the fraction described in Sections 63-3027(i) and 63-3701, Article IV.9, Idaho Code, shall be used in the apportionment of income required by these sections. However, under Sections 63-3027(r) and 63-3701, Article IV.18, Idaho Code, if any one of the prescribed three (3) factors is inapplicable and no substitute factor can be used, then the remaining two (2) factors shall be included as numerators of the fraction described in Sections 63-3027(i) and 63-3701, Article IV.9, Idaho Code, and the denominator of such fraction shall be two (2), unless otherwise ordered by the State Tax Commission. (7-1-93)

071. EXCEPTIONS TO APPORTIONMENT FORMULA; TAX ON GROSS SALES (Rule 071).

Taxpayers whose only activity in Idaho consists of sales which are not in excess of the amount prescribed in Section 63-3701 Article III, Section 2, Idaho Code, may elect to report income and pay tax to Idaho at the rate of one percent (1%) of gross sales. See Section 63-3702, Idaho Code, and ISTC Rule 029. (7-1-93)

072. EXCEPTIONS TO APPORTIONMENT FORMULA; MODIFIED FACTORS FOR CARRIERS OF FREIGHT OR PASSENGERS (Rule 072).

A substantial portion of the net income of taxpayer engaged in the transportation of freight or passengers within and without Idaho results from the movement of revenue-producing equipment, drivers, and other operating personnel. It is, therefore, necessary in calculating the apportionment factor of such carriers to reflect the results of the movement of such equipment and personnel by using miles traveled both within and without the state. Thus, the apportionment formula of such transportation companies is to be computed as follows: (7-1-93)

01. Tangible Property. Fixed properties, such as buildings and land used in the business, terminal facilities, shop equipment, and cars and trucks used in gathering or delivering local freight, will be assigned to the state in which such properties are located. The value of equipment used in over-the-road hauling or other transportation will be assigned to this state on a mileage basis. For example, where ten percent (10%) of a taxpayer's miles traveled are in Idaho, ten percent (10%) of the value of the revenue-producing transportation equipment will be included as part of the Idaho property factor. (7-1-93)

02. Payroll. The wages and salaries of employees assigned to fixed locations such as officers, clerical,

administrative, pickup and delivery, and terminal personnel within this state shall be included in the Idaho payroll factor. The wages of personnel operating transportation equipment within and without this state will be assigned to this state upon the basis of miles. The wages of such personnel shall be assigned to Idaho in the proportion that miles traveled within this state bear to the total miles traveled everywhere. (7-1-93)

03. Revenues. Revenues will be assigned to this state in the proportion that the miles traveled within the state bear to the total miles traveled everywhere. All other revenue will be assigned in accordance with the provisions of Sections 63-3027(o), (p), and (q), and 63-3701, Article IV.15, 16, and 17, Idaho Code, and ISTC Rules 060 through 065. (7-1-93)

073. SPECIAL RULES: RAILROADS (Rule 073).

The following special rules are established in respect to railroads: (7-1-93)

01. General Rule. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In such cases, the first step is to determine what portion of the railroad's income constitutes business income and which portion constitutes nonbusiness income under Section 63-3701, Article IV. 1, Idaho Code, and ISTC 35 through 39. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Section 63-3701, Article IV.5 to .8, Idaho Code, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state constitutes the amount of the taxpayer's entire net income which is subject to tax by this state. (7-1-93)

02. Business and Nonbusiness Income. For definitions, rules, and examples for determining business and nonbusiness income, see ISTC Rule 010. (7-1-93)

03. Apportionment of Business Income. The property factor shall be determined in accordance with ISTC Rules 049 through 055, inclusive, the payroll factor in accordance with ISTC Rule 056 through 058, and the sales factor in accordance with ISTC Rules 060 through 065, inclusive, except as modified in this rule. (7-1-93)

04. The Property Factor. Property Valuation. Owned property shall be valued at its original cost and rented property shall be valued at eight (8) times the net annual rental rate in accordance with Section 63-3701, Article IV. 11, Idaho Code, and ISTC Rules 053 and 054. Railroad cars owned and operated by other railroads or other companies and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer. Railroad cars which are not owned and operated by other railroads for which a per diem or mileage charge is made are included in the property factor as rented property. (7-1-93)

a. The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. (7-1-93)

b. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in accordance with Section 63-3701, Article IV.10.-12., Idaho Code, inclusive, and ISTC Rules 049 through 055, inclusive (7-1-93)

c. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without this state during the income year shall be included in the numerator of the property factor in the ratio which locomotive-miles and car-miles in the state bear to the total everywhere. (7-1-93)

d. Original Cost. For purposes of subsection 04, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions; or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. ISTC Rule 053. (7-1-93)

e. Rent. For purposes of Subsection 073.04, rent does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad. (7-1-93)

f. Value. For purposes of Subsection 073.04, the value of owned real and tangible personal property shall mean its original cost, see Section 63-3701, Article IV. 11., Idaho Code, and ISTC 53. (7-1-93)

g. Average Value. For purposes of Subsection 073.04, average value of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the State Tax Commission may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. See Section 63-3701, Article IV.12, Idaho Code, and ISTC Rule 055. (7-1-93)

h. Rented Property. For purposes of Subsection 073.04, the value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. See Section 63-3701, Article IV.11, Idaho Code, and ISTC Rule 054. (7-1-93)

i. Net Annual Rental. For purposes of Subsection 073.04, net annual rental rate means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. (7-1-93)

j. Property. For purposes of Subsection 073.04, property used during the income year includes property which is available for use in the taxpayer's trade or business during the income year, (7-1-93)

k. Locomotive-mile. For purposes of Subsection 073.04, a locomotive-mile is the movement of a locomotive, a self-propelled unit of equipment designed solely for moving other equipment, a distance of one mile under its own power. (7-1-93)

l. Car-mile. For purposes of Subsection 073.04, a car-mile is a movement of a unit of car equipment a distance of one mile. (7-1-93)

05. The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. See Section 63-3701, Article IV.13.-14., Idaho Code, and ISTC Rules 056 through 059. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in Section 63-3701, Article IV.13.-14., Idaho Code, and ISTC Rules 056 through 059. With respect to enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in this state bear to their services performed everywhere (7-1-93)

06. The Sales (Revenue) Factor. (7-1-93)

a. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. See Section 63-3701, Article IV. 1, Idaho Code, and ISTC Rules 035 through 039. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with Section 63- 3701, Article IV.15.-17, Idaho Code, and ISTC Rules 060 through 065. (7-1-93)

b. The total revenue of the taxpayer in this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows: All receipts from shipments which both originate and terminate within this state; and that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination. (7-1-93)

c. The numerator of the sales, revenue, factor shall include: all receipts from the transportation of passengers, including mail and express handled in passenger service, which both originate and terminate within this state; and that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio which revenue passenger miles in this state bears to the total everywhere. (7-1-93)

074. SPECIAL RULE: CONSTRUCTION CONTRACTORS (Rule 074).

The following special rules are established in respect to the apportionment of income of long-term construction contractors:

(7-1-93)

01. General Rule. When a taxpayer elects to use the percentage of completion method of accounting or the completed contract method of accounting for long-term contracts, as defined in Treasury Regulation Section 1.451-3(b), and has income from sources both within and without this state from a trade or business, the amount of business income derived from such long-term contracts from sources within this state shall be determined pursuant to this rule. In such cases, the first step is to determine which portion of the taxpayer's income constitutes business income and which portion constitutes nonbusiness income under Section 63-3701, Article IV. 1, Idaho Code, and ISTC 35 through 39 thereunder. Nonbusiness income is directly allocated to specific states pursuant to the provisions of Section 63-3701, Article IV.5 to .8, Idaho Code, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income attributable to this state constitute the amount of the taxpayer's entire net income which is subject to tax by this state.

(7-1-93)

02. Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income see ISTC Rules 010 and 035 through 39.

(7-1-93)

03. Methods of Accounting and Year of Inclusion. The state of Idaho permits the taxpayer to elect either the percentage of completion or completed contract method. Business income is apportioned to this state by a three-factor formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts by the taxpayer. The total of the property, payroll and sales percentages is divided by three (3) to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state

(7-1-93)

a. Percentage of Completion Method. Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract, is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income years exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract. Example: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for nine million dollars (\$9,000,000). The contract allowed three (3) years for completion, and as of the end of the second income year the taxpayer's books of account, kept on the accrual method, disclosed the following:

(7-1-93)

i. End of 1st Income Year: Receipts: \$2,500,000 Expend.: \$2,400,000.

(7-1-93)

ii. End of 2nd Income Year: Receipts: \$4,500,000 Expend.: \$4,100,000
Totals: \$7,000,000 Totals: \$6,500,000

In computing the above expenditures, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was thirty percent (30%) completed at the end of the first income year and eighty percent (80%) completed at the end of the second income year. The amount to be included as business income for the first income year is three hundred thousand dollars (\$300,000) (thirty percent (30%) of nine million dollars (\$9,000,000) or two million seven hundred thousand dollars (\$2,700,000) less expenditures of two million four hundred thousand dollars (\$2,400,000) equals three hundred thousand dollars (\$300,000)). The amount to be included as business income for the second year is four hundred thousand dollars (\$400,000) (fifty percent (50%) of nine million dollars (\$9,000,000) or four million five hundred thousand dollars (\$4,500,000) less expenditures of four million one hundred thousand dollars (\$4,100,000) equals four hundred thousand dollars (\$400,000)).

(7-1-93)

b. Completed Contract Method. Under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to this state from each completed contract, see subsection 05 of this rule. Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular three (3) factor formula of property, payroll, and sales.

(7-1-93)

c. Property Factor. In general, the numerator and denominator of the property factor shall be determined as set forth in Section 63-3701, Article IV.10 to .12, Idaho Code, inclusive, and ISTC Rules 049 through 055, inclusive. However, the

following special rules are also applicable: The average value of the taxpayer's cost, including materials and labor, of construction in progress, to the extent such costs exceed progress billings, accrued or received depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts, shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in this state shall be included in the numerator of the property factor. Example 1: Taxpayer commenced a long-term construction project in this state as of the beginning of a given year. By the end of its second income year its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	1st Year Beginning	Ending	2nd Year Beginning	Ending
Construction Costs	0	\$1,000,000		
Progress Billings		600,000		
Balance 12/31--(1/1)		\$ 400,000	\$ 400,000	
Construction Costs--Total from Beginning of Project				\$5,000,000
Progress Billings--Total from Beginning of Project				\$4,000,000
Balance 12/31				\$1,000,000
Balance Beginning of Year				\$ 400,000
Total				\$1,400,000
Average (1/2)- Value Used in Property Factor				\$ 700,000

NOTE: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see Section 63-3701, Article IV.12, Idaho Code, and ISTC Rule 055. Example 2: Same facts as in Example 1, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight (8) times the net annual rental rate even though such rental expense may be capitalized into the cost of construction. The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(7-1-93)

d. Payroll Factor. In general, the numerator and denominator of the payroll factor shall be determined as set forth in Section 63-3701, Article IV.13 and .14, Idaho Code, and ISTC Rules 056 through 059. However, the following special rules are also applicable. Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction. Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state where the services are performed. Example: A taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 63-3701, Article IV.14, Idaho Code, and ISTC Rule 059 thereunder, the compensation is assigned to the numerator of State X. The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately.

(7-1-93)

e. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Section 63-3701, Article I.VI 5 through .17, Idaho Code, inclusive, and ISTC Rules 060 through 065, inclusive. However, the following special rules are also applicable: Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the income year bears to the total of construction costs for the entire project during the income year or any other method, such as engineering costs estimates, which will provide a reasonable apportionment. Example 1: A construction project was undertaken

in this state by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts, progress billings, were derived from the contract during the three (3) income years that contract was in progress:

	1st Year	2nd Year	3rd Year
Gross Receipts	\$1,000,000	\$4,000,000	\$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three (3) years are the amounts shown, Example 2: A taxpayer contracts to build a dam on a river at a point which lies half (1/2) within this state and half (1/2) within State X. During the taxpayer's first income year construction costs in this state were two million dollars (\$2,000,000). Total construction costs for the project during the income year were three million dollars (\$3,000,000). Gross receipts, progress billings, for the year were two million four hundred thousand dollars (\$2,400,000). Accordingly, gross receipts of Two Million Dollars (\$2,000,000) / Three Million Dollars (\$3,000,000) = sixty-six and two thirds percent (66 2/3%) x Two Million Four Hundred Thousand Dollars (\$2,400,000) = One Million Six Hundred Thousand Dollars (\$1,600,000) are included in the numerator of the sales factor. If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. Example: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year, the second since starting the project, it estimated that the project was thirty percent (30%) completed. The bid price for the project was nine million dollars (\$9,000,000) and it had received two million five hundred thousand dollars (\$2,500,000) from progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is two million seven hundred thousand dollars (\$2,700,000) (thirty percent (30%) of nine million dollars (\$9,000,000)), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements. If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts, progress billing, received or accrued, whichever is applicable, during the income year attributable to each contract. Example 1: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year, the second since starting the project, it had billed, and accrued on its books a total of five million dollars (\$5,000,000) of which two million dollars (\$2,000,000) had accrued in the first year the contract was undertaken, and three million dollars (\$3,000,000) had accrued in the current, second, year. The amount of gross receipts to be included in the sales factor for the current income year is three million dollars (\$3,000,000). Example 2: Same facts as in Example 1, except the taxpayer keeps its books on the cash basis, and as of the end of its current income year had received only two million five hundred thousand dollars (\$2,500,000) of the three million dollars (\$3,000,000) billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is two million five hundred thousand dollars (\$2,500,000). The sales factor is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though under the completed contract method of accounting, business income is computed separately. (7-1-93)

f. Apportionment Percentage. The total of the property, payroll, and sales percentages is divided by three (3) to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to this state. (7-1-93)

04. Completed Contract Method, Special Computation. The completed contract method of accounting requires that the reporting of income, or loss, be deferred until the year the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year regardless of whether the project is located within or without this state, in order to determine the amount of income which is attributable to sources within this state. The amount of income from each contract completed during the income year apportioned to this state, plus other business income apportioned to this state by the regular three (3) factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated in this state is the measure of tax for the income year. The amount of income, or loss, from each contract which is derived from sources within this state using the completed contract method of accounting is computed as follows: (7-1-93)

a. In the income year the contract is completed, the income or loss therefrom is determined. (7-1-93)

b. The income, or loss, determined in Subsection 074.04.a. is apportioned to this state by the following method: A fraction is determined for each year the contract was in progress. The numerator is the amount of construction costs paid or accrued each year the contract was in progress and the denominator is the total of all such construction costs for the project. Each percentage determined is multiplied by the apportionment formula percentage for that particular year as determined in

Subsection 074.03.f. of this rule. The percentages determined for each year the contract was in progress are totaled. The amount of total income, or loss, from the contract determined in Subsection 074.04.a., above, is multiplied by the total percentage. The resulting income, or loss, is the amount of business income from such contract derived from sources within this state. (7-1-93)

c. Example 1: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in State X, and Contract N in State Y. In addition, it has other business income, less expenses, during the income year 1972 from interest, rents, and short-term contracts amounting to five hundred thousand dollars (\$500,000), and nonbusiness income allocable to this state of eight thousand dollars (\$8,000). During 1972, it completed Contract M in State X at a profit of nine hundred thousand dollars (\$900,000). Contracts L and N in this state and State Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in Subsection 074.03.f. of this rule and the percentages of contract costs as determined above for each year Contract M in State X was in progress are as follows:

	1970	1971	1972
Apportionment Percentages	30%	20%	40%
Percentages of Construction Costs Contract M Each Year to Total Construction Costs -- (100%)	20%	50%	30%

(7-1-93)

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$500,000
Apportion 40% to this State	\$200,000

Add: Income from Contract M	\$252,000
Total Business Income Derived from Sources within this State	\$452,000
Add: Nonbusiness	
Income Allocated to this State	\$ 8,000
Net Income Subject to Tax	\$460,000

Income from Contract M Apportioned to this state:

	1970	1971	1972	Total
Apportionment Percentage	30%	20%	40%	
Percentage of				
Construction Costs	20%	50%	30%	100%
Product	6%	10%	12%	28%
28% of 5900,000 = 5252,000				

d. Example 2: Same facts as in Subsection 074.04.c, except that Contract L was started in 1972 in this state, the first year the taxpayer was subject to tax in this state. Contract L in this state and Contract N in State Y are incomplete in 1972. The corporation's net income subject to tax in this state for 1972 is computed as follows:

\$500,000
\$200,000
\$108,000
\$308,000
\$8,000
\$316,000

Income from Contract M Apportioned to this State:

	1970	1971	1972	Total
Apportionment Percentage	0%	0%	40%	
Percentage				
of Construction Costs	20%	50%	30%	100%
Product	0%	0%	12%	12%
12% of \$900,000 = \$108,000				

NOTE: Only twelve percent (12%) is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972. (7-1-93)

e. Example 3: Same facts as in Subsection 074.04.C, except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state, see Section 63-3701, Article IV.2 and .3, Idaho Code, and ISTC Rule 041 and ISTC Rules 045 through 047. Contracts M and N in States X and Y were started in 1972 and are incomplete. The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$500,000
Apportion 40% to this State	\$200,000
Add: Income from Contract L Total	\$738,000
Business Income Derived from Sources Within this State	\$938,000
Add: Nonbusiness Income Allocated to this State	8,000
Net Income Subject to Tax	\$946,000

Income from Contract L Apportioned to this State:

	1970	1971	1972	Total
Apportionment Percentage	100%	100%	40%	
Percentage				
of Construction Costs	20%	50%	30%	100%
Product	20%	50%	12%	82%
82% of \$900,000 = \$738,000				

05. Computation for Year of Withdrawal, Dissolution or Cessation of Business, Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within this state from incomplete contracts in progress outside this state on the date of withdrawal, dissolution or cessation of business in this state be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in this state. (7-1-93)

a. The amount of income, or loss, from each such contract to be apportioned to this state by the apportionment method set forth in Subsection 074.05.b of this rule shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income, or loss, for each such contract shall be the amount by which the gross contract price from each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract. (7-1-93)

b. Example: A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two (2) long-term contracts; Contract L in this state was started in 1971 and completed at a profit of nine hundred thousand (\$900,000) on December 16, 1973. The taxpayer withdrew on December 31, 1973. Contract M in State X was started in 1972 and was incomplete on December 31, 1973. The apportionment percentages of the taxpayer as determined at Subsection 074.03 of this rule, and percentages of construction costs are determined in Subsection 074.05.b of this rule for each year Contract M in State X was in progress are as follows:

	1971	1972	1973	Total
Apportionment Percentage	30%	20%	40%	
Percentage of Construction Costs:				
Contract L, this State	20%	50%	30%	100%
Contract M, State X	0%	10%	25%	35%

The corporation had other business income, net of expenses, of five hundred thousand dollars (\$500,000) during 1972 and three hundred thousand dollars (\$300,000) during 1973. The gross contract price of Contract M, State X, was one million dollars (\$1,000,000) and it was estimated to be thirty-five percent (35%) completed on December 31, 1973. Total expenditures to date for Contract M, State X, were three hundred thousand (\$300,000) for the period ended December 31, 1973. The measure of tax for the taxable year ended December 31, 1973 is computed as follows:
Taxable Year 1973

	Income Year 1972	Income Year 1973

Business Income Apportionment	5500,000	\$300,000
Percentage to this State	20%	40%
Amount Apportioned to this State	\$100,000	\$120,000
Add: Income from Contracts:		
L (this State)		5252,000
M (State X)		6,000
Total Business Income Derived from Sources within this State	\$100,000	\$378,000

Income from Contract L Apportioned to this State:

	1971	1972	1973	Total
Apportionment Percentage	30%	20%	40%	
Percentage				
of Construction Costs	20%	50%	30%	100%

Income from Contract M Apportioned to this State:

	1971	1972	1973	Total
Apportionment Percentage	0%	20%	40%	
Percentage of Construction Costs	0%	10%	25%	35%
Product	0%	2%	10%	12%
12% of 550,000 = 56,000				

Computation of Apportionable Income from Contract M Based on Percentage of Completion Method:

Total Contract Price	51,000,000
Estimated to be 35% Completed	5 350,000
Less: Total Expenditures to Date	5 300,000
Apportionable Income	5 50,000

(7-1-93)

075. SPECIAL RULES: AIRLINES (Rule 075).

The following special rules are established with respect to airlines:

(7-1-93)

01. General Rule. Where an airline has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to Section 63-3701, Article IV., Idaho Code, except as modified by this rule. The following terms are used in the apportionment factor descriptions.

(7-1-93)

- a. Value of owned real and tangible personal property shall mean its original cost. See ISTC Rule 053. (7-1-93)
- b. Cost of aircraft by type means the average original cost or value of aircraft by type which are ready for night. (7-1-93)
- c. Original cost means the initial federal tax basis of the property plus the value of capital improvements to such property. It shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. See ISTC Rule 053. (7-1-93)
- d. Average value of property means the amount determined by averaging the values at the beginning and ending of the income year, but the State Tax Commission may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. See Article IV. 12 and ISTC Rule 055. (7-1-93)
- e. The value of rented real and tangible personal property means the product of eight (8) times the annual rental rate. See ISTC Rule 054. (7-1-93)
- f. Net annual rental rate means the annual rental rate paid by the taxpayer. (7-1-93)
- g. Property used during the income year includes property which is available for use in the taxpayer's trade or business during the income year. (7-1-93)
- h. Aircraft ready for flight means aircraft owned or acquired through rental or lease, but not interchange, which are in the possession of the taxpayer and are available for service on the taxpayer routes. (7-1-93)
1. Revenue service means the use of aircraft ready for flight for the production of revenue. (7-1-93)
- j. Transportation revenue means revenue earned by transporting passengers, freight and mail, as well as revenue earned from liquor sales, pet crate rentals, etc. (7-1-93)
- k. Departures means for purposes of these rules, all takeoffs, whether they be regularly scheduled or chartered flights, that occur during revenue service. (7-1-93)
02. Apportionment of Business Income. (7-1-93)
- a. Property Factor. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Section 63-3701, Article IV.11, Idaho Code, and ISTC Rules 053 and 054. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airline to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average of the taxpayer's real and tangible personal property owned or rented and used in this state during the income year. In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with Section 63-3701, Article IV.10 through 12, Idaho Code, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: departures of aircraft from locations in this state weighted as to the cost and value of aircraft by type compared to total departures similarly weighted. (7-1-93)
- b. The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. See Section 63-3701, Article IV.13 through 14, Idaho Code. The numerator of the payroll factor is the total amount paid in this state during the income year by the taxpayer for compensation. With respect to nonflight personnel, compensation paid to such employees shall be included in the numerator as provided in Section 63-3701, Article IV.13 through 14, Idaho Code. With respect to flight personnel, the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air, compensation paid to such employees shall be included in the ratio that departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by types compared to total departures similarly weighted, multiplied by the total flight personnel compensation. (7-1-93)

c. Sales (Transportation Revenue) Factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. See Section 63-3701, Article IV. 1, Idaho Code, and ISTC Rules 035 through 039. Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation: the ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight revenues directly attributable to this state. (7-1-93)

03. Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. Such records are to be subject to review by the State Tax Commission or its agents. (7-1-93)

04. Example 1: Assume the following facts for an airline for the tax year: (7-1-93)

a. It has ten (10) 747's ready for flight and in revenue service at an average per unit cost of forty million dollars (\$40,000,000) for nine (9) of the aircraft. It rents the remaining 747 from another airline for nine million dollars (\$9,000,000) per year. At eight (8) times rents, the latter value is valued at seventy-two million dollars (\$72,000,000) for apportionment purposes. Total 747 valuation is, therefore, four hundred thirty-two million dollars (\$432,000,000) for property factor denominator purposes. (7-1-93)

b. It has twenty (20) 727's ready for flight and in revenue service at an average per unit cost of twenty million dollars (\$20,000,000). Total 727 valuation is, therefore, four hundred million dollars (\$400,000,000) for property factor denominator purposes. (7-1-93)

c. It has nonflight tangible property, NTP, valued at original cost of two hundred million dollars (\$200,000,000). (7-1-93)

d. It has the following annual payroll: (7-1-93)

i. Flight Personnel \$60,000,000 (7-1-93)

ii. Nonflight Personnel - 40,000,000 Total \$100,000,000 (7-1-93)

e. From its operations, it has total receipts of fifty million dollars (\$50,000,000), business net income of one million dollars (\$1,000,000) and no nonbusiness income. (7-1-93)

f. It has the following within State X: Ten percent (10%) of its 747 flight departures forty-three million two hundred thousand dollars (\$43,200,000); twenty percent (20%) of its 727 flight departures eighty million dollars (\$80,000,000); five percent (5%) of its nonflight tangible property, NTP, ten million dollars (\$10,000,000); and fifteen percent (15%) of its nonflight personnel payroll six million dollars (\$6,000,000). (7-1-93)

g. State X has a corporate tax rate of ten percent (10%). (7-1-93)

The airline's tax liability to State X would be determined as follows: Property Factor:

$$\begin{aligned} &43,200,000 \text{ (747s)} + 80,000,000 \text{ (727's)} + 10,000,000 \text{ (NTP)} = \\ &432,000,000 \text{ (747s)} + 400,000,000 \text{ (727's)} + 200,000,000 \end{aligned}$$

$$\begin{aligned} &133,200,000 = 12.90\% \\ &1,032,000,000 \end{aligned}$$

Sales Factor:

$$\begin{aligned} &43,200,000 \text{ (747's)} + 80,000,000 \text{ (727's)} = 123,200,000 = 14.8077\% \\ &432,000,000 \text{ (747's)} + 400,000,000 \text{ (727's)} = 832,000,000 \end{aligned}$$

Payroll Factor:

$6,000,000 \text{ (nonflight)} + (.148077 \times 60,000,000) \text{ (flight)} = 14,884,620 = 14.8846\%$

100,000,000 100,000,000

Average ratio Property, payroll, and sales factors = 3

$\frac{12.907\% + 14.8077\% + 14.8846\%}{3} = 42.5993\% = 14.1998\%$

Taxable income in State X: $14.1998\% \times \$1,000,000 = \$141,998$

Tax liability to State X: $.10 \times \$141,998 = \$14,200$ (7-1-93)

05. Example 2: Same facts except that Subsections 075.04.f. and 04.g. are changed to read: (7-1-93)

a. It has the following within State Y: Six percent (6%) of its 747 flight departures twenty-five million nine hundred twenty thousand dollars (\$25,920,000); thirty-one percent (31%) of its 727 flight departures one hundred twenty-four million dollars (\$124,000,000); three percent (3%) of its nonflight tangible property six million dollars (\$6,000,000); seven percent (7%) of its nonflight personnel payroll four million two hundred thousand dollars (\$4,200,000). (7-1-93)

b. State Y has a corporate tax rate of six and one-half percent (6 1/2%). (7-1-93)

c. The airline's tax liability to State Y would be determined as follows:

Property Factor:

$\frac{25,920,000 \text{ (747's)} + 124,000,000 \text{ (727's)} + 6,000,000 \text{ (NTP)}}{432,000,000 + 400,000,000 + 200,000,000} = \frac{155,920,000}{1,032,000,000} = 15.1085\%$

Sales Factor:

$\frac{25,920,000 \text{ (747's)} + 124,000,000 \text{ (727's)}}{432,000,000 + 400,000,000} = \frac{149,920,000}{832,000,000} = 18.0192\%$

Payroll Factor:

$\frac{4,200,000 \text{ (nonflight)} + (.180192 \times 60,000,000) \text{ (flight)}}{40,000,000 + 60,000,000} = \frac{15,011,520}{100,000,000} = 15.0115\%$

Average ratio = Property, payroll, and sales factors = 3

$\frac{15.1085\% + 18.0192\% + 15.0115\%}{3} = 48.1392\% = 16.0464\%$

Taxable income in State Y: $16.0464\% \times \$1,000,000 = \$160,464$

Tax liability to State Y: $.065 \times \$160,464 = \$10,430$ (7-1-93)

076. AFFILIATED CORPORATIONS (Rule 076).

01. Combined Report. When necessary to accurately reflect income, two (2) or more corporations the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners may be treated as a single entity and are turn using the combined reporting method shall be filed for such entity under the following circumstances. (6-23-94)

a. When the taxpayer so elects and all corporations included in the combined filing are receiving income

from, and are subject to the income tax jurisdiction of Idaho. (7-1-93)

b. Upon written approval of the Tax Commission, any other group of corporations may file on a combined basis. Such approval must be obtained thirty (30) days prior to the due date, including extension for filing the combined return. A request contained in or filed with an income tax return may not come to the attention of the Tax Commission and will not be regarded as a basis upon which a combined return may be filed. (6-23-94)

c. When the Tax Commission determines that a multi-corporate unitary activity is operating within and without Idaho. (6-23-94)

d. In any other instance when the Tax Commission determines that use of the combined reporting method is necessary to accurately reflect income. (6-23-94)

e. In any case in which a corporation, 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, under the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC corporation is required. (7-1-93)

f. In any case in which a corporation 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, under the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-93)

02. Elements of a Worldwide Combined Report. Income for the worldwide combined group shall be computed on the same basis as federal taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 019 and 033 through 078. (6-23-94)

a. For corporations incorporated outside the United States which are included in a consolidated federal corporation income tax return, the federal taxable income reported in such consolidated federal corporation income tax return shall be included in the combined report. (6-23-94)

b. For corporations incorporated outside the United States and not included in a consolidated federal corporation income tax return, the equivalent of federal taxable income to be included in the combined report for foreign corporations shall be determined in one of two ways. The unitary group may elect to include the financial net income before income taxes as reported to the United States Securities and Exchange Commission if required to file with the United States Securities and Exchange Commission, or if not required to file, the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. The second option available to the unitary group is to use profit and loss statements of each foreign corporation, adjusted to conform to tax accounting standards as would be required under the Internal Revenue Code if such corporation were a domestic corporation required to file a federal income tax return. The option chosen must be used for all unitary foreign corporations not included in a consolidated federal corporation income tax return. (6-23-94)

c. 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 must be made for each unitary foreign corporation included in the combined report and must 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. (6-23-94)

d. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group shall be determined under Section 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 033 through 078. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be utilized. (6-23-94)

03. Changing Election. An election to file using the combined reporting method may not be changed in subsequent years by the taxpayer without consent of the Commission. (6-23-94)

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment

factor.

(6-23-94)

077. ATTRIBUTING INCOME OF CORPORATIONS WHICH ARE MEMBERS OF PARTNERSHIPS (Rule 077).

01. Corporate Partners. If a corporation required to file an Idaho income tax return is a member of an operating partnership, for purposes of this rule partnership includes a joint venture, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. This rule does not apply to attribution of income of individuals. (7-1-93)

02. Situs. Membership in a partnership doing business in Idaho creates an Idaho tax situs for each member of the partnership even though the partner has no other contact with the state of Idaho. A partnership is doing business in Idaho if its activities in this state meet the requirement of Sections 63-3023 and 63-3023A, Idaho Code, and ISTC Rule 026 and exceed the activities protected by Public Law 86-272, 15 USC Sections 381-384. If all of the partnership's business activity is conducted in Idaho, and all of the corporate partner's business activity is conducted in Idaho, then all of the corporate partner's share of the partnership income shall be reported by the corporation on its Idaho income tax return as Idaho income. (7-1-93)

03. Partnership Income as Business Income of the Partner. If the income or loss of a partnership constitutes business income or loss, as defined by Section 63-3027(a)(1), Idaho Code, and ISTC 35, to the corporate partner, the partner's share of this net business income or loss must be apportioned, together with all other net business income or loss of the corporation. The partner's share of the partnership property, payroll and sales, after intercompany eliminations, shall be included within the numerators and the denominators of the corporation's property, payroll and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll and sales shall be determined by distributing the partnership's property, payroll and sales among the partners in the same proportions as the partnership's income is distributed. Generally, the property, payroll and sales of the partnership includable in the corporation's factor computations shall be determined in accordance with the rules prescribed by Section 63-3027, Idaho Code, and ISTC Rules 048 through 075. For the purpose of determining how the sales attribution rules of Section 63-3027(p), Idaho Code, apply, the sales of the partnership shall be treated, in the sales factor of the corporate partner, as if they were sales of the corporation. If the partnership income or loss is nonbusiness income to the corporation, none of the partnership property, payroll or sales may be included in the computation of the factors of the corporation. (7-1-93)

04. Example: Corporation A and Corporation B are equal partners in a partnership known as A & B Company. Partnership income is divided equally between them. The partnership does business in Idaho and one other state. Thirty percent (30%) of the partnership's sales, thirty-five percent (35%) of its property, and forty percent (40%) of its payroll are in Idaho. Corporation A is a multi-state business which earns a part of its own business income in Idaho. Corporation A's share of the partnership income attributed to it for federal tax purposes qualifies as business income. There are no intercompany sales, rents, interest or other charges between the partnership and its corporate partners. Corporation A's share of the partnership income shall be added to its own business income subject to apportionment. In determining its own property, payroll and sales factors, Corporation A shall add to the denominator of its sales factor one-half (1/2) of the total sales of the partnership. Thirty percent (30%) of the amount added to the denominator shall be added to the Idaho numerator of the sales factor. Similarly, one-half (1/2) of the partnership's property shall be added to the denominator of the corporate partner's property factor. Thirty-five (35%) percent of the amount added to the denominator of the property factor shall be added to the Idaho property factor numerator. One-half (1/2) of the total payroll of the partnership shall be added to the denominator of the partner's payroll factor. Forty percent (40%) of the amount added to the payroll factor denominator shall be added to the Idaho numerator. The three (3) factors shall then be averaged and the result shall be the corporate partner's Idaho apportionment factor. The total amount of Corporation A's business income, including the business income of the partnership which is attributable to Corporation A, shall be multiplied by the Idaho apportionment factor to determine the net Idaho taxable business income. Corporation B will compute its Idaho taxable income in the same manner. Corporation A's computation would be as follows: (7-1-93)

CORPORATION A COMPUTATION OF IDAHO TAXABLE INCOME		
Net business income subject to apportionment*		1,000,000
Idaho apportionment factor##	17.6676%	

Idaho taxable income	176,676	
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Includes partnership distribution of 100,000

	Property Factor	Sales Factor	Payroll Factor	Average Percent
Idaho:				
Corporate totals	1.0 Mil	5.0 Mil	500,000	
Partnership attributes	350,000	1.2 Mil	200,000	
Idaho Totals	1.35 Mil	6.2 Mil	700,000	
Total:				
Corporate totals	9 Mil	50 Mil	2 Mil	
Less:				
Partnership distribution included above		(100,000)		
Partnership attributes	1 Mil	4 Mil	500,000	
Totals	10.0 Mil	53.9	2.5 Mil	
Idaho factors	13.5%	11.5028	28.0%	17.6676%
Partnership attributes:				
Idaho:				
Partnership totals	700,000	2,400,0	400,000	
Partnership Int.-Corp A	50%	50%	50%	
Id Partnership Atts-Corp	350,000	1,200,00	200,000	
Total:				
Partnership totals	2.0 Mil	8.0 Mil	1.0 Mil	
tf				
Partnership Int.-Corp. A	50%	50%	50%	
Total Partnership				
Atts-Corp A	1.0Mil	4.0M11	500,000	

(7-1-93)

05. Partnership Income as Nonbusiness Income of Partner. If the partnership income or loss does not qualify as business income for its corporate partner, the income shall be nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and ISTC Rule 036. The corporation shall allocate the nonbusiness income to the state in which it was earned. If the partnership operates in more than one state, its income shall, on the partnership return, be apportioned and allocated as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and ISTC Rule 031 through 078 shall be applied to the partnership. An amount equivalent to the partnership's net Idaho taxable income shall be determined. The corporate partner, on its Idaho corporation income tax return, shall specifically allocate to Idaho its share of the partnership's equivalent Idaho net taxable income.

(7-1-93)

078. COMBINED REPORTS INCLUDING FOREIGN COUNTRY OPERATIONS (Rule 078).

01. Reporting Under the Internal Revenue Code. Where a unitary business has foreign country operations which are required or allowed to report income under the Internal Revenue Code, the translation method for determining income for state purposes shall be the same as that used for federal reporting purposes. (7-1-93)

02. Not Reporting Under the Internal Revenue Code. Where a unitary business has foreign country operations which are not subject to the reporting requirements of the Internal Revenue Code, the following translation methods may be used for determining income: (7-1-93)

a. The profit and loss method where there is no recognition of any unrealized gains or losses resulting from the restatement or revaluation of assets or liabilities to reflect changes or fluctuations in currency values; (7-1-93)

b. Any other translation method which does not recognize unrealized exchange rate gain or loss resulting from the restatement of assets or liabilities and which, in the opinion of the Tax Commission, reasonably reflects income from foreign operations. (7-1-93)

03. Written Approval. A unitary business may not change its method of translation for determining income from foreign operations without first obtaining the written approval of the Tax Commission. (7-1-93)

079. (RESERVED).

080. PARTNERSHIPS, PART-YEAR AND NONRESIDENT INDIVIDUALS, TRUSTS, AND ESTATES FOR YEARS BEGINNING ON OR AFTER JANUARY 1,1988 (Rule 080).

01. Partnerships. Partnerships and joint ventures which operate in more than one state shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and ISTC Rules 031 through 078 to determine the income attributable to Idaho. (7-1-93)

02. Part-Year Resident Individuals. (7-1-93)

a. All income earned or received while a resident of Idaho is subject to Idaho taxation. For the person who moves into Idaho, all income from Idaho sources prior to the time of moving into Idaho plus all income from all sources after becoming a resident of Idaho must be reported. For the person who moves from Idaho, all income from all sources prior to moving from Idaho plus all income from Idaho sources after moving from Idaho must be reported to Idaho. For the portion of the year that the person is a nonresident, the income reportable to Idaho must be determined in accordance with Subsection 080.03. (7-1-93)

b. When the income from Idaho sources received prior to becoming a resident of Idaho or received after moving from Idaho consists of interest or dividends, this income will not be reported to Idaho unless the individual has an Idaho business situs at the time when such income is realized. The mere receipt of interest or dividend income from an Idaho source is not sufficient to create an Idaho business situs. (7-1-93)

03. Nonresident Individuals. Income from Idaho sources includes: (7-1-93)

a. Gains and profits from any business which has business situs in Idaho. See Section 63-3023, Idaho Code, and ISTC Rule 026. (7-1-93)

b. Compensation paid for services which are performed partly within and partly without Idaho. Compensation attributable to services performed within Idaho shall be a portion of the total compensation equal to that portion of the total service which is performed within Idaho. If a nonresident proprietor or employee (including corporate officers) performs services for his employer both within and without Idaho, his income derived from Idaho sources includes that proportion of his total compensation for services rendered which the total number of working days employed within Idaho bears to the total number of working days employed both within and without Idaho. The items of gain, loss, and deduction, other than deductions entering into the Idaho itemized deduction, of the proprietor or employee attributable to his employment, derived from or connected with Idaho sources, are similarly determined. In making the allocation provided for in this section,

no account is taken of nonworking days, including Sundays, Saturdays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay. The amount of salary/wages from an Idaho source is computed by this formula:

$$\frac{\text{Idaho Work Days} \times \text{salary}}{\text{Total Work Days}} = \text{Idaho Salary SS}$$

Taxpayers claiming an allowance for work days outside of Idaho must keep detailed records of work days or use the provisions that follow. Taxpayers working a forty (40) hour work week may assume total allocable work days of two hundred sixty (260) less vacation, holidays, and other days off. However, any allowance claimed for days worked outside Idaho must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer. Documentation of non-Idaho work days must be provided. Where a nonresident performs services both within and without Idaho for only part of a taxable year, his income derived from Idaho sources during that period includes only that portion of compensation received during the period he performs services both within and without Idaho, according to the formula in for Idaho salary applied during the period he was required to perform services both within and without Idaho. If a nonresident employee, including corporate officers, performs services for more than one employer both within and without Idaho, he must determine separately for each employer the allocable compensation attributable to Idaho sources. In determining the income from Idaho sources, the total compensation from each employer must be multiplied by a fraction determined under by the Idaho salary formula for the days worked for that employer. The sum of the amounts of compensation determined as attributable to Idaho sources must be included in computing the Idaho adjusted gross income of the nonresident employee. This subsection is designed to apportion and allocate to Idaho, in a fair and equitable manner, a nonresident's items of income, gain, loss, and deduction attributable to a business, trade, profession, or occupation carried on partly within and partly without Idaho, except for itemized deductions. Where the methods provided do not so allocate and apportion those items, the Tax Commission may require a taxpayer to apportion and allocate those items under such method as it prescribes, as long as the prescribed method results in a fair and equitable apportionment and allocation. A nonresident individual may submit an alternative method of apportionment and allocation with respect to items of income, gain, loss, and deduction attributable to a business, trade, profession, or occupation carried on partly within and partly without Idaho. For example, in some cases work hours may be an appropriate allocation base instead of work days. The proposed method must be fully explained in the taxpayer's Idaho nonresident personal income tax return. If the method proposed by the taxpayer is expressly approved by the Tax Commission, it may be used in lieu of the applicable method under this subsection. (7-1-93)

c. Nonresident officers or directors of corporations must report an apportioned share of the salaries or wages paid to them by corporations doing more than fifty percent (50%) of their business within Idaho, and if not reported, the deduction of such salaries or wages on the corporation's income tax return will be disallowed. (7-1-93)

d. Rentals or royalties from property located in Idaho or from any interest in such property, including rentals or royalties for the use of or for the privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises and other like property in Idaho. (7-1-93)

e. Gains, profits, and income from the sale of real property located in Idaho. (7-1-93)

f. Gains, profits, and income derived from the purchase of personal property without Idaho and its sale within Idaho. (7-1-93)

g. Gains, profits, and income derived from any partnership having a business situs within Idaho. (7-1-93)

h. Wages, salaries, fees, commissions, other compensation, dividends, and distributive shares of income from any small business corporation having business situs within Idaho. However, the S corporation is required to report the income for its nonresident shareholders and pay the tax at the corporate rate of eight percent (8%) on this income if the nonresident shareholders fail to file individual returns. See Section 63-3022(1), Idaho Code, and ISTC 19. (7-1-93)

i. Income from interest or dividends arising from a source within Idaho, if at the time that such income is realized, the individual has an Idaho business situs. The mere receipt of interest or dividend income from an Idaho source is not sufficient by itself to create an Idaho business situs. (7-1-93)

j. Any other income which is not specifically exempt under the provisions of the Internal Revenue Code and Section 63-3022, Idaho Code. (7-1-93)

04. Proration of Exemptions and Deductions. Generally, the exemptions and deductions allowable for federal purposes, except state income taxes included in itemized deductions pursuant to Section 164, Internal Revenue Code, are allowable in part for Idaho purposes. To determine the allowable portion (7-1-93)

a. Calculate a factor by dividing Idaho adjusted gross income by total adjusted gross income. Idaho AGI/ Federal AGI. The factor is rounded to the nearest whole percent. In no case may the factor exceed one hundred percent (100%), nor may it be less than zero (0). The examples which follow illustrate the rules of this subsection. (7-1-93)

b. Example 1. Where Idaho adjusted gross income equals twenty thousand dollars (\$20,000) and federal adjusted gross income equals thirty thousand dollars (\$30,000), the factor is rounded to the nearest whole percent of sixty-seven percent (67%). Twenty thousand dollars (\$20,000) / thirty thousand dollars (\$30,000) = sixty-six and six thousand six hundred sixty-six percent (66.6666%) = sixty-seven percent (67%), rounded. (7-1-93)

c. Example 2. Where Idaho adjusted gross income equals thirty thousand dollars (\$30,000) and federal adjusted gross income equals twenty thousand dollars (\$20,000), the factor is limited to one hundred percent (100%). Thirty thousand dollars (\$30,000) / twenty thousand dollars (\$20,000) = one hundred fifty percent (150%) = one hundred percent (100%), limitation factor may not exceed one hundred percent (100%). (7-1-93)

d. Example 3. Where Idaho adjusted gross income is a loss of twenty thousand dollars (\$20,000) and federal adjusted gross income is thirty thousand dollars (\$30,000), the factor is zero (0). Twenty thousand dollars (\$20,000) / thirty thousand dollars (\$30,000) = sixty-six and six thousand six hundred sixty-six percent (66.6666%) = zero (0), limitation factor may not be less than zero (0). (7-1-93)

e. Example 4. Where Idaho adjusted gross income is a loss of twenty thousand dollars (\$20,000) and federal adjusted gross income is a loss of thirty thousand dollars (\$30,000), the factor is computed as illustrated in Subsection 080.04.a. (7-1-93)

f. Example 5. Where Idaho adjusted gross income is a loss of thirty thousand dollars (\$30,000) and federal adjusted gross income is a loss of twenty thousand dollars (\$20,000), the factor is computed as illustrated in Subsection 080.04.C. (7-1-93)

g. Multiply total exemptions and deductions by the factor calculated in Subsection 080.04.a. (7-1-93)

h. Subtract the amount calculated in subsection 04.g. to arrive at Idaho taxable income. (7-1-93)

i. Deductions as used in this section are the itemized deductions or standard deduction allowed by the Internal Revenue Code, except state income taxes included in itemized deductions pursuant to Section 164, Internal Revenue Code, are not deductible for Idaho income tax purposes, Section 63-3022(b), Idaho Code. (7-1-93)

05. Estates and Trusts. (7-1-93)

a. See ISTC 14 and Section 63-3024, Idaho Code. (7-1-93)

b. Income from Idaho sources includes the items listed in Subsections 080.02 and 03, above. (7-1-93)

06. Adjustments to Idaho Source Income. Adjustments to income allowed in computing federal adjusted gross income are allowable in part in computing Idaho adjusted gross income for nonresidents and part-year residents as follows: (7-1-93)

a. Payments to an IRA, Individual Retirement Account, Payments to a Keogh Retirement Plan, and Self-Employed SEP Deduction. Payments allowable for federal purposes are allowable in part for Idaho purposes. To determine the allowable portion: Calculate a factor by dividing the participant's taxable compensation from Idaho sources by the participant's total compensation; and multiply the payments allowable for federal purposes by the previous factor. Participant's compensation is defined in Section 415, Internal Revenue Code, and Treasury Regulation Section 1.415. (7-1-93)

b. Self-Employment Tax. The portion of the self-employment tax deducted for federal purposes which relates to Idaho self-employment is allowed as an Idaho adjustment to income. (7-1-93)

c. Self-Employed Health Insurance Deduction. Self-employed health insurance allowable for federal purposes is allowable in part for Idaho purposes. To determine the allowable portion: Calculate a factor by dividing Idaho source self-employment income by total self-employment income; and multiply the self-employment health insurance allowable for federal purposes by the previous factor. (7-1-93)

d. Penalty on Early Withdrawal of Savings. The penalty deduction is allowed only when the interest income of the time savings deposit is reported as Idaho source income. (7-1-93)

e. Alimony Paid. Alimony may be deducted in the proportion that Idaho income bears to income from all sources. (7-1-93)

07. Idaho Additions to Income. (7-1-93)

a. Interest and Dividends Not Taxable Under Federal Code. Part-year residents will add dividends and interest from obligations of foreign countries or other state governments, including their political subdivisions, received while Idaho residents. Interest from obligations of Idaho, or any political subdivision of Idaho, is exempt from Idaho income tax. Nonresidents will make no adjustment. (7-1-93)

b. Net Operating Loss Carryforward. Add back the portion of the federal net operating loss carryforward deducted from Idaho source income. (7-1-93)

c. Capital Loss Carryforward. Add back the federal capital loss deducted from Idaho source income if the loss was incurred in activities not taxable by Idaho. (7-1-93)

d. Ordinary Income and Capital Gains Received as a Lump-sum Payment from a Qualified Retirement Plan. Part-year residents will add amounts received while Idaho residents. Nonresidents will make no adjustment. (7-1-93)

08. Idaho Subtractions from Income. (7-1-93)

a. Idaho Net Operating Loss Carryforward. Subtract the Idaho net operating loss carryforward. (7-1-93)

b. Interest from U.S. Government Obligations. The interest paid on securities issued by the U.S. Government is exempt from Idaho income tax. Part-year residents may subtract the interest income if it was included in Idaho source income. Nonresidents do not report this interest as Idaho source income; they do not take this subtraction. (7-1-93)

c. Full-time Active Duty Military Pay. Part-year residents who are on full-time active duty in the U.S. Armed Forces include their military pay as Idaho source income for the portion of the year they are Idaho residents. The military pay reported as Idaho source income and earned outside Idaho may be subtracted. Nonresidents do not report their military pay as Idaho source income; they do not take this subtraction. (7-1-93)

d. Household and dependent care expenses, incurred to enable the taxpayer to be gainfully employed in Idaho, may be deducted in the proportion that taxable income from Idaho employment bears to total income from employment. (7-1-93)

e. Insulation and Alternative Energy Device Expenses. Part-year residents and nonresidents may deduct these expenses for an Idaho residence if they meet the requirements of Sections 63-3022B and 63-3022C, Idaho Code. (7-1-93)

f. State Income Tax Refund Included in Idaho Income. Part-year residents and nonresidents may subtract such refunds if they have been included in Idaho income. (7-1-93)

081. WATER'S EDGE ELECTION (Rule 081).

01. In General. Idaho Income Tax Administrative Rules 081 through 083 apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules under this Act, the provisions in Idaho Income Tax Administrative Rules 081 through 083 are controlling. (6-23-94)

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined report for Idaho corporation income tax purposes. The election must be made in accordance with the conditions set forth in Sections 63-3027B through 63-3027E, Idaho Code, and Idaho Income Tax Administrative Rules 081 through 083. (6-23-94)

a. The election can first be made for any year beginning on or after January 1, 1993. (6-23-94)

b. All taxpayers required to file an Idaho return and included in the water's edge combined group must make the election. The election will be made on a form provided by the Tax Commission. The form will provide for a list of the separate companies required to file, if they wish to make a joint election. A joint election must be signed by an individual who is authorized to bind all companies to the election. (6-23-94)

c. Idaho taxpayers having a valid water's edge election shall 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 Idaho Income Tax Administrative Rules 081 through 083. (6-23-94)

03. New Election Required. (6-23-94)

a. A new water's edge election is required even though a valid water's edge election was in effect prior to January 1, 1993. (6-23-94)

b. A valid water's edge election must be filed with a taxpayer's original income tax return for the first year that the election is to apply. (6-23-94)

04. Failure to Include Election. Failure to include the election with the first return to which the election is to apply will result in net income and the tax liability being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. (6-23-94)

05. Elements of the Water's Edge Combined Returns. (6-23-94)

a. Income for the water's edge combined group shall be computed on the same basis as federal taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 019 and 033 through 078. Intercompany transactions between or among members of the water's edge combined group shall be eliminated. Transactions between or among any member of the water's edge combined group and any other non-included affiliated corporation must be included in the computation of the income of the water's edge combined group. (6-23-94)

b. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group shall be determined under Section 63-3027, Idaho Code, and Idaho Income Tax Administrative Rules 033 through 078. When computing the apportionment factors of the water's edge combined group, intercompany transactions between members of the group shall be eliminated. Transactions between any members of the water's edge combined group and any other non-included affiliated corporations must be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, will be included in the sales factor computation. (6-23-94)

06. Disregarding the Election. If the taxpayer fails to comply with the conditions of Sections 63-3027B through 63-3027E, Idaho Code, and Idaho Income Tax Administrative Rules 081 through 083, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert the penalties under Section 63-3046, Idaho Code, and Idaho Income Tax Administrative Rule 111. (6-23-94)

07. The Tax Commission's Legal and Procedural Election Requirements. 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 is to apply. The following information must be included with each year's tax return for which a water's edge election applies: (6-23-94)

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. (6-23-94)

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. (6-23-94)

c. A copy of the consolidated federal income tax return, if applicable. (6-23-94)

d. A schedule of federal taxable income for each possession corporation excluded from the water's edge group under Section 63-3027B(a), Idaho Code. (6-23-94)

082. CHANGE OF ELECTION TREATMENT OF DIVIDENDS. (Rule 082).

01. Written Petition to Change Reporting Method. 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. 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. (6-23-94)

a. The written petition shall include an explanation of the legal or factual basis for requesting the change of reporting method. (6-23-94)

b. The petition must include a computation of the taxpayer's Idaho taxable income and tax liability under both the prior reporting method and the method the taxpayer is petitioning to utilize for the year of change. (7-1-93)

c. 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. (6-23-94)

d. The written petition requesting the change of reporting method must be filed with the Tax Commission at least sixty (60) days prior to the due date for filing the tax return, including extensions of time to file. (6-23-94)

e. 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. (7-1-93)

f. 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 shall be modified accordingly. (6-23-94)

g. The 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. The administrative appeal procedures will be followed to address the taxpayer's protest of the denial. If permission to change its filing method is denied, the taxpayer must continue to file its income tax return under 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. (6-23-94)

02. Treatment of Dividends. (7-1-93)

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 shall be treated as business income. These dividends shall be included as business income of the water's edge combined group even if paid from earnings included in the taxpayer's combined report in prior years. (6-23-94)

b. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return shall be presumed to be business income of the water's edge combined group. (6-23-94)

c. The income of possessions corporations excluded in Section 63-3027B(a), Idaho Code, shall be included in business income as deemed dividends received from payors incorporated outside the fifty (50) states and District of

Columbia. The income of possessions corporations excluded in Section 63-3027B(a), Idaho Code, shall mean federal taxable income. Losses from possessions corporations shall not offset income of other possessions corporations in determining the amount of deemed dividends. (6-23-94)

d. The interest expense offset provided in Section 63-3022(a), Idaho Code, will not be applied to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Sections 63-3027C or 63-3027E, Idaho Code, and Idaho Income Tax Administrative Rule 082. (6-23-94)

083. DOMESTIC DISCLOSURE SPREADSHEET (Rule 083).

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed with each original return in order to satisfy this state's legal and procedural requirements, unless the taxpayer makes a declaration to forego the filing of such spreadsheet. The declaration must be made on a year by year basis. (6-23-94)

02. Spreadsheet Information. The filing of the spreadsheet information must be accomplished using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet," or on identically formatted forms which disclose the same information. (6-23-94)

084. RETROACTIVE WORLDWIDE ELECTION (Rule 084).

01. In General. House Bill 404, 1993 Idaho Session Laws, Chapter 284, declared that an emergency existed enabling a taxpayer to make a retroactive election to be taxed using the worldwide combined reporting method for all unitary affiliates. Once made, the retroactive election would be in effect for all years, as to which the period of limitations for assessment and collection of tax has not expired. (6-23-94)

02. Filing the election. The retroactive worldwide election shall be filed by October 15, 1994. In the case where a change of ownership takes place necessitating short period returns, a retroactive election form must be submitted for each short period return. The Tax Commission will provide an approved form for making this election. (6-23-94)

085. DEDUCTION OF FEDERAL INCOME TAXES (Rule 085).

Corporations. The 1965 amendments to Sections 63-3025 and 63-3025A, Idaho Code, supersede this section. The effect is the disallowance of a deduction of federal income taxes for corporations for all tax years commencing on or after January 1, 1965. (7-1-93)

086. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY (Rule 086).

01. In General. Idaho resident persons, nonresidents of other states, except corporations, who have income subject to income tax both in Idaho and another state may claim a credit for income tax paid the other state. No credit is allowed for income taxes on income taxable in Idaho but exempt from tax in the foreign state. (7-1-93)

02. Part-Year Residents. Part-year residents are also allowed a credit for income taxes paid to other states, if the same income is being taxed by Idaho and the other state. Following are some examples: (7-1-93)

a. Example 1: If the income being taxed jointly by Idaho and the other state is less than the amount being taxed by either Idaho or the other state, compute the amount of the credit under Step A or B, below. The allowable credit is lesser of Step A or B. (7-1-93)

STEP A

Same income being taxed jointly by Idaho and the other state x Idaho Tax = Idaho tax on income Idaho Adjusted Income taxed by both states

STEP B

Same income being taxed jointly by Idaho and the other State x Other State Tax = Other States Other States Adjusted Gross Income tax on income taxed by both states (7-1-93)

b. Example 2: If the income reported to the other state is being taxed one hundred percent (100%) by Idaho, compute the credit under Step A, above. The credit is limited to the lesser of the amount so computed or to the amount of tax paid to the other states. (7-1-93)

c. Example 3: If the only income being taxed by Idaho is the same income being taxed jointly by both states and the same income being taxed jointly by both states is less than the amount being taxed by the other state, compute the credit under Step B. The credit is limited to the lesser of the amount so computed or to the amount of tax paid to Idaho. (7-1-93)

087. EDUCATIONAL INSTITUTIONS (Rule 087).

01. In General. Section 63-3029A, Idaho Code, authorizes a credit against income taxes for charitable contributions to certain educational entities. For purposes of this credit, educational entities include the Idaho institutions identified in Section 63-3029A, Idaho Code. (6-23-94)

02. Deduction and Credit. A charitable contribution made to an educational entity may qualify as a charitable contribution deduction pursuant to Section 170, Internal Revenue Code, and in addition, one-half (1/2) of the contributions, not to exceed specified limitations, may also be credited against income tax. Maximum amounts which may be so credited are: (7-1-93)

a. For individuals, estates, or trusts, twenty percent (20%) of total income tax liability after any credit for taxes paid to other states, or fifty dollars (\$50), one hundred dollars (\$100) for joint returns, whichever is less; (7-1-93)

b. For corporations, ten percent (10%) of total income, franchise, tax liability or five hundred dollars (\$500), whichever is less. (7-1-93)

03. Listing Names. When claiming credit for contributions, taxpayers must list the names of the entities to which contributions were made and the amount contributed to each. (7-1-93)

04. Special Credit. Contributions to institutions in general may qualify as a charitable contribution deduction pursuant to Section 170, Internal Revenue Code, but the special credit against tax may only be taken if the institution qualifies and is located in Idaho. Contributions must also have been actually made in cash or in kind during the taxable year in which claimed. An unpaid pledge does not qualify for the credit. (7-1-93)

05. Nonqualifying Charges. Tuition, board, room, student fees and similar charges on behalf of a student at an educational institution are not contributions for the purpose of this rule. (7-1-93)

06. Passing through Credit. If the credit authorized by this rule is earned by a partnership, S corporation, estate, or trust, the credit may be claimed by individual partners, shareholders, or beneficiaries of the entity that earned the credit. The credit should be claimed on the taxpayer's individual tax return and may not exceed the limitations discussed in Subsection 087.02, above. (7-1-93)

a. In the case of an S corporation, the total contribution will flow through to the shareholders in the same ratio as income or loss is attributed. (7-1-93)

b. In the case of partnership, the total contribution shall flow through to the partners based upon each partner's distributive share of profits or losses as reported on the partnership return. (7-1-93)

c. In the case of an estate or trust, the contribution shall flow through to beneficiaries in the same ratio that income or loss is distributed to beneficiaries. (7-1-93)

d. In no instance shall the total credit claimed by the partners, shareholders, or beneficiaries for contributions made by a partnership, S corporation, estate, or trust exceed fifty percent (50%) of the total contribution made. In no instance may the credit claimed by an individual partner, shareholder, or beneficiary when combined with credit for any contribution made by such individual exceed the limitations described in Subsection 087.02 of this rule. (7-1-93)

07. Unused Portion of the Credit. If the tax liability is absorbed by this and any one or more of the

nonrefundable credits which have priority over this credit, any unused portion of this credit will be lost. See Idaho Income Tax Administrative Rule 096 for the priority order of credits. (6-23-94)

088. INVESTMENT CREDIT (Rule 088).

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, which qualify under Sections 38, 46, 47, and 48, Internal Revenue Code, as in effect prior to enactment of Public Law 101-508, November 5, 1990, and also meet the requirements of this section and this rule. All references in this rule to Sections 38, 46, 47, and 48, are to the Internal Revenue Code as in effect prior to Public Law 101-508. (7-1-93)

a. Credit for qualifying investments made during a tax year beginning in 1982 may not be claimed against tax accruing during such a tax year but must instead be deferred and may be claimed as a credit against taxes accruing during the immediately following tax year. (7-1-93)

b. Credit for qualifying investments made during a tax year beginning in 1983, or any year thereafter, may be claimed against taxes accruing during the tax year in which the investment qualifies. (7-1-93)

c. Credit for qualifying investments made in leased property is to be claimed by the owner. However, the Idaho investment credit will be claimed by the lessee if both parties to the long-term lease had elected to have the lessee claim the credit, pursuant to the Internal Revenue Code and Regulations in effect prior to the 1986 Tax Reform Act. (7-1-93)

02. Calculation of Credit Amount. The credit shall be three percent (3%) of the amount of qualified investments made during the tax year in which the investment first qualifies under Section 38, Internal Revenue Code. (7-1-93)

03. Limitations. The Idaho investment tax credit allowable in a tax year shall be limited by the following. (7-1-93)

a. The total amount of any investment tax credit claimed during a tax year may not exceed fifty percent (50%) of the tax, after credit for taxes paid another state, accruing during such tax year regardless of whether the credit results from a carryover earned in prior years, or is earned in the current year or both. (7-1-93)

b. If the investment tax credit permitted by this section and the Idaho new jobs credit are claimed or carried over, the investment tax credit may be further limited by the provisions of Section 63-3029F, Idaho Code. See ISTC92 and 93. (7-1-93)

c. The taxpayer may elect to forego the new jobs credit to prevent further limitation to the investment tax credit. If so, any carryover of the new jobs credit from the current or a prior year will be lost. (7-1-93)

d. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order of nonrefundable credits as described in ISTC 96. (7-1-93)

e. Example. A taxpayer acquires qualifying investment property having a basis of one hundred thousand dollars (\$100,000) and elects to claim the Idaho investment tax credit. In addition, the taxpayer has Idaho new jobs credit carryover available. The following limitations apply:

Current Year's Allowable Nonrefundable Credits:		
Idaho Income Tax		\$5,000
33% Limitation (55,000 tax x 33%)		\$1,650
Credits In Order of Priority	Earned	Allowable
Contributions to Idaho Educ. Institutions	\$500	\$500

Idaho Investment Tax Credit (5100,000 property's basis x 3%)	\$3,000	\$1,150
Idaho New Jobs Credit Carryover (earned in the previous year)	\$3,000	\$-0-
Total Nonrefundable		
Credits Earned	\$6,500	
Total Nonrefundable		
Credits Allowed		\$1,650

Carryover of Credits: Idaho Investment Tax Credit:	
Amount Earned	\$3,000
Amount Allowable	\$1,150
Idaho Investment Tax Carryover	\$1,850

Idaho New Jobs Credit:

Due to the priority of credits and the thirty-three percent (33%) limitation, no Idaho new jobs credit is allowed. The Idaho New Jobs Credit Carryover is available in computing the allowance for the next tax year. (7-1-93)

f. Example. Same as Subsection 088.03.e., except taxpayer claims to forego the current year's Idaho investment tax credit allowable:

Current Year's Allowable Nonrefundable Credits:			
Idaho Income Tax			\$5,000
33% Limitation (\$5,000 tax x 33%)			\$1,650
Credits In Order of Priority	Earned	Claimed	Allowable
Contributions to Idaho Educ. Institutions	\$500	\$500	\$500
Idaho Investment Tax Credit Taxpayer Foregoes the Credit	\$3,000	\$-0-	\$1,150
Idaho New Jobs Credit Carryover	\$3,000	\$1,150	\$-0-
Total Nonrefundable Credit Earned	\$6,500		
Total Nonrefundable Credit Allowable			\$1,650
Carryover of Credits: Idaho Investment Tax Credit:			
Amount Earned	\$3,000		
Amount Allowable	\$1,150		
Idaho Investment Tax Credit Carryover	\$1,850		

Idaho New Jobs Credit: Due to the priority of credits and the thirty-three percent (33%) limitation, no Idaho new jobs credit is allowed. The Idaho New Jobs Credit Carryover is available in computing the allowance for the next tax year. (7-1-93)

04. Carryover. (7-1-93)

a. If the investment tax credit earned for a tax year is more than may be used, the unused portion of the credit may be carried forward to the next five (5) tax years. An unused credit carryover to the current tax year is used before the credit earned in the current tax year. (7-1-93)

b. When the carryover includes credit for movable property or rolling stock acquired before January 1, 1992, the taxpayer must have documented that the property was used in Idaho the year it was acquired and placed into service as well as for each year of its estimated life. The credit will be recomputed following the method elected for the year of acquisition. (7-1-93)

c. An investment credit carryover earned by a C corporation which has converted to an S corporation is allowed against the S corporation's tax on built-in gains, net capital gains, and excess net passive income. Such credit is not allowed against the tax computed under Section 63-3022(k), Idaho Code, nor shall such credit be passed on to the S corporation shareholders. (7-1-93)

05. Qualifying Property. The following property listed below qualifies for the investment tax credit. (7-1-93)

a. New or used section 38 property as defined in Section 48, Internal Revenue Code. (7-1-93)

b. Idaho situs property, property has situs in Idaho if it is used in this state at any time during the tax year. (7-1-93)

c. Property which was first acquired, constructed, reconstructed, erected or placed into service after December 31, 1981. Any property which was either acquired, constructed, reconstructed or erected on or before December 31, 1981, but placed into service on or after January 1, 1982, is eligible for the credit, providing that the property qualifies for the credit in a tax year beginning on or after January 1, 1982, under Sections 46(c) and 48, Internal Revenue Code. (7-1-93)

d. Public utility property limited by Section 46(f), Internal Revenue Code. (7-1-93)

06. Nonqualifying Property. The property listed below does not qualify for the investment tax credit. (7-1-93)

a. Replacement property, as defined in Subsection 088.07.a. of this rule, unless the replacement is made for reasons of technical obsolescence, as determined under Subsection 088.07.b. of this rule. (7-1-93)

b. A motor vehicle, as defined in Section 49-123, Idaho Code, with a maximum gross vehicle weight of less than eight thousand (8,000) pounds. Gross vehicle weight shall be determined by the manufacturer's specified gross vehicle weight. (7-1-93)

c. The cost of property which the taxpayer elects to treat as an expense and is not chargeable to a capital account pursuant to Section 179, Internal Revenue Code. (7-1-93)

d. Property not used in Idaho during any time of the tax year. (7-1-93)

07. Replacement Property. For purposes of Subsection 088.06.a. of this rule, replacement property means newly acquired property which performs functions that are the same as or similar to functions performed by other property used in a taxpayer's trade or business. Any property which is purchased to replace property which is nonfunctional due to wear and tear will be deemed to be replacement property and will not qualify for the credit. Any property which is purchased as replacement property will be presumed to have been purchased for reasons other than technical obsolescence. The taxpayer claiming the credit for replacement property shall have the burden of proving that the replacement property was purchased for reasons of technological obsolescence of existing or previously owned property. To meet the burden, the taxpayer must show by clear and convincing evidence, all of the following. (7-1-93)

a. The new property must possess enhanced capabilities which render the property it replaces obsolete.

Obsolescence may render property economically useless to the taxpayer regardless of its physical condition. Obsolescence is attributable to many causes, including technological improvements and reasonably foreseeable economic changes. Among these causes are normal progress of the arts and sciences, supersession or inadequacy brought about by developments in the industry, products, methods, markets, sources of supply, and other like changes, and legislative or regulatory action. (7-1-93)

b. There must be a substantial profit motive for obtaining the enhanced capability. To show a substantial profit motive, the taxpayer must show that the enhanced capability actually makes a measurable contribution to the taxpayer's ability to produce the goods and/or deliver the services which constitute all or part of his business either in greater quantity or with improved efficiency. The contribution measured must be sufficient to show that a reasonable and prudent businessman would make the decision to purchase the property in order to obtain the enhanced capability alone, separate and apart from any other motive for purchasing it. (7-1-93)

08. Agricultural Cooperative. The portion of the Idaho investment credit earned by an agricultural cooperative which it cannot use for the tax year will 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 rules of Subsection 088.10 will be applied as though the cooperative had not allocated any of the original credit to the members. (7-1-93)

a. The distribution to the members will be made in the manner prescribed in Subsection 088.09 of this rule. (7-1-93)

b. In no instance may the investment credit claimed by the agricultural cooperative and the members be more than one hundred percent (100%) of the credit earned. (7-1-93)

09. Pass-through Entities. Owners in partnerships, shareholders in S corporations entitled to file returns under provisions of subchapter S of the Internal Revenue Code, and beneficiaries of estates and trusts shall share the investment tax credit of the partnership, S corporation, estate or trust in the same proportion that the income or loss is shared. (7-1-93)

a. The partnership, S corporation, estate or trust shall prepare and distribute to each owner, shareholder or beneficiary a schedule detailing his proportionate share of the qualified investment in the property. Copies of these schedules must be attached to the partnership, S corporation or fiduciary Idaho income tax return for the tax year in which the credit is earned and to each return upon which the credit is claimed. (7-1-93)

b. When a partnership, S corporation, estate or trust has a fiscal year end other than that of its owner, shareholder or beneficiary, the investment tax credit will be available to be claimed by the owner, shareholder or beneficiary in the same tax period that income or loss from that entity is required to be reported for federal tax purposes. No credit earned by a partnership, S corporation, estate or trust will be available to be claimed by an owner, shareholder or beneficiary in an earlier tax year than it could have been claimed by the entity itself. (7-1-93)

10. Recapture. If, at any time prior to the close of the estimated useful life of the property, in respect to which the taxpayer is claiming or has claimed the credit, is sold or otherwise disposed of, or ceases to qualify under Subsection 088.06 of this rule, a recomputation of the credit must be made. (7-1-93)

a. The recomputation of the credit, and any recapture of prior credits which may be required, shall be made in accordance with the Internal Revenue Code and rules thereunder in the tax year in which the property is disposed of or ceases to qualify. (7-1-93)

b. The recapture will be computed by multiplying the amount of credit times the applicable recapture percentage listed below: (7-1-93)

Number of full years held or qualifying	The recapture percentage
0	100
1	80
2	60

3	40
4	20

c. The recapture of credit previously claimed against tax in prior years will be an addition to tax in the tax year in which the property is disposed of or ceases to qualify. The addition to tax will not affect the computation of limitations used to determine the amount of investment tax credit, or any other Idaho credit, which may be claimed in the year of the recapture. (7-1-93)

d. If the recapture discussed in Subsection 088.10.C., above is applicable, the amount of investment tax credit carryover will also be recomputed. The recomputation and recapture must be made for state purposes even though no recapture of federal investment tax credit is required. (7-1-93)

e. There is no recapture required when a corporation makes an election to file as an S corporation. However, the S corporation shall be liable for any tax under this section. (7-1-93)

11. Movable Property or Rolling Stock-for Credit Claimed in Tax Years Beginning on or after January 1, 1992. If a taxpayer operating both within and without Idaho acquires movable property or rolling stock, which is used in his business and would otherwise qualify for the investment tax credit, each such asset must have an Idaho situs in the year it is acquired, constructed, reconstructed, erected or placed into service and in each succeeding year to which a carryover may be taken. Carryovers from movable property and rolling stock acquired prior to 1992 are also subject to these provisions. (7-1-93)

a. For property used both in and outside Idaho, the credit earned is based on the amount of qualified investment made during the year computed using one of the following computation methods. The method elected will apply to all such movable property or rolling stock acquired during any one (1) tax year. The qualified investment of each item of movable property or rolling stock will be computed based upon the Idaho percentage of total miles, total machine hours, or other measure that most accurately reflects the use of that property within the state. While the measure of use may vary among the different types of assets, the qualified investment of each asset with Idaho situs will be separately computed using this methodology. Or, the qualified investment is determined by applying the property factor, computed pursuant to Section 63-3027(j) through (1), Idaho Code, to the total investment in movable property and rolling stock used in Idaho and which otherwise qualifies for the credit. (7-1-93)

b. Property used only inside Idaho is not subject to the credit proration in Subsection 088.11.a., above. (7-1-93)

c. Example A. Taxpayer, a road construction company, purchased three (3) new road graders. The calculations to determine the Idaho qualifying investment for both methods are as follows:

Idaho Total % of Method (a) Method (b)						
		Mach.	Mach.	Idaho	Qual	Total
Item	Basis	Hrs.	Hrs	Use	Invest	Invest
Rd Grader A	\$125K	1,000	2,080	48%	\$60K	\$125K
Rd Grader B	\$150K	1,500	2,000	75%	\$112.5K	\$150K
Rd Grader C	\$150K	-0-	2,100	0%	-0-	-0-

Total Investment in Qualifying Property - \$275K
Property Factor - 40%
Total Idaho Qualifying Investment - \$172.5K - \$110K

(7-1-93)

d. Example B. Taxpayer, an interstate trucking company, purchases five (5) new trucks to add to its fleet. The calculations to determine the Idaho qualifying investment for both methods are as follows:

Idaho Total % of Method (a) Method (b)						
				Idaho	Qual.	Total
Item	Basis	Miles	Miles	Miles	Invest	Invest
Truck #81	\$55K	75K	250K	30%	\$16.5K	\$55K
Truck #82	55K	-0-	275K	0%	-0-	-0-
Truck #83	55K	-0-	200K	0%	-0-	-0-
Truck #84	55K	25K	225K	11%	6,050	55K
Idaho Total % of Method (a) Method (b)						
Truck #85	55K	5K	300K	2%	1,100	55K

Total Investment in Qualifying Property - \$165K
Property Factor - 10%
Total Idaho Qualifying Investment - \$23,650 - \$16,500

(7-1-93)

12. Movable Property or Rolling Stock-for Credit Claimed in Tax Years Beginning Before January 1, 1992.

(7-1-93)

a. A taxpayer operating both within and without Idaho who acquires movable property or rolling stock which is used in his business and otherwise qualifies for the federal investment tax credit, will compute the credit earned based upon the investment in such property multiplied by the Idaho apportionment factor. For example, a taxpayer will determine the Idaho credit for a fleet of new trucks based upon the investment in the fleet multiplied by the Idaho apportionment factor.

(7-1-93)

b. Where the credit available consists of credit earned on property located in Idaho, as well as credit earned on movable property or rolling stock and the available credit exceeds fifty percent (50%) of the income tax, the credit used must be prorated between the credit earned on the two (2) different classes of property. The credit allowed for the tax year is prorated by the ratio that the credit earned on property located in Idaho bears to the available credit and the ratio that the credit earned on movable property and rolling stock bears to the available credit.

(7-1-93)

c. Example: A taxpayer doing business in several states including Idaho had an Idaho tax liability of eight hundred dollars (\$800) for 1990.

	Idaho	Movable	Total
		Property	Property
Credit Carryover Earned in 1989	\$400	\$900	\$1,300
Credit Earned 1990	\$ 100	\$ 100	\$200
Total Credit Available	\$500	\$1,000	\$1,500
Ratio of Credit per Class of Property to Total Credit	$\$500/\$1,500 = 1/3$	$\$1,000/\$1,500 = 2/3$	
Limitation $\$800 \times 50\%$			\$400

Proration of Limitation	$\$400 \times 1/3 = \133	$400 \times 2/3 = \$267$	\$400
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(7-1-93)

13. Examples.

(7-1-93)

a. **Movable Property or Rolling Stock.** In January, 1987, a calendar year corporate taxpayer purchased a truck, over eight thousand (8,000) pounds gross vehicle weight. Thirty percent (30%) of its miles were logged in Idaho during the year. The investment qualifies under Sections 46(c) and 48, Internal Revenue Code, as five (5) year property. Its cost is fifty thousand dollars (\$50,000). No other qualified investments were made during 1987 and no other Idaho credits are applicable. The taxpayer's Idaho apportionment factor is ten percent (10%). The taxpayer has a five thousand dollars (\$5,000) qualified investment, ten percent (10%) of fifty thousand dollars (\$50,000), upon which he may claim an Idaho investment tax credit of one hundred fifty dollars (\$150), three percent (3%) of five thousand dollars (\$5,000), subject to the limitations of this subsection.

(7-1-93)

b. **Limitation.** Assume the same facts and taxpayer as in Subsection 088.13.a., above. In 1987, the taxpayer has Idaho net taxable income of two thousand five hundred dollars (\$2,500). The tax is two hundred dollars (\$200), eight percent (8%) of two thousand five hundred dollars (\$2,500). The maximum credit allowed in 1987 is one hundred dollars (\$100), fifty percent (50%) of two hundred dollars (\$200). The remaining unused credit of fifty dollars (\$50) may be carried forward up to five (5) succeeding years or until completely absorbed, provided that the property continues to qualify.

(7-1-93)

c. **Carryover.** Assume the same facts and taxpayer as in Subsections 088.13.a. and 13.b., above. During 1988, the taxpayer drives seventy-five percent (75%) of the truck's miles in Idaho. The taxpayer has Idaho net taxable income of one thousand five hundred dollars (\$1,500) in 1988. Movable property costing eighteen thousand one hundred eighty dollars (\$18,180) is acquired in 1988, eleven percent (11%) Idaho apportionment factor times eighteen thousand one hundred eighty dollars (\$18,180) equals two thousand dollars (\$2,000) qualifying, resulting in a 1988 investment tax credit of sixty dollars (\$60), three percent (3%) times two thousand dollars (\$2,000). No other Idaho credits are applicable. The taxpayer computes its investment tax credit as follows:

Idaho Net Taxable Income	\$1,500.00
Idaho Tax (@ 8.0%)	\$ 120.00
Permanent Building Fund Tax	\$ 10.00
Total Tax	\$ 130.00
Investment Tax Credit Carryover from 1987	\$ 50.00
1988 Investment Tax Credit	\$ 60.00
Total	\$ 110.00
Maximum Investment Tax Credit Allowable (SI 20 x 50%) (Permanent Building Fund Tax is not included to compute the limitation)	\$ 60.00
Allowable Credit	\$ 60.00
Balance of Tax Due	\$70.00
Unused Credit Available for Carryover:	\$50.00

NOTE: The basis of the qualified investment was established by the apportionment factor in the year of acquisition (1987) and did not change as a result of an increase, or decrease, of the factor in the year to which the unused credit was carried. (7-1-93)

d. **Recapture.** Assume the same facts as in Subsections 088.13.a., 13.b., and 13.c., above. On January 1, 1989, the taxpayer sold the truck. The truck has an estimated useful life under M.A.C.R.S., Section 46 Internal Revenue Code, of

five (5) years. Idaho investment tax credit must be recaptured as follows:

Investment Tax Credit Earned Initially	\$450.00
Amount Recapture:	
(\$450 x 60%, credit initially earned, times the applicable recapture percent)	\$270.00

Recomputed Credit (\$450 less \$270)	\$180.00
Amount of Credit Used in 1987	\$400.00
Amount of Credit Used in 1988	\$ 50.00
Total Credit Used	\$450.00
Excess Credit Claimed (\$450 less \$180, total credit used less recomputed credit)	\$270.00
Amount of Tax on Recapture (the lesser of the recapture amount or the excess credit claimed)	\$270.00

(7-1-93)

14. Documentation. Every taxpayer shall retain and make available, upon request, records for each item of qualifying property included in the computation of the investment tax credit claimed on any income tax return subject to examination. The records shall include the following: (7-1-93)

- a. A description of the property. (7-1-93)
- b. The asset number assigned to the item of property, if applicable. (7-1-93)
- c. The acquisition date. (7-1-93)
- d. Date placed in service (7-1-93)
- e. Basis of the property. (7-1-93)
- f. The class of the property for recovery property or the estimated useful life for nonrecovery (7-1-93)
- g. Designation as new or used property. (7-1-93)
- h. The location and utilization, the portion of usage within and without Idaho, of the property. (7-1-93)
- i. The retirement, disposition, or date transferred out of Idaho. (7-1-93)

15. Accounting Records Subject to Examination. Accounting records which may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: (7-1-93)

- a. Accounting documents which contain asset and account designations and descriptions. Such documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. (7-1-93)
- b. Asset location records including asset directories, asset registers, insurance records, property tax records,

or similar asset inventory documents. (7-1-93)

c. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. (7-1-93)

d. Log books measuring the utilization of movable or mobile property within and without Idaho. Such logs are to be maintained for each item of property upon which investment tax credit is claimed. These logs should measure utilization of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use within Idaho of trucks, trailers, locomotives, and railcars shall be calculated according to actual mileage within and without Idaho. (7-1-93)

e. A system, reflecting items in Subsection 088.14, which provides verification that property upon which the investment tax credit was claimed is not replacement property and which continues to maintain its status as Idaho qualifying property throughout the recapture period, along with the documents prescribed in this subsection, will support the taxpayer's claimed credit. Absence of such a system and documentation may result in a disallowance of the credit claimed. (7-1-93)

089. CREDIT FOR CONTRIBUTIONS TO YOUTH AND REHABILITATION FACILITIES (Rule 089).

01. Scope. A credit against Idaho income tax may be claimed for charitable contributions made to certain Idaho youth and nonprofit rehabilitation facilities which are located within Idaho and accredited by the Commission on Accreditation of Rehabilitation Facilities. If other requirements are also met, the taxpayer may, in addition, deduct these contributions in arriving at Idaho taxable income. (7-1-93)

02 Limitations. The credit allowed in any tax year shall be limited as follows: (7-1-93)

a. For individuals, estates and trusts, the credit may not exceed twenty percent (20%) of total income tax liability after any credit for taxes paid to other state or one hundred dollars (\$100), two hundred dollars (\$200) on a joint return, whichever is less. (7-1-93)

b. For corporations, the credit may not exceed ten percent (10%) of the total income or franchise tax liability or five hundred dollars (\$500), whichever is less. (7-1-93)

03. Flow-Through of Credit. If the credit authorized by this subsection is earned by a partnership, S corporation, estate, or trust, the credit may be claimed by individual partners, shareholders, or beneficiaries of the entity that earned the credit. The credit should be claimed on the taxpayer's individual tax return and may not exceed the limitations discussed in Subsection 089.02, above. (7-1-93)

a. In the case of an S corporation, the total contribution shall flow through to the shareholders in the same ratio as income or loss is attributed. (7-1-93)

b. In the case of partnership, the total contribution shall flow through to the partners based upon each partner's distributive share of profits or losses as reported on the partnership return. (7-1-93)

c. In the case of an estate or trust, the contribution shall flow through to beneficiaries in the same ratio that income or loss is distributed to beneficiaries. (7-1-93)

d. In no instance shall the total credit claimed by the partners, shareholders, or beneficiaries for contributions made by a partnership, S corporation, estate, or trust exceed fifty percent (50%) of the total contribution made. In no instance may the credit claimed by an individual partner, shareholder, or beneficiary when combined with credit for any contribution made by such individual, exceed the limitations described in Subsection 089.02.a. of this rule. (7-1-93)

090. (RESERVED).

091. DEFINITIONS FOR REVISED IDAHO NEW JOBS CREDIT FOR TAX YEARS BEGINNING IN 1983 OR AFTER (Rule 091).

01. Qualifying New Employee. A qualifying new employee is one who: (7-1-93)
- a. Is hired during a taxable year beginning on or after January 1, 1983. Employees will not qualify if transferred from a related taxpayer or employed by reason of acquisition or merger of the employee's former employer by the taxpayer within the last twelve (12) months. (7-1-93)
 - b. Is employed within Idaho in the taxpayer's revenue-producing enterprise. Refer to Subsection 091.02, below. (7-1-93)
 - c. Is subject to Idaho income tax withholding. (7-1-93)
 - d. Is covered by Idaho unemployment insurance. The taxpayer will use Idaho unemployment reports as a starting point to count the number of employees. However, not necessarily all employees reported will meet the other qualifications. (7-1-93)
 - e. Performs duties on a regular, full-time basis, or on a part-time basis, if at least twenty (20) hours per week throughout the taxable year. (7-1-93)
 - f. Performs duties for a minimum of nine (9) months during the taxable year. A seasonal or new business must have been in operation for a minimum of nine (9) months during the taxable year for any new employees to qualify. (7-1-93)
02. Revenue-Producing Enterprise. A revenue-producing enterprise is a business organization or proprietorship engaged in: (7-1-93)
- a. The production, assembly, fabrication, manufactured or processing of any agricultural, mineral, or manufactured product. (7-1-93)
 - b. The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing. (7-1-93)
 - c. The feeding of livestock at a feed lot. (7-1-93)
 - d. The operation of laboratories or other facilities for scientific, agricultural, animal husbandry or industrial research, development or testing. (7-1-93)
 - e. For purposes of this credit, a revenue-producing enterprise does not include retail sales, professional, managerial or repair services. (7-1-93)
 - f. The revenue-producing enterprise must have an Idaho situs. Those taxpayers operating both within and without the state will use only the employees that are employed within the state in the revenue-producing enterprise to compute the credit. (7-1-93)
 - g. If the taxpayer is engaged in both revenue-producing, as defined above, and nonrevenue producing activities and more than fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-producing activity, then the legal entity as a whole will qualify as a revenue-producing enterprise for purposes of the credit. If less than fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-producing activity, then the legal entity as a whole will not qualify as a revenue-producing enterprise. (7-1-93)
03. Average Number of Qualifying New Employees. Average number of qualifying employees is determined by adding the number of qualifying employees, as defined in Subsection 091.01 of this rule, employed by the taxpayer each month and dividing the sum by the number of months of operation. (7-1-93)

092. (RESERVED).

093. REVISED NEW JOBS TAX CREDIT AMOUNT FOR TAX YEARS BEGINNING IN 1983 OR AFTER (Rule 093).

01. Computation of Gross Credit. The gross credit shall be computed by multiplying the number of qualifying new employees determined in Subsections 039.02 and 03, below, by five hundred dollars (\$500). (7-1-93)

02. Number of New Qualifying Employees. New employment upon which the Idaho new jobs credit is computed shall be determined by reducing the average number of qualifying employees, as defined in ISTC Rule 091, employed during the current taxable year by the greater of (7-1-93)

a. The average number of qualifying employees employed during the immediately preceding taxable year, or (7-1-93)

b. The average number of qualifying employees employed during the three (3) preceding taxable years. (7-1-93)

03. Fractional Numbers. The number of qualifying new employees determined by Subsection 093.02, above, must equal or exceed one (1) and thereafter will be rounded to the nearest tenth (.1) to compute the gross credit. (7-1-93)

04. Computation of the Earned Credit. The earned credit will be the lesser of: (7-1-93)

a. The amount of the gross credit, determined by Subsection 093.01, above, or (7-1-93)

b. Three and one-quarter percent (3.25%) of the net income of the revenue-producing enterprise within which the employment occurred. (7-1-93)

05. Definition of Net Income. For purposes of computing the earned credit, net income of a revenue-producing enterprise means Idaho income determined as follows: (7-1-93)

a. Proprietorships or Farms. The amount of income from Idaho activities as determined under Internal Revenue Code that is reported as net profit or loss on Schedule C or Schedule F on the federal income tax return. (7-1-93)

b. Corporations and Combined Corporate Returns. The amount of Idaho net taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. Each corporation included in the combined report of a unitary business will use its apportioned share of the combined group's total net income subject to allocation and apportionment, modified to restore net operating loss deductions and excluding any nonbusiness income and expenses allocated to Idaho, to compute the earned credit. Refer to Subsection 093.06 and ISTC Rule 040 for limitations on claiming the new jobs credit in a combined report. (7-1-93)

c. Subchapter S Corporations. The amount of income determined under the Internal Revenue Code that is reported as ordinary income or loss, modified to include adjustments for allocation and apportionment and to exclude any nonbusiness income and expenses allocable to Idaho. This amount is the Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by individual shareholders on their Idaho income tax returns and before addition of compensation or income attributable to nonresident shareholders who do not report such income on Idaho income tax returns. (7-1-93)

d. Partnerships. The amount of income determined under the Internal Revenue Code that is reported as ordinary income or loss, modified to include adjustments under the allocation and apportionment provisions of Section 63-3027, Idaho Code, and rules thereunder, excluding any nonbusiness income and expenses allocable to Idaho, to arrive at the amount of business income from Idaho activities. (7-1-93)

06. Amount of Credit Claimed. The new jobs credit, when earned and either used during the current taxable year or carried forward to a succeeding taxable year, may not, together with all other nonrefundable credits, except the credit allowed for taxes paid to other states, exceed thirty-three percent (33%) of the income tax after any deduction of credit for taxes paid to other states. Refer to Section 63-3029H, Idaho Code, and ISTC Rule 096 for the priority order within which nonrefundable credits must be applied. (7-1-93)

07. Carryover. A carryover of unused credit to succeeding tax years will be allowed to the extent that the earned credit, determined in accordance with Subsection 093.04, above, exceeds the credit claimed, determined in accordance with Subsection 093.06, above. (7-1-93)

a. The entire amount of unused earned credit will be carried forward to the earliest of the succeeding tax years, wherein the oldest available unused credit shall be applied first. Unused earned credit means the amount by which the earned credit exceeds the thirty-three percent (33%) limitation contained in Subsection 093.06, above. (7-1-93)

b. For the carryover to be claimed, the employment level upon which the credit was computed must be maintained during the succeeding taxable years to which the unused credit is carried. If the new employment level which generated the credit drops, the taxpayer will not be required to recapture the credit claimed in previous tax years. However, the credit must be recomputed based upon the reduced employment level for purposes of determining the correct amount of carryover. Example: The 1983 return shows a new jobs credit based on the following:

Total income tax after credit for taxes paid to other states \$6060	
Average number of qualifying employees in 1983	45
Average number the preceding 3 years	35
Average number the preceding year	30
Number of new qualifying employees (45-35)	10
Gross credit (10x\$500)	\$5,000
Earned credit lesser of \$5,000 or 3.25% of net income (\$125,000) = 4,063	4,063
Amount claimed (based on 33% limitation)	\$2,000
Carryover to 1984	\$2,063
In 1984, the taxpayer's employment level drops to forty (40). The taxpayer must recompute the credit based on the new employment level as follows:	
Number of new qualifying employees	5
Gross credit (5 x \$500)	\$2,500
Earned credit lesser of \$2,500 or \$4,063	2,500
Amount claimed (based on the 33% limitation)	2,000
Carryover to 1984 allowed	\$500

If the taxpayer's employment level in a subsequent year drops to a point where the credit actually claimed in 1983 would be more than the amount allowed based on the reduced employment level, no carryover will be allowed; however, the taxpayer is not required to recapture any excess credit claimed due to a reduction of employment. (7-1-93)

08. Flow-Through of Credits. The credit earned in taxable years beginning on or after January 1, 1983, will be available to be claimed by owners or beneficiaries of partnerships, subchapter-S corporations, estates or trusts as follows: (7-1-93)

a. To the extent that income or loss from the subchapter S corporation, partnership, estate or trusts flows through to the owners or beneficiaries, the proportionate share of the earned Idaho new jobs credit will also flow through. A schedule of the flow through of Idaho credits must be provided to each owner of beneficiary, and copies of these schedules must be attached to the Idaho tax return or information return of the entity generating the credit, and to each return upon which the credit is claimed. (7-1-93)

b. When the subchapter S corporation, partnership, estate or trust has a fiscal year end different from that of the

owners or beneficiaries, the earned Idaho new jobs credit will be available to be claimed in the same taxable year that income or loss from that entity is required to be reported for federal tax purposes. (7-1-93)

09. Application of the Credit to Taxpayer in Combined Report. A unitary group electing to file a single corporation income tax return must reflect the computation of the Idaho apportionment percentage for each company required to file with Idaho and must separately compute any tax credits including limitations that might apply thereto. Only the corporation generating the tax credit will be able to use such credit. No corporation will be allowed to use a credit generated by another member of the unitary group. (7-1-93)

10. Documentation. The taxpayer will compute the credit using Idaho Form 55 and attach it to the income tax return upon which it is claimed. The taxpayer must maintain adequate records to document the qualifications of new employees claimed, the computation of the number of new employees, the qualification as a revenue-producing enterprise, the computation of the earned credit, the computation of the credit claimed, the continued maintenance of adequate employment levels into carryover years, and the computation of any carryovers. These records must be maintained for as long as the jobs credit may be carried forward or until further assessments or deficiency determinations are barred by a period of limitation, whichever is longer. (7-1-93)

094. - 095. (RESERVED).

096. PRIORITY ORDER OF CREDITS (Rule 096).

01. Tax Liability. Tax liability refers to the tax imposed under Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (7-1-93)

02. Nonrefundable Credits. Nonrefundable credits are to be applied only against the tax liability in the following order of priority: (7-1-93)

a. Credit for taxes paid to other states authorized by Section 63-3029, Idaho Code, enacted in 1959. (7-1-93)

b. Credit for political contributions authorized by Section 63-3024B, Idaho Code, enacted in 1976. (7-1-93)

c. Credit for contributions to Idaho educational institutions, libraries or library districts authorized by Section 63-3029A, Idaho Code, enacted in 1976 Amended 1984. (7-1-93)

d. Credit for value of property for purposes of manufacturing ethanol alcohol for use in gasoline authorized by Section 63-3024C or 63-3025, Idaho Code, enacted in 1980. (7-1-93)

e. Income tax credit for capital investment authorized by Section 63-3029B, Idaho Code, enacted in 1982. (7-1-93)

f. Income tax credit for contributions made to Idaho youth and rehabilitation facilities authorized by Section 63-3029C, 63-3029B, Idaho Code, enacted in 1982. (7-1-93)

g. Revised new jobs tax credit authorized by Section 63-3029E and F, Idaho Code, enacted in 1983, effective for tax years beginning in 1983 or after. (7-1-93)

03. Lost Credits. If the tax liability is absorbed by any one or more of the above listed credits, any remaining nonrefundable credits are considered lost, unless subject to carryover provisions as authorized by the particular code section defining the credit. (7-1-93)

04. Refundable Credits. Refundable credits are those credits which will result in a refund if in excess of the tax liability after application of nonrefundable credits. Those credits are: (7-1-93)

a. Credit for overpayment of withholding or tentative payments authorized by Sections 63-3072 and 63-3035, Idaho Code, enacted in 1959. (7-1-93)

b. Grocery credit authorized by Section 63-3024A, Idaho Code, enacted in 1976. (7-1-93)

- c. Additional grocery credit authorized by Section 63-3024A, Idaho Code, enacted in 1976. (7-1-93)
- d. Credit for maintaining a home for elderly family member authorized by Section 63-3025D, Idaho Code, enacted in 1981. (7-1-93)
- 05. Other Refunds. Taxpayers may apply for credits or refunds of gasoline or special fuels tax on Idaho income tax returns. Credits or refunds of such amounts are moneys taken from gasoline or special fuel tax refund accounts to be either refunded to the taxpayer, together with income tax refunds, or credited against income tax liability. (7-1-93)

097. PERSONS REQUIRED TO MAKE RETURNS OF INCOME (Rule 097).

- 01. Gross Income. Listed below are items of gross income: (7-1-93)
 - a. Compensation, gross receipts, for services including fees, commissions, and other similar items. (7-1-93)
 - b. Gross income derived from: Manufacturing, merchandising and mining gross sales less cost of goods sold plus incidental income. On the cash basis, the gross income from farming, designated as gross profits is itemized on page one (1) of Schedule F, Form 1040, and includes the cash or the value of merchandise or other property received from the sale of livestock and produce raised during the taxable year or prior taxable year, profit from sale of livestock or other items that were bought, and all gross income received from any other source. It is this gross income plus any income from sources other than farming, that is determinative of whether a farmer must file a return. On the accrual basis, the gross income from farming is the figure designated on page two (2) of Schedule F as gross profits, and is determined by taking into account inventories as of the beginning and the close of the taxable year. (7-1-93)
 - c. Gains. Gain realized on the sale or exchange of property is includable in gross income, unless excluded by law. (7-1-93)
 - d. Interest. As a general rule, interest received by or credited to the taxpayer constitutes gross income. (7-1-93)
 - e. Rents and Royalties. Gross income includes gross royalties and gross rentals received or accrued. (7-1-93)
 - f. Dividends. Dividends are included in gross income in the year received or made subject to the shareholder's demand. For tax years beginning before January 1, 1987, dividends included in gross income are reduced by the allowable exclusion: one hundred dollars (\$100) for single taxpayers, two hundred dollars (\$200) on a joint return. (7-1-93)
 - g. Alimony and Separate Maintenance Payments. Constitute gross income unless excluded by law. (7-1-93)
 - h. Annuities and Certain Proceeds from Life Insurance and Endowment Contracts. In general, amounts subject to provisions of Section 72, Internal Revenue Code, are includable in the gross income of the recipient except to the extent they are considered to represent a reduction or return of premiums or other consideration paid. Generally, proceeds of life insurance policies, if paid by reason of the death of the insured, are excluded from the gross income of the recipient. (7-1-93)
 - i. Pensions. Constitute gross income unless excluded by law. Refer to Sections 72, 402, and 403, Internal Revenue Code. (7-1-93)
 - j. Income from Discharge of Indebtedness. Taxpayer may realize income by the payment or purchase of his obligations at less than their full value. Refer to Sections 61 and 108, Internal Revenue Code. (7-1-93)
 - k. Partner's Distributive Share of Partnership Gross Income. Partner's distributive share of partnership gross income constitutes gross income. Refer to Section 61 and Section 702(c), Internal Revenue Code. (7-1-93)
 - 1. Shareholder's Pro Rata Share of S Corporation Gross Income. Shareholder's pro rata share of S corporation gross income constitutes gross income. Refer to Section 61 and Section 1366(c), Internal Revenue Code. (7-1-93)

- m. Income in Respect to a Decedent. Gross income to the recipient. Refer to Section 691, Internal Revenue Code. (7-1-93)
- n. Income from an Interest in an Estate or Trust. Gross income as outlined under Section 641 and following, Subchapter J, Chapter I, Internal Revenue Code. (7-1-93)
- o. Nonresident Beneficiaries. As used in this section, the term gross income includes any amounts determined pursuant to Sections 652, 662, or 668, Internal Revenue Code. Any amount excluded from the gross income of a beneficiary under Section 663(a)(1), Internal Revenue Code, shall be treated for purposes of this section as property acquired by gift, bequest, devise, or inheritance. (7-1-93)
- p. Prizes and Awards. Refer to Section 74, Internal Revenue Code. (7-1-93)
- q. Scholarships/Fellowship Grant. Refer to Section 117, Internal Revenue Code. (7-1-93)
- r. Unemployment Compensation. Refer to Section 85, Internal Revenue Code for gross income inclusion. (7-1-93)
- s. Moving Expense Reimbursements. Refer to Section 82, Internal Revenue Code. (7-1-93)
02. Exclusions from Gross Income. Refer to Internal Revenue Code Subtitle A, Chapter IB, Part III which specifically excludes some items from gross income. Generally, in determining whether a taxpayer has received enough gross income to be required to file a return, items entitled to exclusion from gross income under Section 61(b), Internal Revenue Code, are not taken into account in computing the amount of gross income. However, if the Internal Revenue Code specifies that, for purposes of determining whether an income tax return must be filed, gross income shall be computed without regard to the exclusion, the exclusion shall also be disregarded for state purposes. (7-1-93)
03. Requirements of a Valid Return. A tax return or other document required to be filed in accordance with Section 63-3030, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed in accordance with these requirements and returned to the Commission. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties prescribed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder to be imposed. (7-1-93)
- a. All Idaho tax return forms must be completed and copies of all pertinent schedules or computations must be attached. A copy of the federal income tax return must be included with the Idaho return unless the federal filing requirement was not met and a federal return was not filed or when a Form 40EZ, Idaho Resident Short Form, is filed. The results of supporting computations must be carried forward to applicable lines on the tax return form. It will not be acceptable to enter on the tax return form a statement such as see schedule attached if necessary information from the attachments is not also entered on the Idaho tax return form. (7-1-93)
- b. All Idaho tax returns or other documents filed by the taxpayer must include his social security number or federal employer identification number in the space provided for this number on the face of the Idaho tax form. If required to file an Idaho tax return, the taxpayer must obtain and use the proper federal identification number even if such number is not otherwise required. (7-1-93)
- c. A request for an extension of time to file an Idaho income tax return must accurately show the filing status and type of tax return that will be filed by the taxpayer at the end of the extension period. In addition, corporations must indicate whether they will be included in a combined report when the completed return is filed. (7-1-93)
- d. A return that does not provide sufficient financial information to compute a tax liability does not constitute a valid tax return. (7-1-93)
- e. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: The document must purport to be a return; and it must be on the proper form as prescribed by the State Tax Commission; and it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must evince an honest and genuine effort to satisfy the requirement of the law. For purposes

of determining if this requirement is met, documents which contain the following are clearly insufficient: broad unspecified constitutional claims; or unsupported statements to the effect that no Idaho activity or income exists; or language which demonstrates a protest against the tax law or its administration. (7-1-93)

04. Reproduced and Substitute Returns. In the preparation of returns, any reproduced or substitute form or schedule must meet the general requirements of the original forms as published by the Commission. (7-1-93)

a. Specific instructions for substitute forms will be published by the Commission and can be obtained from any Commission office. Substitute forms, other than official State Tax Commission forms, require approval prior to usage. Non-approved forms will be rejected and considered not valid under this rule. (7-1-93)

b. Reproduced forms, photocopies of official State Tax Commission forms, are acceptable provided that weight and size of the paper is compatible to that used in official forms. The reproduced returns or schedules must be sufficiently legible that they may be reproduced again. (7-1-93)

c. The returns or schedules must be durable and not faded or clouded. (7-1-93)

d. Heat reproductions on thin flimsy paper will not be accepted for filing. (7-1-93)

e. All reproductions which are not an exact copy of the forms provided by the Tax Commission must be approved by the Commission prior to the use of the forms. (7-1-93)

f. Defective reproductions will not be accepted for filing if inadequate in any of the above requirements. (7-1-93)

05. Indians. An enrolled Indian in any federally recognized Indian tribe who lives on a federally recognized Indian reservation is not required to include in his or her gross income any income earned within the original exterior boundaries of any federally created Indian reservation within the state of Idaho, excluding areas ceded by the tribes to the federal government. It is not necessary that land within an Indian reservation be owned in trust by the United States but any land regardless of ownership within a reservation constitutes reservation territory. An Indian, to be exempt from state income tax on income earned on a reservation, is not required to be a member of that particular tribe but of any tribe within the United States. Income earned within a reservation by any other person is taxable. (7-1-93)

06. Returns Required to be Filed. Idaho income tax returns, verified by a written declaration of accuracy, are required to be filed if the taxpayer received gross income from all sources as follows: (7-1-93)

a. TAXPAYER FILING REQUIREMENTS: GROSS INCOME FROM ALL SOURCES

TAXPAYER FILING REQUIREMENTS: GROSS INCOME FROM ALL SOURCES		
RESIDENT INDIVIDUALS	Under 65	65 and Over
Filing Status		
Single	\$3,300	\$4,300
Single, Claimed Dependent Unearned Income	1,000	1,000

TAXPAYER FILING REQUIREMENTS: GROSS INCOME FROM ALL SOURCES		
RESIDENT INDIVIDUALS	Under 65	65 and Over
Total Income	3,300	3,300

Head of Household	3,300	4,300
Qualifying Widow(er)	4,400	5,400
Married Filing Separate Ret.	1,000	1,000
Married Filing Joint Return	5,400	
One Spouse 65 or Over		6,400
Both Spouses 65 or Over		7,400
PART-YEAR RESIDENT AND NONRESIDENT INDIVIDUALS GROSS INCOME FROM IDAHO SOURCES		
Filing Status		
Single	\$3,300	
Single,		
Claimed Dependent Unearned Income	1,100	
Total Income	3,300	
Head of Household	3,300	
Qualifying Widow(er)	4,400	
Married Filing Separate Ret.	1,000	
Married Filing Joint Return	5,400	
ESTATES	\$600 Reportable to Idaho	
TRUSTS	\$100 Reportable to Idaho	
RECEIVERS AND		
OTHER FIDUCIARIES	I.R.C. Section 601 2(b)	
CORPORATIONS	Authorized to do business or conducting business in Idaho	
S CORPORATIONS	Authorized to do business or conducting business in Idaho	
PARTNERSHIPS	Resident Partner or Idaho Situs	

(7-1-93)

b. If a partnership does not have business situs in the state of Idaho but has one or more resident partners, the partnership must file a partnership return as specified by Section 63-3030, Idaho Code, or submit to the Idaho State Tax Commission a copy of Schedule K, Partner share of income, credits, deductions, etc., from their federal partnership return, Form 1065, together with a copy of each Schedule K-1 reflecting distributions allocated to each Idaho resident partner. (7-1-93)

07. Signed Return. Tax returns must be manually signed by the taxpayer or an authorized officer or representative. Joint individual returns must be signed by both spouses. In case a taxpayer is deceased or cannot sign his name, a duly authorized person, such as a surviving spouse, executor, administrator or person holding power of attorney may sign the return, indicating his status or relationship. If a taxpayer signs with an X, his mark must be attested by a witness. (7-1-93)

08. Franchise Tax. Sections 30-1-129A through 30-1-139, Idaho Code, relating to corporation franchise tax, were repealed by the 1982 Legislature. (7-1-93)

a. Effective for taxable years ending on and after July 1, 1983, a corporation will no longer forfeit its corporate

powers for failing to pay its franchise tax to the State Tax Commission, Section 30-1-134, Idaho Code, and the Secretary of State may reinstate a corporation without obtaining State Tax Commission verification that the franchise tax has been paid, Section 30-1-137, Idaho Code. (7-1-93)

b. The two tenths of one percent (0.2%) franchise tax provisions of Sections 30-1-130, 30-1-131, 30-1-132, and 30-1-139, Idaho Code, are repealed effective for corporation taxable years ending on or after July 1, 1983. Sections 30-1-129A, 30-1-133, and 30-1-137A, Idaho Code, are repealed effective on and after July 1, 1983. (7-1-93)

c. The franchise tax was replaced by a corresponding increase of two tenths of one percent (0.2%) in the corporation income, franchise, tax rates Sections 63-3025 and 63-3025A, Idaho Code, effective for taxable years beginning on and after January 1, 1983. (7-1-93)

d. The result of the above effective dates is that corporations with taxable years ending between December 31, 1983, and May 31, 1984, will be entitled to a credit of their prepaid franchise tax as follows:

Taxable Year Ending Date	Fractional Credit of Prior Year's Franchise Tax Paid
December 31, 1983	6/12
January 31, 1984	5/12
February 29, 1984	4/12
March 31, 1984	3/12
April 30, 1984	2/12
May 31, 1984	1/12

(7-1-93)

e. Another result is that for corporations with taxable years ending on or after July 1, 1983, through November 30, 1983, no franchise tax will be due. (7-1-93)

098. JOINT RETURNS (Rule 098)

01. Who May File Joint Returns. (7-1-93)

a. This section provides for the filing of a joint return by a husband and wife. Section 63-3024, Idaho Code, provides, additionally, for the election of joint return rates for payment of taxes by individuals filing joint returns as husband and wife and by individuals qualifying as a surviving spouse or a head of household. If a husband and wife file a joint return and the due date for the filing of a separate return has expired for either spouse, separate returns thereafter cannot be filed. For example, if calendar-year taxpayers file a joint return at any time before April 15 in the year due and desire to change their election and file separately, they may only do so if they file the separate return, or returns, on or before April 15. (7-1-93)

b. A United States citizen or resident married to a nonresident alien may elect to have the nonresident alien spouse treated as a resident alien for income tax purposes. They may file joint returns but will be taxed on their worldwide income and must provide all records and information pertinent to the determination of their tax liability. (7-1-93)

c. A husband and wife shall make the election by attaching a statement to the joint return for the first taxable year for which the election is to be in effect. The statement must contain the name, address and taxpayer identification number of each spouse, if they have such a number, and it must be signed by both persons making the election. (7-1-93)

d. Notwithstanding any of the above provisions, an executor, administrator or personal representative may elect to file separately for a decedent at any time within one year after the due date. The due date for this purpose is the last day the surviving spouse may file; or if both husband and wife are deceased, the due date is the fifteenth (15th) day of the fourth (4th) month following the death of the spouse last living. (7-1-93)

e. A surviving spouse may file a joint return with the deceased spouse for the year of death if said survivor has not remarried before the close of the taxable year and there has been no change of accounting period resulting in a short taxable year, as defined for federal income tax purposes. The death of one or other of the spouses does not create a short taxable year. The surviving spouse may sign for the decedent if no return was made by the decedent for the same taxable year and no executor, administrator or personal representative has been appointed prior to the due date of the return. If an executor, administrator or personal representative has been appointed, both the surviving spouse and the executor, administrator or personal representative must sign the return. (7-1-93)

f. **Executor.** For purposes of this section, the term executor, administrator or personal representative means the person who actually is appointed in such capacity by a court having proper jurisdiction and does not include a person who merely has taken charge of the property of the decedent. (7-1-93)

g. The one (1) year period allowed the executor, administrator or personal representative to disaffirm a joint return filed by a surviving spouse does not establish a new due date for filing the return of the deceased spouse. Thus, penalties may be affixed or interest charged for any filing after the due date for the surviving spouse. (7-1-93)

h. For purposes of this section, taxpayers are required to use the same filing status with the state of Idaho as used when filing returns with the Internal Revenue Service. If no return is due the Internal Revenue Service and a return is due the state of Idaho, taxpayers shall determine the filing status in accordance with Internal Revenue Code and Section 63-3031, Idaho Code. (7-1-93)

02. Date Marital Status Determined. (7-1-93)

a. The marital status of persons electing under this section shall be determined as of the last day of the taxable year, or if death of one spouse occurred during the taxable year, it shall be determined as of the date of death. Persons legally separated or divorced on or before the year end are not married for purposes of this section. If a husband and wife are divorced subsequent to the last day of the taxable year, a joint return may, nevertheless, be filed, provided both parties consent thereto. (7-1-93)

b. **Legal separation,** as herein used, refers to a divorce which has been finalized under the laws of the state in which such divorce was granted or a decree of separate maintenance which has been granted by a court of competent jurisdiction. (7-1-93)

c. If a joint return is made, the gross income and adjusted gross income, as well as deductions allowed and taxable income, are computed together. Thus, although there are two taxpayers, there is only one taxable income. (7-1-93)

03. Persons Living Separate and Apart. The phrase living separate and apart refers to an estrangement or separation of a husband and wife resulting from friction or dissatisfaction between the parties. It does not refer, for example, to situations where husband and wife are living in separate residences for the convenience of employment, or because of service in the Armed Forces. (7-1-93)

099. TIME FOR FILING INCOME TAX RETURNS (Rule 099).

01. Requirement to File. All taxpayers, including corporations, S corporations, individuals, partnerships, estates and trusts, are required to file an income tax return with the State Tax Commission on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year, as defined by the Internal Revenue Code. (7-1-93)

02. Timely Filing Defined. If the last day prescribed for filing a return falls on a Saturday, Sunday or legal holiday, the return shall be deemed timely filed if it is filed on the next day which is not a Saturday, Sunday, or legal holiday. This same rule applies to returns falling due at the end of a period of extension granted by the State Tax Commission. A legal holiday, for this purpose, is any statewide holiday recognized by the state of Idaho, including special holidays declared by the Governor (7-1-93)

03. Mail. Section 63-2221, Idaho Code, specifies that an income tax return sent through the mail is timely filed if it is postmarked on or before the due date of the return. (7-1-93)

100. EXTENSIONS OF TIME (Rule 100).

01. Individuals. A resident, nonresident or part-year resident requesting an extension must file Idaho Form 51 on or before the fifteenth day of the fourth month following the close of the taxable year. The extension request must be accompanied by a remittance of the amount of tax estimated to be due. (6-23-94)

02. Estates, Trusts and Partnerships. An extension must be made on Idaho Form 41E on or before the fifteenth day of the fourth month following the close of the taxable year. The extension must be signed by an authorized representative or agent of the taxpayer and filed before the due date of the return. A separate extension is required for each return and for each return to which items of income, loss, deductions, and credits flow. (6-23-94)

03. Corporations. Any corporation requesting an extension must file Idaho Form 41E on or before the fifteenth day of the fourth month following the close of the taxable year (6-23-94)

04. Approval of Extension. An extension of time to file will be approved if it is filed on time, is complete and any tax estimated to be due is paid in full. If approved, the extension will extend the time for filing, without delinquency penalty, up to six (6) months after the due date of the return, although the completed return may be filed at any time prior to the expiration of the six (6) month period. Once the completed return has been filed, the extension period has expired. Any remaining tax is due at the time of filing the completed return. Notification of approval of the extension will not be given to the taxpayer. A taxpayer will be notified only if the extension is denied. (6-23-94)

05. Taxpayers Abroad. United States citizens or residents, who are in military service on active duty, or who reside outside the United States and Puerto Rico on their due date for filing, are given an automatic two (2) month extension of time in which to file their income tax returns. If the Internal Revenue Service has granted a taxpayer abroad an extension of time to file federal income tax returns at a time later than two (2) months past the due date, such extension will be accepted as a valid extension for state filing purposes. Such extensions are granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test under Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension. A copy of the approved federal extension form must accompany the state income tax return. In addition to the automatic two (2) month extension, an additional four (4) months extension will be granted if an Idaho Form 51 is filed. (6-23-94)

06. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. Returns are not due in such event until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever last occurs. Refer to Sections 63-3013 and 63-3022, Idaho Code, and Idaho Income Tax Administrative Rule 014 and 019 for rules relating to the exclusion of military pay from Idaho taxable income (6-23-94)

07. Interest. The granting of extension of time in which to file income tax returns pursuant to Subsections 100.01 through .06 of this rule, does not alter the due date of the returns for the purpose of computing interest. Interest will accrue on the portion of the tax not withheld or paid from the original due date until the date the return is filed in final form and the full amount of tax paid. However, if an extension of time has been granted, interest will not be paid on amounts of withholding tax or corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (6-23-94)

08. Penalties. The estimated tax paid with the request for extension must, when combined with the tax previously withheld for an individual, if any, be at least eighty percent (80%) of the total tax due under the provisions of this chapter, or must equal or exceed the total tax reported on the tax return for the preceding year if a return was filed. Any deficiency may be subject to a five percent (5%) penalty in addition to interest. The words total tax due under the provisions of this chapter, refer to a tax which is correctly determined on the tax return. If, for any reason, the tax reported on the return is either greater than or less than the tax imposed by the Idaho Income Tax Act, the tax reported on the return shall be corrected before the amount of penalty due, if any, is computed. (6-23-94)

101. ELECTRONIC TRANSFER OF FUNDS (Rule 101).

AH taxes due the state must be paid by electronic funds transfer whenever the amount is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, a copy of which is appended to these rules.

(7-1-93)

102. STATE INCOME TAX WITHHOLDING ON PERCENTAGE BASIS WITHHOLDING, COLLECTION AND PAYMENT OF TAX (Rule 102).

The amount an employer is required to withhold from an employee and remit to the Tax Commission is referred to in these rules as the withholding tax. (6-23-94)

01. Employer. The term employer is defined in Idaho Income Tax Administrative Rule 010. An employer may be an individual, corporation, partnership, estate, trust, association, joint venture, or other organization. The term also includes religious, educational, charitable, and social organizations or societies, even though such organizations are exempt from payment of income taxes. Governmental agencies, including federal, state and local subdivisions, are required to withhold. (6-23-94)

02. Employee. The term employee is defined in Idaho Income Tax Administrative Rule 010. Where the relationship of employer and employee exists, a different description or agreement as to the nature of the relationship of the parties is immaterial. For example, an employee may be designated as a partner or independent contractor. The fact that compensation may be based upon an agreed percentage of profits or other undetermined measure is also of no consequence. No distinction is made between classes or grades of employees. Administrative and executive personnel and corporate officers are employees. (6-23-94)

03. Registering For An Idaho Withholding Account Number. Every employer who pays salaries, wages, or other compensation for services performed in Idaho is required to have an Idaho withholding account number. An employer upon hiring one (1) or more full or part-time employees must apply for an Idaho withholding account number by filing with the Tax Commission a Form TCA, Application for Idaho Permit Based Taxes. (6-23-94)

04. Sale of Business or Change in the Form of Doing Business. Idaho withholding account numbers are nontransferable. When a business is sold, the new employer must apply for a new withholding account number and file separate returns and W-2s. Generally, when there is a change in the form of doing business which requires a new federal employer identification number, i.e., a sole proprietor forms a corporation or partnership, the new entity must 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. (6-23-94)

05. Withholding Required. Withholding is required from all salaries, wages, bonuses, or other compensation paid by an employer for services performed within Idaho if: (6-23-94)

a. The employee is a resident of Idaho; or (6-23-94)

b. Compensation of one thousand dollars (\$1,000) or more per year is paid for personal services performed in Idaho by a nonresident employee; or (6-23-94)

c. In the case of traveling salesmen and others who perform services in more than one state, withholding is required only on the portion of total compensation which is reasonably attributable to actual services performed in Idaho regardless of the employee's post of duty. This may be based on hours, time spent in Idaho, mileage, or a percentage of commissions. (6-23-94)

06. Exceptions to Withholding Requirements. Withholding from salaries, wages, bonuses, or other compensation paid by an employer is not required if: (6-23-94)

a. The salaries, wages, bonuses, and other compensation paid by an employer is for services performed wholly outside Idaho by an employee regardless of the residency or domicile of the employer or employee. (6-23-94)

b. The compensation is paid to a nonresident member of the Armed Forces of the United States on active duty serving in Idaho; (6-23-94)

c. The employee is a transportation employee covered under Public Law 101-322 and is a nonresident of Idaho; or (6-23-94)

d. The employee is exempt from federal withholding, except as described in Section 63-3036, Idaho Code. (6-23-94)

07. Amounts Withheld. The amount withheld shall not be less than the amounts shown in the withholding tables prepared by the Tax Commission, except in cases where an alternative method of withholding has been approved. An employee at any time may enter into an agreement with his employer for the withholding of an amount greater than the minimum amount specified in the tables. (6-23-94)

08. Filing of Returns. Generally, an employer is required to file monthly an Idaho Withholding Tax Return, Form 950, to report payroll and any state income tax withheld. (6-23-94)

a. Employers who owe less than five hundred dollars (\$500) per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly instead of monthly. (6-23-94)

b. A return must be filed for each reporting period. For reporting periods in which the employer had no withholding tax liability, the return must be completed and filed by the due date. (6-23-94)

09. Valid Returns. Returns and other documents required to be filed in accordance with Section 63- 3035, Idaho Code, and these rules must meet the conditions prescribed below. Returns which fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. An employer's failure to properly file in a timely manner may cause interest and penalties to be imposed as provided by Sections 63-3045 and 63-3046, Idaho Code. (6-23-94)

a. All withholding tax returns and other documents filed by the taxpayer must include his name, signature of the taxpayer or his authorized representative, withholding tax account number, and federal employer identification number. (6-23-94)

b. Withholding returns must be filed on the proper form, as prescribed by the Tax Commission. (6-23-94)

10. Use of Estimates; Extension of Time Returns. (6-23-94)

a. The Tax Commission may, for good cause, allow a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. (6-23-94)

b. If the return for any period is filed on an estimated basis, the estimated return must be timely filed and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date of such return. Any additional tax due as a result of there conciliation shall be remitted at the time of filing of the original return and shall include interest on any unpaid balance due from the due date of the return for the period to which that additional amount relates. (6-23-94)

c. The estimated tax remitted must be at least ninety percent (90%) of the total withholding tax due on the return when it is filed or one hundred percent (100%) of the total withholding tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty, as provided by Section 63-3046(a), Idaho Code, may be applied to the remaining tax due. (7-1-93)

d. If the Tax Commission determines that no good cause existed for the filing of the estimate, a penalty as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due on the original return when filed. (6-23-94)

11. Annual Reconciliation, Form 956. (6-23-94)

a. On or before the last day of February following the close of the calendar year, the employer must file a summary of all withholding returns filed throughout the preceding calendar year and a reconciliation of tax withheld. This summary and reconciliation must be accompanied by a Form W-2 for each employee to whom Idaho taxable wages were paid during the year, regardless of whether Idaho income tax was withheld from such wages. (6-23-94)

b. When corrections are needed due to errors or omissions which resulted in an underpayment of tax withheld, a deficiency may be issued to the employer based on the actual amount of tax withheld or which should have been withheld. Penalty and interest, as provided by Sections 63-3045 and 63-3046, Idaho Code, will apply. Interest will accrue at the rate set forth in Idaho Income Tax Administrative Rule 132. The underpayment shall be presumed to have occurred throughout the year and interest shall be assessed at the averaged rate, unless the month of the underpayment is specifically identified. (6-23-94)

12. Employee's Wage and Tax Statements. A Form W-2, showing total wages paid, total Idaho wages, and Idaho income tax withheld during the calendar year, must be filed with the Tax Commission for each employee. The filing must be made on or before the last day of February following the close of the calendar year. The employer must furnish to the employee a copy of Form W-2 before February 1, or upon request of the employee within thirty (30) days after termination of the employee. The W-2 or a form of similar size and design may be used for reporting wages paid and Idaho income tax withheld. The information on the form must be clearly legible, not cloudy or faded, particularly on all carbon copies. Altered forms will not be accepted. All such forms must include the following information: (6-23-94)

- a. The words W-2 Wage and Tax Statement; (6-23-94)
- b. Employer's complete name, address, and Federal Employer Identification Number; (6-23-94)
- c. Employer's Idaho Withholding Account Number;' (6-23-94)
- d. Employee's complete name, address, and social security number; (6-23-94)
- e. Taxable Year; and (6-23-94)
- f. Total Idaho wages paid, Idaho income tax withheld, and name of state must be indicated in the appropriate boxes. (6-23-94)

13. Requirement to File on Magnetic Media. Every employer required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, and also having fifty (50) or more Idaho employees, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine readable form shall also report Idaho wages and Idaho withholding. Employers required to file on magnetic media and failing to do so will be subject to the provisions of Section 63- 3046(e), Idaho Code, as if no return had been file (6-23-94)

14. Records. Each employer is required to keep adequate records showing the name, address, and social security number of each employee to whom Idaho wages are paid, the dates and amounts of wages paid, and the amount of tax withheld, if applicable. Record-keeping is required on all employees, regardless of whether or not tax has been withheld. These records shall be subject to inspection by an authorized representative of the Tax Commission. (6-23-94)

15. Form W-4. (6-23-94)

a. Internal Revenue Service Form W-4, Employee's Withholding Allowance Certificate, shall be recognized and accepted for Idaho income tax withholding purposes. (6-23-94)

b. Employees subject to Idaho income tax withholding are required to report the same total number of withholding allowances for Idaho as for federal income tax withholding purposes. (6-23-94)

c. An employee may not claim an exemption from Idaho income tax withholding unless the exempt Form W-4 he has filed with his employer has been accepted as exempt by the Internal Revenue Service; he does not expect to owe any Idaho state income tax for the current year; and he expects to have a right to a refund of all income tax withheld. (6-23-94)

d. Employer's Report of Exempt Withholding Status or Excess Withholding Allowances. When any employer delivers to the Internal Revenue Service information from any employee claiming an exemption from withholding or claiming ten (10) or more withholding allowances, the employer shall also provide copies to the Tax Commission regarding such information. (6-23-94)

e. Exception to Excess Withholding Allowances and exempt Withholding Status. Subsection 102.15.d. of this rule will not apply when an employer reasonably expects to pay gross wages of less than two hundred dollars (\$200) per week to an employee. However, if such employee earns in excess of five thousand two hundred dollars (\$5,200) during the calendar year, an employee's Form W-4 must be sent to the Tax Commission. (6-23-94)

16. Verification by Employee - Notice. The Tax Commission may request verification of marital status or withholding

allowances from any employee. The request for verification shall give the employee an opportunity to submit verification documents. In the event of failure of the employee to verify the claimed marital status or withholding allowances, the Tax Commission may designate the marital status and the number of withholding allowances. An employee's claim of an erroneous marital status or of excess withholding allowances shall be deemed to be a deficiency as defined in Section 63-3044, Idaho Code. If the Tax Commission determines that such a deficiency exists, a notice of deficiency shall be issued to the employee. The notice of deficiency shall be subject to the appeal procedures as provided in Sections 63-3045 and 63-3049, Idaho Code. If such notice of deficiency is not protested or is upheld upon appeal, a new order specifying the new marital status or withholding allowances shall be issued to the employee. (6-23-94)

17. Order of Tax Commission or Internal Revenue Service. The Tax Commission may notify the employer of the order specifying the maximum number of withholding allowances to which the employee is entitled for Idaho withholding purposes. The employer shall withhold amounts from the employee on the basis of the maximum number of allowances specified in the written notice received from the Tax Commission, unless the employee shall provide to the employer a certificate claiming fewer allowances. The notice to the employer shall be effective immediately upon receipt and shall remain effective for the rest of the calendar year. The employer shall not withhold from any employee on any basis in excess of the maximum number of withholding allowances specified in the most recent notice from either the Tax Commission or the Internal Revenue Service which allows for withholding based upon the fewest number of withholding allowances. (6-23-94)

18. Employee's Petition for Change in Status. Any employee subject to an order specifying the maximum number of withholding allowances may petition the Tax Commission for a change in status. If the employee establishes that a material change of circumstances has occurred and justifies a change to a new status, the Tax Commission may notify the employer of a change of status and may specify a new number of maximum withholding allowances. The determination of the Tax Commission on any change of status is final. (6-23-94)

19. Liability of Employer for Failure to Make Proper Withholding. The employer shall be liable for deficiencies for withholding on any basis in excess of the maximum number of withholding allowances specified in the most recent notice from either the Tax Commission or the Internal Revenue Service which allows for withholding based upon the fewer number of withholding allowances. (6-23-94)

103. STATE INCOME TAX WITHHOLDING ON PERCENTAGE BASIS FOR AGRICULTURAL, HOUSEHOLD, OR DOMESTIC EMPLOYERS UNDER SECTION 63-3036, IDAHO CODE (Rule 103).

01. Employers Subject to This Rule. All employers, as defined in Idaho Income Tax Administrative Rule 010, employing individuals not subject to withholding under Section 63-3035, Idaho Code, including but not limited to those who hire agricultural, household, or domestic labor are required to withhold. (6-23-94)

02. Registering for an Idaho Withholding Account Number. Every employer subject to this rule is required to have an Idaho withholding account number. Every employer upon hiring one (1) or more full or part-time employees must apply for an Idaho withholding account number by filing a Form TCA, Application for Idaho Permit Based Taxes with the Tax Commission (6-23-94)

03. Sale of Business or Change in the Form of Doing Business. See Idaho Income Tax Administrative Rule 102. (6-23-94)

04. Withholding Required. Withholding is required from all salaries, wages, bonuses or other compensation paid by an employer for services performed within Idaho which will exceed one thousand dollars (\$1,000) during the calendar year. An employee at any time may enter into an agreement with his employer for withholding of an amount greater than the required one percent (1%). (6-23-94)

05. Reporting and Paying the Taxes Withheld. Agricultural, household, and domestic employers shall file a return, Form 954, Idaho Withholding Farmer-Employer's Annual Return, and remit the Idaho income taxes withheld by the last day of February following the year in which the deductions were made. This return shall report total payroll and total Idaho income tax withheld for the previous calendar year and be accompanied by the supporting Form W-2, Wage and Tax Statement, for each employee. This return must be completed and filed with the W-2s, even if no tax is due. (6-23-94)

06. Valid Return. To be a valid return, a return must meet the requirements of Idaho Income Tax Administrative Rule 102. (6-23-94)

- 07. Employer's Wage and Tax Statements. See Idaho Income Tax Administrative Rule 102. (6-23-94)
- 08. Requirements to File on Magnetic Media. See Idaho Income Tax Administrative Rule 102. (6-23-94)
- 09. Records. See Idaho Income Tax Administrative Rule 102. (6-23-94)

104. CORPORATE ESTIMATED PAYMENTS (Rule 104).

- 01. General Rule. A corporation is required to make payments of estimated tax to the Commission if its estimated federal tax for its current taxable year can reasonably be expected to be five hundred dollars (\$500) or more and its estimated Idaho tax for the current tax year can reasonably be expected to be five hundred dollars (\$500) or more. (7-1-93)
- 02. Estimated Tax. The term estimated tax means the excess of; (7-1-93)
 - a. The amount which the corporation estimates as the income tax imposed by Sections 63-3025, 63-3025A, 63-3029B, Idaho Code, recapture of Idaho investment tax credit, and Section 63-3082, Idaho Code, Permanent Building Fund, over (7-1-93)
 - b. The amount which the corporation estimates as the sum of any credits provided by this chapter. (7-1-93)
- 03. Minimum Payment. Estimated tax payments will be twenty-five percent (25%) of the lesser of: (7-1-93)
 - a. The tax required to be reported on the taxpayer's return filed for the immediately preceding year, minimum twenty dollars (\$20), or ninety percent (90%) of the tax required to be paid on the current year's return. (7-1-93)
 - b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return are defined as the taxable income multiplied by the appropriate tax rate, minimum twenty dollars (\$20), plus Permanent Building Fund tax, plus tax on recapture of investment tax credit, less allowable income tax credits. (7-1-93)
 - c. If, after making one or more estimated tax payments for a taxable year, a corporation makes a new estimate of its current year income, it should recompute its estimated tax accordingly. Example:

	PAYMENT	TOTAL PAYMENT
Period 1 Estimated tax	\$16,000	
Payment made on 15th day of 4th month (25% of 90% of \$16,000)	\$ 3,600	\$ 3,600
Period 2 Estimated tax (revised)	\$20,000	
Payment made on 15th day of 6th month (25% of 90% of \$20,000)	\$4,500	
Plus payment to catch up difference in Period 1 payment (25% of 90% of \$4,000)	\$900	\$5,400
Period 3 Estimated tax (revised)	\$12,000	
Payment made on 15th day of 9th month	-0-	-0-
Period 4 Estimated tax (revised)	\$18,000	
Payment made on 15th day of 12th month (25% of 90% of \$18,000)	\$4,050	

Plus payment to catch up difference in Period 3 payment	\$3,150	\$7,200
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No payment is due because seventy-five percent (75%) of the estimated tax payment was paid in first and second installments. (7-1-93)

04. Any corporation required to make payments of Idaho estimated tax shall make such payments on the same due dates required for federal estimated tax payments. (7-1-93)

a. Payments of Idaho estimated tax for calendar year taxpayers will be due on April 15, June 15, September 15, and December 15. Payments for fiscal year taxpayers will be due on the fifteenth (15th) day of the fourth month, the fifteenth (15th) day of the sixth (6th) month, the fifteenth (15th) day of the ninth (9th) month, and the fifteenth (15th) day of the twelfth (12th) month. (7-1-93)

b. If any due date falls on a Saturday, Sunday, or legal holiday, substitute the next regular workday. (7-1-93)

05. Annualized Income Installment Method. Corporations required to make estimated tax payments under this section, who use the annualized income installment method for federal purposes, may use the annualized income installment method to figure their estimated Idaho tax. (7-1-93)

a. A corporation may annualize its Idaho income: For the first three (3) months if the installment was required to be paid in the fourth (4th) month. For the first three (3) months or for the first five (5) months if the installment was required to be paid in the sixth (6th) month. For the first six (6) months or for the first eight (8) months if the installment was required to be paid in the ninth (9th) month. For the first nine (9) months or for the first eleven (11) months if the installment was required to be paid in the twelfth (12th) month. (7-1-93)

b. To annualize, multiply taxable income for the period by twelve (12) and divide the result by the number of months in the period; three (3), five (5), six (6), eight (8), nine (9), or eleven (11), as the case may be. (7-1-93)

c. The annualized income installment required will be 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 percentage is the percentage designated for the specific installment period under Section 6655, Internal Revenue Code. The tax computed on the annualized income includes the annualized income times the corporate income tax rate, plus Permanent Building Fund tax, plus estimated tax on recapture of investment tax credit, less estimated allowable income tax credits. (7-1-93)

06. The allowable net operating loss carryover should be deducted from income for the period before the estimated tax is computed. (7-1-93)

07. Each corporation included in a combined report which is required to make estimated payments must separately compute its estimated tax based on the following: (7-1-93)

a. Its apportioned share of estimated Idaho taxable income, (7-1-93)

b. Its Idaho net operating loss carryover, (7-1-93)

c. Its Permanent Building Fund tax, (7-1-93)

d. Its anticipated tax on recapture of Idaho investment tax credit, (7-1-93)

e. Anticipated income tax credits. (7-1-93)

f. Example: (7-1-93)

ABC CORPORATION AND COMBINED SUBSIDIARIES IDAHO QUARTERLY ESTIMATED PAYMENTS
COMPUTATION FOR FISCAL YEAR ENDED 5/30/89

	ABC CORP	ABC OF IDAHO	ABC OF UTAH	COMBINED
ESTIMATED:				
Federal Taxable Income	2,000	750	1,000	3,750
State Adjustments	250	30	40	320
Apportionable Income	2,250	780	1,040	4,070
Idaho Apportionment Factor	18.9248%	6.8891%	-0-	25.8139%
Idaho Apportioned Income		770	280	1,050
Idaho NOL Carryover		-0-	(100)	(100)
Idaho Taxable Income		770	180	950
Idaho Income Tax @ 8%		62	14	76
Anticipated Tax on Recapture of ITC		5	5	
Income Tax Credits (2) (7) (9)				
Idaho Estimated Tax		60	12	72

Combined quarterly estimated payments of \$16 (25% of 90% of \$72) are due September 15, 1988, November 15, 1988, February 15, 1989, and May 15, 1989. (7-1-93)

g. Estimated tax payments shall be made in the same name(s) of the taxpayer(s) whose name(s) will be on the return(s) filed. (7-1-93)

08. In the case of a short taxable year for which estimated tax is required to be paid, the amount and time for each payment shall be determined by Subsections 104.03 and 04 of this rule. Since the short period will end prior to some of the payment due dates, any remaining payments shall be made on the fifteenth (15th) day of *the* last month of the short taxable year. No estimated tax payment is required if the short period is less than four (4) months or if the requirements to make an estimated payment are not met before the first (1st) day of the last month in the short taxable year. (7-1-93)

a. Example 1: X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1988, and ending August 31, 1989. For the short taxable year, January 1, 1988, to August 31, 1988, X must make installment payments of twenty-five percent (25%) of its estimated tax on April 15, 1988, and June 15, 1988. The remaining payment of fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third (3rd) payment, plus twenty-five percent (25%) for the fourth (4th) payment, is due on August 15, 1988, the fifteenth (15th) day of the last month of the short taxable year. (7-1-93)

b. Example 2: If, in Example 1, X does not meet the requirement to make estimated payments until June 15, 1988, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third (3rd) payment and twenty-five percent (25%) for the fourth (4th) payment, no payment is required for the first (1st) and second (2nd) reporting periods, on August 15, 1988, the fifteenth (15th) day of the last month of the short taxable year. (7-1-93)

09. Tax-exempt Organizations. Tax-exempt organizations required to make estimated tax payment on unrelated business income for federal purposes will be required to make estimated tax payments for Idaho purposes. (7-1-93)

10. Previous Underpayments. A payment of estimated tax is applied to any previous underpayments in the order in which the installments were required to be paid. To the extent the payment exceeds previous underpayments, it is applied to the installment then due. An overpayment of any installment may be claimed as a credit against the next

installment only to the extent it exceeds all underpayments of prior installments. (7-1-93)

11. Overpayments. Overpayments of estimated tax installments, together with all other payments and allowable income tax credits in excess of the income tax computed on the return, shall be refunded to the taxpayer after the filing of the completed return. (7-1-93)

a. No refund or credit shall be made to a taxpayer who fails to file its return, as required under this Act, within three (3) years from the due date of the return for which the estimated tax payments were made. (7-1-93)

b. Except as provided in Subsection 104.10, above, the taxpayer may elect to apply overpayments arising on or before the due date of the return against the first installment payment of the next year's estimated tax by designating the carryover on the return. Overpayments will be applied to any deficiencies of tax, penalties, and interest prior to application to a subsequent year's estimated tax payment or tax liability. (7-1-93)

12. Obligation to File Returns. The payment of estimated tax does not relieve any corporation of the obligation to file a return when due under the provisions of this chapter. No extensions of time will be allowed for payment of estimated taxes. Making estimated tax payments as required in this section does not relieve the taxpayer of the requirement for payment of the appropriate amount of tax with an application for extension of time to file or with the original return. Refer to Section 63-3033, Idaho Code, and supporting rules. (7-1-93)

13. S Corporations. S corporations required to make estimated payments to the Internal Revenue Service are required to make estimated payments to the Tax Commission, provided the S corporation was subject to Idaho tax for the immediately preceding year. For purposes of this section, Idaho tax is limited to the S corporation's taxes on built-in gains, capital gains, excessive passive investment income, and investment tax credit recapture. (7-1-93)

105. INFORMATION RETURNS. (Rule 105).

01. In General. All information returns required by the Internal Revenue Code are required to be filed with the Idaho State Tax Commission, unless the filing is excused by rule. The filing of the following information returns shall not be required to be filed with the Tax Commission: (7-1-93)

- a. Form 1042S, Foreign Person's U.S. Source Income Subject to Withholding. (7-1-93)
- b. Form 1098, Mortgage Interest Statement. (7-1-93)
- c. Form 1099-B, Statement for Recipients of Proceeds From Broker and Barter Exchange Transactions. (7-1-93)
- d. Form 1099-DIV, Statement for Recipients of Dividends and Distributions. (7-1-93)
- e. Form 1099-G, Statement for Recipients of Certain Government Payments. (7-1-93)
- f. Form 1099-INT, Statement for Recipients of Interest Income. (7-1-93)
- g. Form 1099-OID, Statement for Recipients of Original Issue Discount. (7-1-93)
- h. Form 1099-PATR, Statement for Recipients, Patrons, of Taxable Distributions Received From Cooperatives. (7-1-93)
- i. Form 4789, Currency Transaction Report. (7-1-93)
- j. Form 5498, Individual Retirement Arrangement Information. (7-1-93)
- k. Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. (7-1-93)
- l. Form 8300, Report of Cash Payments Over Ten Thousand Dollars (\$10,000) Received in a Trade or Business. (7-1-93)

m. Form 8362, Currency Transaction Report by Casinos. (7-1-93)

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on paper form, Internal Revenue Service Form 1099, or magnetic tape. Taxpayers reporting on magnetic tape must contact the Tax Commission for specifications prior to submitting tapes. (11-28-94)

03. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (7-1-93)

106. PUBLICATION OF RULES (Rule 106)

01. Petitioning the Commission. Any person, group or other association may petition to the State Tax Commission for promulgation, amendment or repeal of a rule pursuant to the Idaho Administrative Procedures Act. Such petitions may be submitted to the Commission in any written form but must contain an express statement that the writing is intended to be such a petition. In the case of a proposal to promulgate or amend a rule, the petition must include suggested language which the petitioner believes appropriate to effect the petitioner's desired regulatory provisions. The petition should also include a statement of the reasons the petitioner believes the proposals should be adopted, and should also include a statement of anticipated economic impact of the proposed change. Upon receipt of such a petition, the Tax Commission will, within twenty-eight (28) days, notify the petitioner whether the Commission will or will not institute rule making procedures in accordance with the Administrative Procedures Act for the purpose of considering the petitioner's proposal. The petitioner shall receive written notice of the time and place of any and all public hearings which the Tax Commission may hold in regard to such a proposed rule. (7-1-93)

02. Effective Date. To the extent allowed by statute, Income Tax Rules will be applied on their effective date to all tax years open for determining tax liability. Taxpayers may file amended returns or the Tax Commission may issue a Notice of Deficiency Determination for open years. (7-1-93)

03. Closed Years or Issues. Closed tax years and issues will remain closed, whether closed by the statute of limitations or closed by the expiration of appeal time, hardening. Therefore, if an ISSUE is closed by the hardening of a Notice of Deficiency Determination or by the hardening of a Decision, a rule change will not reopen the tax year on that issue. (7-1-93)

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 obvious injustice. (7-1-93)

107. EXAMINATION OF BOOKS AND WITNESSES DISCOVERY (Rule 107).

01. Retention of Working Papers. Every taxpayer shall retain and make available, upon request, all working papers used in the preparation of any income tax return still subject to examination by the State Tax Commission. (7-1-93)

02. Failure to Comply. Any person who refuses to comply with any of the provisions of this section may be required to appear in district court and ordered to comply at the risk of being held in contempt of court, Section 63-3043, Idaho Code, or may be charged with a misdemeanor, and subject to a fine or imprisonment, as provided for in Section 63-3075, Idaho Code. Failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Commission (7-1-93)

03. Discovery. The Commission may engage in all forms of discovery permitted under the Idaho Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions and requests for production or inspection. Failure to respond to any discovery request in the manner required under the Idaho Rules of Civil Procedure may result in the reissuance of a summons to the taxpayer and the imposition of any sanctions permitted by these rules for failure to respond to the summons. (7-1-93)

04. Scope. Examination of the books and records of the taxpayer shall include books, memoranda, working records and federal tax returns relating to the taxpayer's taxable income, expenses, filing status, or other pertinent information. (7-1-93)

05. Cost Reimbursement to Third-Party Recordkeeper. The Tax Commission may reimburse a third party summonsed by the Tax Commission to produce records for copies of such records not to exceed seventy-five cents (\$0.75) per page of copy, or may require that originals of such documents be delivered to the Tax Commission. (7-1-93)

108. DEFICIENCY IN TAX (Rule 108).

01. Agreement to Amount of Deficiency. Any taxpayer at any time may enter into an agreement with the Tax Commission regarding the amount of deficiency in tax for a given tax year. For example, if the taxpayer had listed one hundred dollars (\$100) as a charitable contribution and the person preparing his return had erroneously listed the amount as one thousand dollars (\$1,000), the taxpayer could readily admit to additional taxable income of nine hundred dollars (\$900) and a deficiency of tax based on that amount. An agreement of deficiency made in this manner will not be considered a compromise of tax, nor will it affect the statutory period of limitations for audit or additional assessment or for a claim for refund filed by the taxpayer. (6-23-94)

02. The Record of Assessment. The record of assessment shall be the Notice of Demand that also functions as the required notice for the distraint and sale of a taxpayer's personal property under Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, or 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice of Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return. (6-23-94)

109. NOTICE OF DEFICIENCY PROTEST (Rule 109).

01. Protest Procedures. (6-23-94)

a. When the Tax Commission determines that a deficiency exists with respect to the tax liability of any taxpayer, notice shall be given to the taxpayer as soon as practicable. If the taxpayer does not agree with the deficiency determination, the taxpayer must, within sixty-three (63) days from the date the notice of deficiency is mailed, file a written protest with the Tax Commission for the purpose of obtaining a redetermination of the deficiency. (6-23-94)

b. The protest must be in writing and must contain the following information to be perfected: name, address and pertinent identification number; the period to which the deficiency relates; the specific item or items in the deficiency notice to which the taxpayer objects; and the factual or legal basis for the objections made. Once this protest is received by the Tax Commission, the sixty-three (63) day period ends. If the Tax Commission determines that the protest does not include all the items required by this subsection, the Tax Commission will notify the taxpayer of the items needed to perfect the protest. The taxpayer shall have twenty-eight (28) days from the date this notice is mailed to provide this information. For example: If the taxpayer has sixty-three (63) days from August 31 to protest the deficiency determination, and the protest is received from the taxpayer on September 10, the sixty-three (63) day period stops on September 10. If the Tax Commission determines that this protest is not perfected and mails notification to the taxpayer of this fact on September 15, the taxpayer has twenty-eight (28) days or through October 13 to perfect the protest. After October 13, the taxpayer can no longer perfect his protest or submit a new protest even though the original sixty-three (63) day period would have run through November 2. (6-23-94)

c. Failure to timely perfect a protest will be treated the same as if no protest had been filed, as provided for in Section 63-3045(5), Idaho Code. (6-23-94)

02. Procedures Before the State Tax Commission. (7-1-93)

a. Upon filing a perfected protest with the Tax Commission, the taxpayer may request a hearing, the opportunity to submit additional documents, or that the Tax Commission issue its final decision. A request for a final decision must be in a letter addressed to the individual from whom the acknowledgement of the protest was received or to such individual subsequently assigned to resolve the protest. The request must be the sole subject of the letter and must clearly identify the taxpayer and the deficiency determination that the request relates to. If the taxpayer makes a simultaneous request for both a final decision and a hearing, the Tax Commission shall treat this request as if it is solely a request for a hearing and the one hundred eighty (180) day period shall not commence until the conclusion of the hearing. (6-23-94)

b. Hearings. A Commissioner or other person designated by the Tax Commission shall conduct a hearing in the form of an informal conference. If the taxpayer chooses to be represented by another person, a valid power of attorney

form must be provided to the Tax Commission. The taxpayer has the right to be accompanied by another person, however, the Tax Commission may limit the number of people accompanying the taxpayer. If any protestant fails to comply with a summons or subpoena or fails to appear for the informal conference, the Tax Commission may issue a decision without further hearing. (6-23-94)

c. **Submission of Additional Documents in Lieu of Hearing.** If the taxpayer does not wish to appear in person, he may submit such additional statements, documents, or other materials he desires to have the Tax Commission consider before deciding the protest, and no personal appearance by the taxpayer before the Tax Commission will be required. If the one hundred eighty (180) day period for issuing a final decision has commenced, the Tax Commission may require that a taxpayer execute a waiver of the one hundred eighty (180) day time period before the Tax Commission will consider additional information or documentation. (6-23-94)

03. **Amended Return After Audit.** No amended return will be accepted for a tax year upon which the appeal of an audit determination is pending unless the taxpayer can demonstrate that the changes on the amended return are unrelated to issues examined in the audit or that the changes are the result of federal audit adjustments. (7-1-93)

110. MATHEMATICAL ERROR-ASSESSMENT OF TAX (Rule 110).

01. **Assessment of Taxes-Returns.** Taxes are deemed assessed the date a tax return showing taxes owing is filed, even if the return is revised for mathematical errors. If no tax is computed upon an otherwise properly filed return, any tax calculated by the State Tax Commission to be owed shall be deemed to be assessed the date payment was due. (7-1-93)

02. **Assessment of Taxes-Notices of Deficiency and Decision.** Tax is deemed assessed when a taxpayer fails to timely protest a notice of tax deficiency or to properly file suit for a redetermination in district court or to properly appeal a decision of the State Tax Commission. (7-1-93)

111. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY (Rule 111).

01. **Negligence.** A negligence penalty of five percent (5%) may be added to a deficiency if a taxpayer or his agent has disregarded published rules and regulations of the U.S. Department of Treasury or the Idaho State Tax Commission. (7-1-93)

a. Taxpayer continues to make substantial errors in reporting income, sales or assets, and claiming erroneous deductions or exemptions even though these mistakes have been called to his attention in previous audit reports. (7-1-93)

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (7-1-93)

c. Taxpayer makes careless and exaggerated claims of deductions or exemptions unsubstantiated by facts. (7-1-93)

d. Taxpayer fails to offer any explanation for the understatement of taxes. (7-1-93)

e. Unreported taxable income is a material amount as compared to the reported income. (7-1-93)

f. Taxpayer has exhibited a careless disregard of his tax obligations. (7-1-93)

g. Failure to keep current file of resale and exemption certificates. (7-1-93)

h. Unintentional failure to pay the tax with the return. (7-1-93)

i. Unintentional failure to make the required estimated payment when requesting an extension of time for filing a return. See ISTC Rule 100. (7-1-93)

j. Taxpayer fails to provide the Tax Commission with a copy of a final determination of an Internal Revenue Service audit or an amended return which would, when corresponding Idaho adjustments are made, result in a tax deficiency, within sixty (60) days of the date of notice of final determination by the Internal Revenue Service. The negligence penalty will not apply

if the taxpayer can show reasonable cause for not providing the Tax Commission with a copy of the Internal Revenue Service audit report in a timely manner. (7-1-93)

- k. Taxpayer fails to respond to requests for production of records to substantiate items shown on the return (7-1-93)

02. Negligence Penalty for Sales and Use Tax Deficiencies Examples. For sales tax purposes pertinent computations relating to substantial errors Subsection III.OI.b., above or material amount Subsection III.OI.d., above might be the following: (7-1-93)

- a. The ratio (%) of untaxed sales, that should have been taxed, to total taxable sales. (7-1-93)
- b. The ratio (%) of untaxed sales, that should have been taxed, to total sales. (7-1-93)
- c. The ratio (%) of untaxed purchases, subject to use tax, to total taxable purchases and to total purchases. (7-1-93)
- d. Any other computations bearing on negligence. (7-1-93)

03. Waiver of Negligence Penalty. Circumstances precluding waiver of penalty assessed for negligence or disregard of rules: (7-1-93)

a. The following circumstances will not constitute sufficient cause for waiver or cancellation of penalty assessed for negligence, or disregard of rules and rules except as mitigated under the provisions of Subsection 111 .03.c.: mere requests for extensions of time to do acts required of the taxpayer by the tax laws of this state without a grant of such extension or other facts equivalent to such a grant; an unsettled dispute between the Commission and the taxpayer concerning any tax liability. Inability to pay tax will never excuse late filing due to negligence. (7-1-93)

b. The foregoing does not enumerate all those circumstances which are sufficient cause for the waiver or cancellation of penalty. Penalty for negligence or disregard of rules will not be waived whenever it appears that reasonable cause for noncompliance does not exist. (7-1-93)

c. In making a determination as to whether a negligence penalty be waived, consideration will be given to all the factors involved, one of which is the taxpayer's record for filing and paying state taxes; provided, however, that on tax returns which are filed annually, a good record for filing and paying will not by itself constitute sufficient reason for waiver of penalty. (7-1-93)

04. Fraud Penalty. In determining additions based on tax fraud, the Tax Commission shall review all facts and circumstances surrounding preparation of a taxpayer's return, public and private statements regarding income or sales of the taxpayer, business and financial practices of the taxpayer, taxpayer's knowledge of principles of finance, accounting, law, or taxation, and objective and subjective evidence showing or tending to show intent to evade payment of taxes. Assessment of the fraud penalty precludes assessment of negligence penalties. (7-1-93)

05. Penalty for Failure to File, Failure to Pay, or Delinquent Filing. (7-1-93)

a. A penalty of five percent (5%) per month not to exceed twenty-five percent (25%) of the deficiency amount including subsequent audit adjustments may be imposed against a taxpayer who files a delinquent return, who files timely but pays delinquent, or who fails to file any return. (7-1-93)

b. For purposes of this rule, the return required by this act is one: Which is timely filed, and which is accompanied by payment of the amount shown due on such return. (7-1-93)

c. This penalty may be added to a deficiency which includes any other addition to tax allowed under Section 63-3046, Idaho Code. (7-1-93)

d. Insufficient Postage. The proper amount of prepaid postage is required on all returns mailed to the State Tax Commission. If a tax return is returned to sender because of insufficient postage it may result in the return becoming delinquent and

subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code.

(7-1-93)

e. **Month Defined.** If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction thereof, during which the failure to file continues shall constitute a month for purposes of this section. If the due date is a date other than the last day of the calendar month, the period which terminates with the same date of the next month shall constitute a month for purposes of this section. If there is no corresponding date in the succeeding month, the last day of the month shall be substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment shall constitute a full month.

(7-1-93)

05. **Substantial Underpayment.** The Tax Commission shall follow federal rules promulgated under Section 6661, Internal Revenue Code, et seq., to the extent such rules are consistent with Idaho law and rules.

(7-1-93)

a. For sales or use tax purposes, taxable year shall be the period for which an annual reconciliation of sales or use tax returns is allowed or required.

(7-1-93)

b. The lack of Internal Revenue Service rulings or guidelines with respect to issues not present in federal income taxation shall not preclude a ten percent (10%) penalty from being imposed within the terms of Section 63-3046(d), Idaho Code.

(7-1-93)

06. **Penalty Presumed Appropriate.** If an Idaho taxpayer becomes liable to pay a penalty to the Internal Revenue Service for any penalties which are similar in nature to those specified by Section 63-3046, Idaho Code, such penalties will be presumed to be appropriate state penalties to be asserted as part of any related state income tax deficiency.

(7-1-93)

07. **Credits to be Considered.** The penalties referred to in this rule shall apply on the net amount of the tax due after taking into account all credits applicable against the tax.

(7-1-93)

08. **Minimum Penalty.** The ten dollar (\$10) minimum penalty referred to herein applies to any penalties imposed by the terms of Section 63-3046(a), (b), (c), (d), (e), and (f), Idaho Code. For instance, if a taxpayer has failed to file only one (1) withholding tax statement and would have incurred a penalty of two dollars (52), pursuant to the provisions of Section 63-3046(e), Idaho Code, a penalty of at least ten dollars (\$10) will be assessed.

(7-1-93)

09. **Dishonored Checks.** The charge prescribed by Section 63-3046(f), Idaho Code, shall be ten dollars (\$10) for each insufficient funds check, checking account closed check, or any other dishonored check or instrument. This penalty may be added even though funds are available in that account after the date of dishonor.

(7-1-93)

10. **Record of Compromise.** Any authorized agent of the Commission in making a determination to waive penalty pursuant to this rule shall put in writing on a form prescribed by the Commission the reason for such determination, and this written record shall be kept on file.

(7-1-93)

112. ADJUSTED OR COMPROMISED CASES-CLOSING AGREEMENTS (Rule 012).

01. **Grounds for Compromise.** The State Tax Commission may compromise any case relating to the tax liability, penalties, or interest of any person at any time. Any such liability will be compromised only upon one or all of the following three (3) grounds:

(7-1-93)

a. Doubt as to liability.

(7-1-93)

b. Doubt as to collectibility.

(7-1-93)

c. Extreme hardship of the taxpayer.

(7-1-93)

02. **Valid Judgment.** No tax will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the taxpayer to pay or the state to collect the amounts owing.

(7-1-93)

03. **Agreement Final.** A compromise agreement relates to the matters agreed upon for the tax years in question. The agreement is final and conclusive and neither the State Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a

material fact. Recalculation of carryback or carryforward items shall not be construed as opening the case. Any such recalculation will not affect the tax liability of a closed period or closed matter (7-1-93)

04. Form of Compromise. Offers of compromise shall be submitted in writing and shall be accompanied by a remittance in the amount of the offer being made. The remittance shall be in the form of cash, a postal or bank money order or cashier's check drawn on a bank. An offer may not be considered accepted by the taxpayer until he is so notified in writing. Acceptance may be made only by a member of the State Tax Commission or a specifically authorized delegate. (7-1-93)

05. Withdrawal of Offer. An offer in compromise may be withdrawn at any time prior to its acceptance by the State Tax Commission. In the event the offer is rejected, the taxpayer shall be promptly notified by the Commission. (7-1-93)

113. JUDICIAL REVIEW (Rule 113).

01. Manner of Appeal. To obtain review of a decision of the Tax Commission, a complaint must be filed with the district court or a notice of appeal filed with the Board of Tax Appeals within ninety-one (91) days from the receipt, by the taxpayer or the taxpayer's representative, of notice of the decision by the Tax Commission. A request for rehearing or an offer to compromise will not stay the time within which a complaint or appeal must be filed. (6-23-94)

02. Board of Tax Appeals. An appeal to the Board of Tax Appeals is perfected by filing a notice of appeal with the clerk of that Board in the manner prescribed by the rules of the Board. (7-1-93)

03. District Court. Judicial review is sought by filing a complaint in a district court of the state of Idaho. The complaint may be filed in the district court of the county in which the taxpayer resides, the county where the taxpayer's principal place of business is located, or in Ada County. Service of the summons and complaint must be made in accordance with Rule 4(d)(5), Idaho Rules of Civil Procedure which requires delivery of two (2) copies of the summons and complaint to the Attorney General or any Assistant Attorney General. Delivery of the summons and complaint to a Tax Commissioner or any officer, agent or employee of the Tax Commission is not valid service. (6-23-94)

04. Filing a Complaint. Filing of a complaint with the district court or a notice of appeal with the Board of Tax Appeals will not prevent the issuance of a tax warrant or filing of a lien until notice of the filing of a complaint or appeal has been received by the Tax Commission. No complaint may be filed in district court nor any appeal filed with the Board of Tax Appeals unless the taxpayer first deposits with the Tax Commission cash in an amount equal to at least twenty percent (20%) of the total deficiency assessed by the Tax Commission, including penalties and interest. In lieu of cash, the taxpayer may deposit: (6-23-94)

a. A bond executed by a surety company licensed and authorized to do business in the state of Idaho, conditioned upon the payment of any tax, penalty, and interest that may be found due by the court. (6-23-94)

b. Bearer bonds or other similar obligations of the United States having a market value not less than twenty percent (20%) of the total deficiency. (6-23-94)

c. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the Tax Commission, and containing the provision that interest earned shall be payable to the depositor. (6-23-94)

d. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the Tax Commission (6-23-94)

e. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Tax Commission. The terms of the letter of credit must permit the Tax Commission to make demand directly against the issuer of the letter of credit for not less than twenty percent (20%) of any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (6-23-94)

f. Cash in the form of a cashier's check, money order, or other certified funds which are payable to the Tax Commission. (6-23-94)

g. No other type of security will be accepted by the Tax Commission to secure a taxpayer's right of appeal, unless the Tax Commission has previously agreed in writing to accept such security in lieu of a cash payment. (6-23-94)

114. ACTION TO COLLECT UNPAID TAX OR DEFICIENCY (Rule 114).

Sections 63-3050, 63-3063, and 63-3064, Idaho Code, are to be read together. A debtor-creditor relationship exists between the taxpayer and the state of Idaho in regard to taxes imposed by the Idaho Income Tax Act, except only in the instance of withholding taxes, where a trust relationship is imposed. See Section 63-3035(c), Idaho Code. Each of these three (3) sections authorizes the State Tax Commission to pursue any action at law for the payment of taxes owing. This authority, so granted, is in addition to the specific collection authority granted by Sections 63-3051 through 63-3061, Idaho Code. (7-1-93)

115. PROPERTY SUBJECT TO LIEN (Rule 115).

01. Statutory Lien. Deficiencies in taxes, see Section 63-3044, Idaho Code, interest and penalties are assessed and a statutory lien is created immediately upon the giving of a demand for payment. The lien extends to all real and personal property or rights therein owned by the taxpayer or acquired before the lien expires. The lien shall not be valid against any mortgagee or other lienholder, pledgee, secured party, purchaser, or judgment lienor until notice has been filed in the office of the recorder of the county in this state where the property subject to lien is situated. (7-1-93)

02. Notice of Lien. A notice of lien shall contain the name of the taxpayer, his last known address, the tax period covered, the amount of taxes, penalties, interest and additional amount, including cost of filing the lien for record, an identification number, and a statement that the Commission has complied with all provisions of the Act in determining the amount due. (7-1-93)

03. Length of Lien. A notice of lien remains in effect for five (5) years from the date the lien notice is first filed in the county recorder's office where the taxpayer may have property. The lien can be extended by filing another notice of tax lien with the proper county within that period. The lien, as extended, shall be valid and exist against only the real property of the taxpayer. (7-1-93)

116. RELEASE OR SUBORDINATION OF TAX LIEN (Rule 116).

01. Request for Release of Lien. A request for a release of all or any portion of the property subject to a state tax lien, filed for record under the authority of Section 63-3055, Idaho Code, must be in writing and addressed to the Tax Commission. The request shall identify the lien number and date. It must state the taxpayer's reasons and provide supporting documentation. A partial release of lien will be issued only if the Tax Commission determines that one or more statutory reasons exist. (6-23-94)

02. Lien Error. If a lien error is found, the lien must be released as soon as possible. The statement "This release is based on a finding that the lien herein released was filed in error" must be shown on the release filed. For example, if a taxpayer files a return timely with payment in full attached and the payment is separated from the return and subsequently credited to a different account unrelated to the taxpayer, an error has been made. This lien must be released as soon as possible. (6-23-94)

117. LEVY OR DISTRAINT WARRANT (Rule 117).

Levy and distraint is the summary method of collecting taxes where the assessment and lien remain unsatisfied. The Idaho Income Tax Act provides that where the taxpayer neglects or refuses to pay taxes or deficiencies, the tax may be collected by levy upon all property or property rights belonging to the taxpayer. A levy or notice thereof may be served on any person in possession of or obligated with respect to property rights of the taxpayer. Any property identified as belonging to the taxpayer may be levied upon. The authority to execute a levy or warrant is granted and vested in any member of the State Tax Commission, any deputy commissioner, any sheriff, constable or any deputy of the State Tax Commission. Any person in possession of property or property rights and upon which a levy has been made must surrender the property to the process server upon demand. The consequence for failure to so surrender the property shall subject the holder thereof to personal liability to the State Tax Commission in the amount of or value of the property so held and retained, unless that person may avail himself of one of only two (2) reasons for refusal; they being that he is not in possession of the property subject to levy, or that the property is the subject of a prior judicial attachment or execution. (7-1-93)

118. PROCEEDINGS ON LEVY OR DISTRAINT (Rule 118).

The proceedings on distraint or levy are with the same force and effect as upon writ of execution issued by a court upon final judgment, except that the right to claim exemption from execution is limited by Section 63-3058, Idaho Code. The sale or liquidation of property so seized shall proceed in the manner provided by the general statutes of the state of Idaho relating to execution on judgment. See Title 11, Idaho Code. All costs of execution and sale shall be the responsibility of the taxpayer and shall be collected as a part and parcel of the obligation owing the state. Any moneys obtained on sale of taxpayer's property shall first be applied on the obligation in the following order: first to costs incurred, next to penalty, next to interest, and next to principal or tax owing. Any moneys received in excess of the total obligation shall be paid to the taxpayer unless prior to that time others of his creditors shall execute upon the state, see Section 11 -202, Idaho Code. (7-1 -93)

119. JEOPARDY ASSESSMENTS (Rule 119).

01. Termination of Tax Period. The Tax Commission is authorized to terminate the tax period of any taxpayer at any time when payment of a tax is in jeopardy. The effect of this termination is to make the tax for that period immediately due and payable. (6-23-94)

a. No particular form of notice of the jeopardy assessment is required, and either notice or demand may be served on the authorized agent of the taxpayer as well as upon the taxpayer personally or mailed to the taxpayer's last known address. In the event a short tax period is declared, the taxpayer shall not be required to prorate deductions and personal exemptions. (7-1-93)

b. Notwithstanding any action by the Tax Commission under this section, a taxpayer will be required to file a tax return at the end of his regular accounting period, and to report all of his income, deductions, and credits. Any tax collected as a result of termination under this section shall be applied against the tax due at the end of the current taxable year. (6-23-94)

02. Appeals Procedure. A petition for redetermination may be filed with the Tax Commission within sixty-three (63) days after notice of the jeopardy assessment. The petition must be in writing and the taxpayer must either pay the assessment in full or file with the Tax Commission a bond in the manner prescribed by Idaho Income Tax Administrative Rule 113, conditioned upon the payment of any tax, penalty, and interest that may be found due by the court. The rules and procedures of Idaho Income Tax Administrative Rule 109 shall govern the disposition thereof. Appellate procedures provided by Section 63-3049, Idaho Code, and Idaho Income Tax Administrative Rule 113 from a decision adverse to the taxpayer shall be available to and govern the taxpayer. (6-23-94)

03. Property Under Distraint. Property under distraint which has not been sold or otherwise disposed of, may be returned to the taxpayer upon payment of the assessment in full, plus the costs of distraint, or filing with the Tax Commission a bond in the amount of the assessment, executed by a surety licensed and authorized to do business in the state and conditioned upon payment of the full amount of the assessment plus interest and costs within the time prescribed by Section 63-3065(b), Idaho Code, or any extension thereof ordered by the Tax Commission. (6-23-94)

04. Written Petition. Indigent taxpayer may file a written petition with the Tax Commission for return of property under distraint of a jeopardy assessment. The petition must be filed at a time prior to any publication or posting by the Tax Commission or a sheriff of notice of sale or other disposition of the property within fifteen (15) days from the date of seizure, whichever time shall be the greater. The Tax Commission's order granting or denying the petition shall be governed by facts disclosed or found which would lead to the expectation that voluntary payment of the assessment by the taxpayer will be made within reasonable time. The rules of procedure of Idaho Income Tax Administrative Rule 109 shall govern all proceedings for the disposition of petitions filed by indigent persons for the return of their property. (6-23-94)

120. CONTRIBUTIONS TO TRUST ACCOUNTS (Rule 120).

An election to contribute to any of the trust accounts may not be subsequently withdrawn or reduced once the return or amended return upon which it was made is filed. (7-1-93)

121. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION OF TAX (Rule 121).

01. Request for Prompt Action by the Tax Commission. The effect of Section 63-3068 (e), Idaho Code, is to require, upon proper request from the authorized representative of the decedent, the Tax Commission to either issue a notice of deficiency, if applicable, assess the tax, or begin court proceeding for collection of the tax within six (6) months from the date the request is filed. The personal representative, executor, administrator, or other fiduciary representing the estate of the

decedent, after the return in question has been filed, may file a written request for prompt action. The request must be filed separately from any other document. The request must set forth the period for which the prompt action is required, and must clearly indicate that it is a request for prompt action under the provisions of this section. The request will not apply to any return filed after the date of the request. This subsection is applicable only to returns reflecting income earned during the lifetime of a decedent, as defined for federal income tax purposes. (6-23-94)

02. Federal Determination. The additional one (1) year period of limitation, as provided in Section 63-3068(f) and (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 his representative. The Internal Revenue Service and taxing agencies of other governmental units are not representatives of taxpayers. (6-23-94)

03. Protest of Audit Findings. In the event of a protest of audit findings, the expiration of the period of limitations as provided for in Section 63-3068, Idaho Code, is suspended, and redetermination of the refund or tax due shall not be limited to the specific issue or issues protested for such taxable year, unless limited by Section 63-3068(f), Idaho Code. (6-23-94)

122. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (Rule 122).

01. Final Determination. The term "final determination" as used in Section 63-3069, Idaho Code, means "final federal determination" as defined in Section 63-3068(f), Idaho Code. (6-23-94)

02. Written Notice. (6-23-94)

a. The taxpayer is required to submit all Revenue Agent's Reports, or copies thereof, and such other documents and schedules, as may be required by the Tax Commission, to clarify the adjustments to taxable income immediately upon the final Internal Revenue Service determination. If the final federal determination results in a refund of state taxes, the written notice must be accompanied by an amended Idaho income tax return, in order to constitute a valid claim for refund pursuant to Idaho Income Tax Administrative Rule 123.02. (6-23-94)

b. Notices provided upon or included with an income tax return for a year or years other than the year subject to the federal adjustment shall not constitute the required notification. (6-23-94)

03. Immediate Notification. Negligence penalties may be imposed upon additional tax due if written notification has not been provided within sixty (60) days of the date of the final Internal Revenue Service determination. Refer to Section 63-3046(a), Idaho Code, and Idaho Income Tax Administrative Rule 111. (6-23-94)

123. CREDITS AND REFUNDS (Rule 123).

01. Overpayment. The term overpayment includes: (7-1-93)

a. Any voluntary and unrequested payment in excess of an actual tax liability; but in no event will it include any part of that which is paid pursuant to any 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. (6-23-94)

b. Any excessive amount which is withheld by an employer pursuant to Sections 63-3035 and 63-3036, Idaho Code. (7-1-93)

c. All amounts erroneously or illegally assessed or collected. (7-1-93)

02. Claim Required for Refund. (7-1-93)

a. No refund will be made except upon the filing of a claim by the taxpayer. The claim for a credit or refund must set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The claim must be verified by a written declaration that it is made under the penalties of perjury. (6-23-94)

b. A properly executed amended tax return shall constitute a claim for refund within the meaning of this section. The taxpayer should clearly set forth the amount claimed and an explanation of why and how the original return is being amended.

The Tax Commission is not authorized to make a refund of taxes withheld from wages unless a return is filed within three (3) years after the due date. See Section 63-3035(e), Idaho Code. The Tax Commission is not authorized to refund any remittance received with an extension of time to file or with a tentative return, which includes quarterly estimated payments, unless a claim for such refund is made within three (3) years of the due date of the return without regard to extensions. (6-23-94)

c. Individuals may claim refunds by filing Form 40X, Amended Idaho Individual Income Tax Return. Corporations, partnerships and fiduciaries may claim refunds by filing Form 41X, Amended Business Income Tax Return. (6-23-94)

03. Timely Filing of Claim. (7-1-93)

a. Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitations unless, before the expiration of such period, a claim has been filed by the taxpayer. (6-23-94)

b. When an adjustment to the federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the statute of limitations, the taxpayer has one (1) year from the date of the final determination of the federal tax liability to file a claim for refund. (6-23-94)

04. Amended Returns for Issues Previously Audited. A credit or refund claimed on an amended return filed for a tax year upon which an audit report has been issued will not be allowed unless the taxpayer can demonstrate that the changes on the amended return are unrelated to the issues examined in the audit or that the changes are the result of a final federal determination. (6-23-94)

05. Reduction and Denial of Refund Claims. When the Tax Commission determines that a refund claim is erroneous, the Tax Commission shall deny the claim in whole or part. Unless the denial is the result of a math error by the claimant, the Tax Commission shall give notice of the denial by means of a Notice of Deficiency Determination in the manner required by Section 63-3045, Idaho Code, and Idaho Income Tax Administrative Rule 109. The protest and appeal processes that apply to a Notice of Deficiency Determination shall apply to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, relating to mathematical errors. (6-23-94)

06. Amended Federal Return. An amended federal return filed with the Internal Revenue Service and accepted by them will be treated as a final federal determination for purposes of the period of limitations for claiming a refund or credit provided in Section 63-3072(d), Idaho Code. The mere filing of such a claim with the Internal Revenue Service, however, does not extend such period of limitations. (6-23-94)

07. Final Federal Determination and Change of Filing Method. If the Idaho statute of limitations is only open due to a final federal determination, a taxpayer can not make adjustments to his Idaho return to include a previously omitted corporation or to exclude any corporation previously included in the combined report. (6-23-94)

124. INTEREST ON REFUNDS (Rule 124).

01. General Rule, section 63-3035(e), Idaho Code, requires the Commission to refund to the taxpayer any amount withheld by his employer which is in excess of the amount of tax due and to make such refund not later than sixty (60) days after the filing or due date of the individual's return, whichever is later. Section 63-3073, Idaho Code, requires the Commission to pay interest on refunds of all taxes received in excess of liability or illegally or erroneously assessed or collected. (7-1-93)

02. Interest. Interest is not payable in the event that a tax is paid on a voluntary or unrequested basis. Therefore, a distinction will be made between an error in overstatement of income tax liability and a voluntary or unrequested payment. The latter is definitely not entitled to interest. (7-1-93)

03. Computation. If otherwise allowable, interest on refunds will be computed as follows: (7-1-93)

a. Refund of Income Tax Withheld. No interest will be paid unless refund is made later than sixty (60) days after the due date of the return or date filed, whichever is later. Ordinarily, this will mean that if refunds are paid on or before June 15 of a given year, interest will not be paid. Refunds made on or after June 15 will include interest from April 15 forward. (7-1-93)

b. Tentative Returns. No interest will be paid on a completed return when a tentative return was originally filed. (7-1-93)

c. Taxes Erroneously or Illegally Collected. Interest will be computed from the date the taxes were collected or the due date for filing, whichever is later. (7-1-93)

d. Error Discovered Upon Audit or the Filing of an Amended Return. Interest will be computed from the date the payment was received or the due date for filing whichever was later. (7-1-93)

e. Refund of Income Tax Caused by Loss Carryback. Interest will be computed from the last day of the taxable year in which the net operating loss or capital loss arises. When a credit adjustment attributable to a loss carryback results in a refund, the interest will be computed from the last day of the taxable year in which the loss arises. (7-1-93)

f. Undue Delay by Taxpayer. If a taxpayer does not respond promptly to requests for information or in any other way delays the processing of his return, such delays attributable to the taxpayer will be deducted from the total processing time to determine whether or not interest will be paid and, if so, from what date. It will be considered as undue delay if, unless reasonable cause is established for the delay, a period exceeding sixty (60) days expires from the time information is requested. (7-1-93)

125. DISCLOSURE-SCOPE (Rule 125).

01. In General. This rule provides guidelines for disclosure of information gained by the Tax Commission in the administration and enforcement of tax laws when such information is made confidential or secret under provisions of Sections 63-3076 and 63-3077, Idaho Code. (7-1-93)

02. Cases Initiated by the State of Idaho. (7-1-93)

a. If a prosecuting attorney, county sheriff, municipal police department, or other law enforcement agency believes that a tax law has been violated, such person or entity may provide to the Tax Commission information in support of such belief. If, after consultation with its legal counsel, the Tax Commission believes that a criminal violation of tax laws has occurred, the Tax Commission may provide any information within its possession to the appropriate county prosecutor necessary or useful in securing criminal investigation, prosecution or both. In addition, the Tax Commission may provide legal assistance in conjunction with the Attorney General, or may provide experts from its staff, or assist in other matters, within its resource capabilities. (6-23-94)

b. If the Tax Commission obtains information through sources other than law enforcement agencies indicating criminal violation of tax laws, the Tax Commission, after consulting with its legal counsel, may provide any information within its possession to such agency or any county prosecutor if the Tax Commission believes that it is useful or necessary in investigating or prosecuting tax crimes. (6-23-94)

03. Third Parties. (6-23-94)

a. Generally. The Tax Commission will not disclose information about a taxpayer to any person other than that taxpayer or another authorized by the taxpayer. (7-1-93)

b. Power of Attorney. The Tax Commission may disclose information to a third party who has delivered to the Tax Commission a power of attorney-in-fact authorizing such third party to receive specified information about the taxpayer. The power of attorney may be made with forms provided by the Tax Commission. Any such power of attorney must contain: the taxpayer's name, address and social security number or employer identification number; the name and address of the attorney-in-fact; language indicating the taxpayer's consent to disclosure of information to the attorney-in-fact; the tax period or periods for which disclosure may be made to the attorney-in-fact; the signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an entity other than an individual, the signature of an authorized employee or officer of such taxpayer. (6-23-94)

c. In the Course of Audit or Investigation. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person for the purposes of collecting or ascertaining any tax liability, determining the correctness of any return, report or statement, or for any other purpose relating to the Tax Commission's duties in the administration or enforcement of Idaho tax laws. Disclosures necessary to obtain information sought in such inquiries or to effectively pursue collection of amounts owed are authorized for those limited purposes. (7-1-93)

d. If a Commissioner, agent or employee is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify, and may object to such appearance on the basis of this rule and Section 63-3076, Idaho Code.

(7-1-93)

04. General Public.

(7-1-93)

a. The Tax Commission may disclose to the public any information about a taxpayer which has become public information by its introduction as evidence in any court or before the Board of Tax Appeals or has become public through means of publication other than through the Tax Commission.

(7-1-93)

b. The Tax Commission, after notice to the taxpayer, may disclose information necessary to correct misleading statements or misrepresentations publicized by the taxpayer or his agents or employees regarding his liability to the state of Idaho, his conduct in relation to the Tax Commission, or proceedings, audits or investigations of the taxpayer by the Tax Commission.

(7-1-93)

c. Written decisions of the Tax Commission will be made available to the public as required by Section 63-3045B, Idaho Code. Before publication of a decision, the taxpayer will first have the opportunity to review the decision and make a written request that specific information be excised. If the Tax Commission does not receive a written request for deletions from the taxpayer within ninety-one (91) days following the date of the final decision, it will be presumed that the taxpayer does not object to publication of any information contained in the decision.

(6-23-94)

05. Legislative Bodies. The Tax Commission shall disclose information to the Idaho legislature upon the written request of the chair of any duly constituted committee of either branch of the Idaho legislature.

(6-23-94)

06. Government Agencies or Officials. The Tax Commission shall divulge information necessary to comply with provisions of Title 63 requiring reports or information to be provided to government agencies or officials.

(6-23-94)

07. Exchange of Information. Information may be exchanged between the state of Idaho and the Internal Revenue Service or other states, if reciprocal provisions for information exchanges are granted the state of Idaho.

(7-1-93)

08. Application of Rule. Tax Commission staff, employees and agents shall make no disclosures other than those authorized by the foregoing sections of this rule. The Tax Commission, in its sole discretion, may make disclosures under circumstances when such disclosure is not prohibited by law.

(7-1-93)

126. INFORMATION FURNISHED TO CERTAIN OFFICIALS (Rule 126).

Upon a written request from the chairman of a duly constituted committee of either branch of the Idaho State Legislature, specifically named income tax returns may be inspected by the committee of members thereof. Inspection will be upon the condition that the chairman of the committee assume full responsibility for preventing the divulging of any information obtained from the returns, and that he will not permit any such income tax returns to be examined by an unauthorized person or persons.

(7-1-93)

127. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (Rule 127).

01. Individuals Liable. Corporate officers and employees with a duty to cause a corporation to file a return or to pay a tax, or any partnership member or employee with such duty immediately shall become liable for payment of the tax, penalty and interest due from the corporation or partnership if he shall fail to carry out his duty. The State Tax Commission or any delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due. The action may include the filing of a lien on the property of the person found liable, or seizure and sale of his property or any other means of collection. The persons involved shall have the taxpayer remedies provided in Sections 63-3045, 63-3049, 63-3065 and 63-3074, Idaho Code.

(7-1-93)

02. Penalty for Failure to Collect. Any individual required to collect, account for and pay over any tax who wilfully fails to carry out or execute his duty will be required to pay, in addition to the tax, penalty and interest, an additional amount equal to the total amount of tax involved. This penalty is in addition to all other penalties provided by this Act.

(7-1-93)

128. ADDITIONAL TAX REQUIRED WHEN FILING INCOME TAX RETURN (Rule 128).

Sections 63-3082 through 63-3087, Idaho Code, comprise an act which imposes an excise tax of ten dollars (\$10) on each person who is required to file an income tax, unless the entire income of the tax entity required to file a return is distributed or otherwise reportable on the income tax return of another taxpayer, or unless specifically exempt under Section 63-3086, Idaho Code. See Section 63-3030, Idaho Code, for persons required to file an income tax return. Section 57-1110, Idaho Code, requires that the proceeds of this tax be deposited to the credit of the Permanent Building Fund. (7-1-93)

129. ELECTION CAMPAIGN FUND (Rule 129).

01. In General. The individual income tax return will contain a block where each taxpayer may designate a portion of his income tax to be paid into the election campaign fund of a specific party qualified with the Secretary of State as of July 1st of each calendar year or may designate no specific party. (7-1-93)

02. Changing Election. An election to designate a portion of the income tax to the election campaign fund may not subsequently be changed or withdrawn once the return is filed. (7-1-93)

130. DESIGNATION OF SCHOOL DISTRICT (Rule 130).

The taxpayer's place of residence which affects the school district designation shall be the taxpayer's place of residence on the last day of the tax year. If the taxpayer files a part-year, nonresident, return and did not reside in Idaho the last day of the tax year, the place of residence shall be the taxpayer's last Idaho residence. (7-1-93)

131. DECLARATORY RULINGS (Rule 131).

01. Written Determination. Any person, group or other association may file a written petition with the State Tax Commission asking for an interpretation or determination by the Commission as to the applicability of any statutory provision or of any rule or order issued by the State Tax Commission to the party filing the petition. To obtain such a determination from the Commission, the petitioner must be a person, group or association whose tax liability is directly affected by the determination or can otherwise demonstrate a direct financial interest in the determination sought. Such petitions may be submitted to the Commission in any written form but must contain an express statement that the writing is intended to be a petition for a declaratory ruling pursuant to the Administrative Procedures Act, Section 67-5255, Idaho Code. (7-1-93)

02. Receipt of Petition. Upon receipt of such a petition the State Tax Commission may: (7-1-93)

a. Issue a written determination on the issue, (7-1-93)

b. Require the petitioner to submit such additional facts, evidence or information as the Commission in its discretion deems as necessary to make a determination of the issue, or (7-1-93)

c. Decline to make a determination. The Commission will decline to make a determination if the taxpayer fails to submit sufficient facts, evidence or other information upon which a resolution may be based, if the issue upon which a determination is sought is the subject of pending litigation or administrative appeal, if the petitioner is not a person directly affected by a resolution of the issue presented, or if it appears to the Commission that there is other good or compelling reason why a determination should not be made. (7-1-93)

03. Factual Circumstances. A declaratory ruling issued by the Commission pursuant to this rule applies only to the factual circumstances as submitted to the Commission by the petitioner and applies only to the petitioner seeking the determination. The determination may not be relied upon by any taxpayer or other person not named as a petitioner in the original petition. In the event that there is a significant change of facts relating the issue or in the event that not all relevant facts were presented to the Commission at the time of the petition or that facts were not accurately represented to the Commission in the original petition, the determination made upon the petition is void. If the regulatory or statutory provisions affecting the determination are amended by the legislature or by this Commission, the written determination is voided as of the date of the amendment to the statute or rule. (7-1-93)

04. Withdrawal of Determination. If at any time after the issuance of such a written determination it appears to the Commission that the determination is erroneous, the Commission may, by giving written notice to the petitioner at the petitioner's last known address, withdraw the determination. However, any tax liabilities accruing between the date of the

issuance of the determination and the withdrawal to the petitioner which have not been paid as a result of the petitioner's good faith reliance upon the determination, will not be assessed by the Commission. (7-1-93)

05. Petition for Redetermination. In the event that a taxpayer disagrees with a written determination made by the State Tax Commission in response to a petition for such a determination in accordance with this rule, the person may file with the State Tax Commission written petition for redetermination. Except in the case of sales and use tax, the petition for redetermination shall be heard by the Commission in the same manner as provided for the hearing of a protest and petition for redetermination of taxes pursuant to ISTC 109 of these rules. In the case of a determination relating to sales or use taxes, such a petition for redetermination shall be heard by the Commission in the same manner provided for hearing a protest and petition for redetermination of taxes pursuant to ISTC 122 of the Sales Tax Rules. (7-1-93)

06. Confidentiality. The determinations made by the State Tax Commission pursuant to this rule are information subject to the confidentiality requirements of Sections 63-3076 and 63-3077, Idaho Code. No factual, financial or other information relating to any taxpayer submitted as part of a proceeding under this rule shall be public record or disclosed to any person except as provided by Sections 63-3076 and 63-3077, Idaho Code, or as authorized by the taxpayer. (7-1-93)

132. INTEREST ON AMOUNTS OF TAX ACCRUING OR UNPAID. (Rule 132).

01. Calendar Year 1994. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1994 subject to assessment of interest under Section 63-3045, Idaho Code, is seven percent (7%) simple interest. See Revenue Ruling 93-64. (1-1-95)

02. Calendar Year 1995. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1995 subject to assessment of interest under Section 63-3045, Idaho Code, is nine percent (9%) simple interest. See Revenue Ruling 94-61. (1-1-95)

03. Calendar Year 1996. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1996 subject to assessment of interest under Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 95-67. (1-1-96)T

133. DEFINITIONS FOR PURPOSES OF "THE TAXPAYERS' BILL OF RIGHTS," CHAPTER 40, TITLE 63, IDAHO CODE (Rule 133).

01. Collection and Enforcement. For purposes of the taxpayer's bill of rights, the terms collection and enforcement shall be defined to include only post-assessment processes. (6-23-94)

02. Publication of Lists. For purposes of the taxpayer's bill of rights, publication is defined as communicating to the general public. Publication does not include internal communication or communication with other governmental agencies as provided for under Idaho law. (6-23-94)

03. Written Notification of Representation. A taxpayer's written notification that he will be represented by another person must include the information required for a valid power of attorney. If the notification is not valid, the revenue officer shall communicate with the taxpayer. The revenue officer should exercise reasonable care in determining whether a power of attorney exists. (6-23-94)

134. ACQUISITION OF LOCATION INFORMATION (Rule 134).

A revenue officer may recontact a person if it is reasonable to believe that the person may have acquired new location information since the prior contact. (6-23-94)

135. COMMUNICATION IN CONNECTION WITH TAX COLLECTION (Rule 135).

A revenue officer may contact a taxpayer before 8:00 a.m. or after 9:00 p.m. if it is reasonable to believe that these times would be more convenient for the taxpayer. (6-23-94)

136. SPECIAL RULES: PUBLISHING. (Rule 136).

01. Special Rules: 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 shall be computed in the same

manner as provided by Multistate Tax Commission Regulation IV.18.(j) except that: (1-1-95)

a. Article IV. of the Multistate Tax Compact and the regulations issued thereunder shall mean Sections 63-3027 or 63-3701, Article IV., Idaho Code, and Idaho Income Tax Administrative Rules 032 through 078. (1-1-95)

b. Article IV. 14. of the Multistate Tax Compact and the regulations adopted thereunder shall mean Sections 63-3027(m) and (n) and 63-3701, Article IV.14., Idaho Code, and Idaho Income Tax Administrative Rules 056 through 059. (1-1-95)

c. Regulation IV.15. through 18. shall mean Idaho Income Tax Administrative Rules 060 through 064. (1-1-95)

137. SPECIAL RULES: TELEVISION AND RADIO BROADCASTING. (Rule 137).

01. Special Rules: Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting shall be computed in the same manner as provided by Multistate Tax Commission Regulation IV.18.(h) except that: (1-1-95)

a. Article IV. of the Multistate Tax Compact and the regulations issued thereunder shall mean Sections 63-3027 or 63-3701, Article IV, Idaho Code, and Idaho Income Tax Administrative Rules 032 through 078. (1-1-95)

b. Regulation IV. 1. shall mean Idaho Income Tax Administrative Rules 035 through 039. (1-1-95)

c. Regulation IV.10. through 12. shall mean Idaho Income Tax Administrative Rules 049 through 055. (1-1-95)

d. Regulation IV.13. and 14. shall mean Idaho Income Tax Administrative Rules 056 through 059. (1-1-95)

e. Regulation IV.15. and 16. shall mean Idaho Income Tax Administrative Rules 060 through 064. (1-1-95)

f. Tax Administrator shall mean Idaho Tax Commissioner. (1-1-95)

g. Regulation IV.18.(c) shall mean Idaho Income Tax Administrative Rule 068. (1-1-95)

138. APPLICATION OF PARTIAL PAYMENT. (Rule 138).

If bad check charges, penalties, or interest accrue as a result of any. deficiency in tax, partial payments made by the taxpayer shall first apply to the bad check charges, if any, next to penalty, then to interest, and thereafter to tax. (6-23-94)

139. -189. (RESERVED).

190. MEDICAL SAVINGS ACCOUNTS (Rule 190).

Section 63-3022K, Idaho Code. (7-1-96)

01. Submitting Information Returns. Information returns reporting medical savings account information shall be submitted to the Tax Commission by the depository on paper form, Form MSA-1, or on magnetic media if filing two hundred fifty (250) returns or more. Depositories reporting on magnetic media must contact the Tax Commission for specifications prior to submitting the information. (7-1-96)

02. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (7-1-96)

03. Withdrawal for the Purpose of Paying Eligible Medical Expenses. A withdrawal from a medical savings account to reimburse the account holder for expenses paid prior to the withdrawal is not a withdrawal for the purpose of paying eligible medical expenses to the extent the medical savings account balance at the time of the payment of the medical expense was less than the subsequent withdrawal. For example, on March 1, 1996 a taxpayer's medical savings account had a balance of three hundred dollars (\$300). On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10, 1996 the taxpayer deposited two hundred dollars (\$200) into his

medical savings account. On March 11, 1996 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Because the balance in the medical savings account was one hundred dollars (\$100) less than the medical expense paid on that date, only three hundred dollars (\$300) of the withdrawal is considered to be a payment of eligible medical expenses. The taxpayer is entitled to a deduction of two hundred dollars (\$200) for the contribution to the account. He must also include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). (7-1-96)

04. Salary Reduction Agreements. Health benefits paid with pre-tax contributions, such as those under 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 which qualify as an expense paid by the employee. (7-1-96)

191. -- 999. (RESERVED).