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**IDAPA 35
TITLE 01
Chapter 01**

**IDAPA 35.01.01 - IDAHO STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Income Tax Act. The rules relating to the administration and enforcement of income taxes as well as other taxes, such as sales taxes, are promulgated as IDAPA 35.02.01. (3-20-97)

001. TITLE AND SCOPE (Rule 001).

These rules shall be cited as IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35, Title 01, Chapter 01, "Income Tax Administrative Rules." They 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. (3-20-97)

002. WRITTEN INTERPRETATIONS (Rule 002).

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, the Tax Commission has written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. To the extent that these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the Tax Commission. (3-20-97)

003. ADMINISTRATIVE APPEALS (Rule 003).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. (3-20-97)

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code. (3-20-97)

005. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

Section 63-3003, Idaho Code. (3-20-97)

01. Administration and Enforcement Rules. The term Administration and Enforcement Rules refers to IDAPA 35.02.01, relating to the administration and enforcement of Idaho taxes. (3-20-97)

02. Due Date. As used in these rules, due date means the date prescribed for filing without regard to extensions. (3-20-97)

03. Employee. An employee is an individual who performs services for another individual or organization that controls what services are performed and how they are performed. (3-20-97)

04. Employer. An employer is any person or organization for whom an individual performs services as an employee. (3-20-97)

05. Mathematical Error. A mathematical error includes arithmetical errors, incorrect computations, omissions, defects in a return, and entries on the wrong line. (3-20-97)

06. Sale. A sale is defined as a transaction in which title passes from the seller to the buyer, or when possession and the burdens and benefits of ownership are transferred to the buyer. A sale may have occurred even if the buyer does not have the right to possession until he partially or fully satisfies the terms of the contract. (3-20-97)

07. Tax Home. For income tax purposes, the term tax home refers to the taxpayer's principal place of

business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he is not entitled to a deduction for travel expenses incurred in the other state since that is his tax home. (3-20-97)

08. Terms. 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 including Section 7701 relating to definitions of terms. (3-20-97)

09. These Rules. The term these rules refers to IDAPA 35.01.01, relating to Idaho income tax. (3-20-97)

10. Wages. The term wages relates to all compensation for services performed for an employer regardless of the form of payment. (3-20-97)

011. -- 014. (RESERVED).

015. INTERNAL REVENUE CODE (Rule 015).
Section 63-3004, Idaho Code. (3-20-97)

01. Interpretations. Interpretations of the Internal Revenue Code may be found in various sources. These sources include decisions of the Tax Court, Congressional Committee Reports, General Counsel Memoranda, Decisions of the Federal and State Courts on federal income tax issues and Treasury Regulations. These interpretations are adopted by this reference to the extent that they are not in conflict with or inconsistent with the Idaho Code or administrative rules. (3-20-97)

02. Tax Commission Granted Discretion in Determining Correctness of Tax Return. Discretion granted to the Secretary of the Treasury to determine or reallocate items of income or adjustments to income, deductions, expenses, credits or other subjects of taxation by the Internal Revenue Code may also be exercised by the Tax Commission and its authorized agents, employees and deputies to enforce and administer the Idaho Income Tax Act and these rules. (3-20-97)

016. -- 024. (RESERVED).

025. TAXABLE YEAR AND ACCOUNTING PERIOD (Rule 025).
Section 63-3010, Idaho Code. (3-20-97)

01. In General. A taxpayer shall file his Idaho return for the same taxable year as filed for federal income tax purposes. Taxable year is the fixed period used for purposes of computing income. It generally corresponds to the taxpayer's annual accounting period unless a short-period return is required. (3-20-97)

02. Change of Accounting Period. (3-20-97)

a. If a taxpayer changes his accounting period for federal income tax purposes, he shall make the same change for the same period for Idaho income tax purposes. If prior approval of the Commissioner of the Internal Revenue Service is required, a copy of that approval shall accompany the Idaho short-period return. (3-20-97)

b. If a change does not require prior approval of the Commissioner of the Internal Revenue Service, the change shall be noted on the Idaho short-period return, along with a statement that no prior approval was required and the authority cited. (3-20-97)

026. -- 029. (RESERVED).

030. RESIDENT (Rule 030).
Section 63-3013, Idaho Code. (3-20-97)

01. Resident. The term resident applies to individuals, estates, and trusts. (3-20-97)

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of members of the Armed Forces, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules. (3-20-97)

b. For the rules relating to the residency status of estates, see Rule 034 of these rules. (3-20-97)

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules. (3-20-97)

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. (3-20-97)

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. (3-20-97)

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(c), Idaho Code. (3-20-97)

c. An individual meeting the safe harbor exception set forth in Section 63-3013(c), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. (3-20-97)

031. ALIENS (Rule 031).

Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

01. Idaho Residency Status. For purposes of the Idaho Income Tax Act, an alien may be either a resident, part-year resident, or nonresident. The individual's residency status for federal income tax purposes does not determine the Idaho residency status of an alien taxpayer. An alien shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

02. Computation of Idaho Taxable Income. (3-20-97)

a. To compute the Idaho taxable income of an alien, the first step is to determine his taxable income. This will depend on whether the alien is a resident, nonresident, or dual status alien for federal income tax purposes. (3-20-97)

b. Once the alien's taxable income has been computed, the amount of income subject to Idaho income tax depends on the alien's Idaho residency status. In general, if the alien qualifies as an Idaho resident, he is subject to Idaho income tax on all his taxable income regardless of its source. If the alien qualifies as a part-year resident or nonresident of Idaho, the amount of his taxable income subject to Idaho income tax is determined pursuant to Section 63-3026A, Idaho Code, and Rules 250 through 259 of these rules. (3-20-97)

c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). (3-20-97)

03. Filing Status. An alien shall use the same filing status for the Idaho return as used on the federal return. (3-20-97)

032. MEMBERS OF THE ARMED FORCES (Rule 032).

01. Idaho Residency Status. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a

result of being stationed in Idaho. (3-20-97)

a. A qualifying service member is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a qualified service member is presumed to be that member's military home of record until the qualified service member establishes a new domicile. (3-20-97)

b. A qualified service member who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)

c. A qualified service member who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)

d. The Soldiers' and Sailors' Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

02. Active Duty Military Pay. (3-20-97)

a. Section 574 of the Soldiers' and Sailors' Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. (3-20-97)

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(j), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(j), Idaho Code, for the specific qualifications of this deduction. (3-20-97)

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 does not apply. (3-20-97)

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

b. For purposes of this rule, a former active duty service member whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

04. Nonmilitary Income. All Idaho source income earned by a military service member is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)

05. Nonmilitary Spouse. Subsection 032.02 does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. (3-20-97)

033. NATIVE AMERICANS (Rule 033).

01. Idaho Residency Status. A Native American shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. Membership in an Indian tribe does not affect that individual's Idaho residency status. (3-20-97)

02. Certain Income Exempt From Idaho Income Taxation. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxed on income derived within the reservation. (3-20-97)

- a. Income derived outside a federally recognized Indian reservation is not exempt. (3-20-97)
- b. Income derived within a federally recognized Indian reservation by an individual who is not an enrolled member of a federally recognized Indian tribe is not exempt. (3-20-97)

034. ESTATE -- RESIDENCY STATUS (Rule 034).

- 01. Resident Estates. An estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of his or her death. If the estate is other than an estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho. (3-20-97)
- 02. Nonresident Estates. If the estate does not qualify as a resident estate, it is treated as a nonresident estate. The tax liability of a nonresident estate is computed in the same manner as a nonresident individual. (3-20-97)

035. TRUSTS -- RESIDENCY STATUS (Rule 035).

- 01. Resident Trusts. A trust is treated as a resident trust if three (3) or more of the following conditions exist: (3-20-97)
 - a. The domicile or residency of the grantor is in Idaho; (3-20-97)
 - b. The trust is governed by Idaho law; (3-20-97)
 - c. Trust property is located in Idaho; (3-20-97)
 - d. The domicile or residency of a trustee is in Idaho; (3-20-97)
 - e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record-keeping and preparation and filing of tax returns. (3-20-97)
- 02. Nonresident Trusts. If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. (3-20-97)
- 03. Residency Status of a Trust. For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. (3-20-97)

036. -- 039. (RESERVED).

040. PART-YEAR RESIDENT (Rule 040).

Section 63-3013A, Idaho Code. (3-20-97)

- 01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)
 - a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)
 - b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02. (3-20-97)
- 02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

a. The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. (3-20-97)

b. An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. (3-20-97)

c. Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. (3-20-97)

041. -- 044. (RESERVED).

045. NONRESIDENT (Rule 045).
Section 63-3014, Idaho Code.

(3-20-97)

01. Traveling Salesmen. (3-20-97)

a. A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. (3-20-97)

b. If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 262 of these rules. (3-20-97)

02. Transportation Employees Covered By Title 49, Section 11504, United States Code. Compensation paid to an interstate rail or motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: (3-20-97)

a. An operator, including an independent contractor, of a commercial motor vehicle; (3-20-97)

b. A mechanic; (3-20-97)

c. A freight handler; and (3-20-97)

d. An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. (3-20-97)

03. Air Carrier Employees Covered By Title 49, Section 40116(f), United States Code. The pay of an employee of an air carrier having regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: (3-20-97)

a. The employee's state of residence, and (3-20-97)

b. The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. (3-20-97)

046. -- 099. (RESERVED).

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

Section 63-3022, Idaho Code. Rules 101 through 249 of these rules discuss the additions to and subtractions from taxable income required when computing the Idaho taxable income of corporations, partnerships, and resident individuals, estates and trusts. For the rules relating to the adjustments to taxable income required of nonresident and part-year resident individuals and nonresident trusts and estates, see Rules 250 through 259 of these rules. (3-20-97)

101. -- 104. (RESERVED).

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

Section 63-3022, Idaho Code. (3-20-97)

01. Interest and Dividend Income Exempt from Federal Taxation. As provided in Section 63-3022(a), Idaho Code, add certain interest and dividend income that is exempt from federal income tax. For example, add interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code. (3-20-97)

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

b. Expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, that are related to the production of interest and dividend income required to be added to taxable income, shall offset the amount of the interest and dividend income. The allowable offset may not exceed the reportable amount of interest and dividend income. An unused offset may not be carried back or carried over. A schedule showing the interest, dividends, and related offsets shall be attached to the return. (3-20-97)

02. State Taxes. As provided in Section 63-3022(b), Idaho Code, add state income taxes deducted in computing taxable income. This includes taxes paid to states other than Idaho and amounts paid by a pass-through entity. (3-20-97)

03. Net Operating Loss Deduction. As provided in Section 63-3022(c), Idaho Code, add any net operating loss deduction included in taxable income. (3-20-97)

04. Capital Loss Carryover Deduction. As provided in Section 63-3022(k), Idaho Code: (3-20-97)

a. A corporation shall add a capital loss deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho. (3-20-97)

b. An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in a business activity not taxable by Idaho at the time it was incurred. (3-20-97)

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

Section 63-3022, Idaho Code. (3-20-97)

01. Dividends Received Deduction. As provided in Section 63-3022(e), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. (3-20-97)

02. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022(a)(1), Idaho Code, a corporation shall add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. To calculate the addition or offset, the taxpayer shall multiply the total interest expense otherwise allowable by one of the following ratios: (3-20-97)

a. The ratio of the taxpayer's average adjusted basis of the applicable obligations to the average adjusted basis of all assets; or (3-20-97)

b. The ratio of the taxpayer's interest income from the applicable obligations to the taxpayer's total income, including tax-exempt income, for the taxable year. (3-20-97)

03. Interest Expense Attributable to Nonbusiness Activities. If dividends or interest income is determined to be nonbusiness income, a multistate corporation's interest expense may be nonbusiness interest expense. This nonbusiness interest expense shall be added to taxable income. Because this addition serves to offset nonbusiness dividends and interest income, it is often referred to as a nonbusiness interest expense offset. For purposes of this subsection, interest expense means the aggregate interest expense deductible in determining taxable income less reductions required by Section 63-3022(a)(1), Idaho Code. Dividends and interest income do not include income that is exempt from Idaho income tax pursuant to Section 63-3022(g), Idaho Code. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. This addition or offset of nonbusiness interest expense is the lesser of: (3-20-97)

a. The interest expense less the sum of business dividends and business interest income; or (3-20-97)

b. The sum of nonbusiness dividends and nonbusiness interest income. (3-20-97)

107. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS AND PARTNERSHIPS (Rule 107).

Section 63-3022, Idaho Code. (3-20-97)

01. Income of Nonresident Officers, Directors, Shareholders, Partners, or Members. As provided in Section 63-3022(h), Idaho Code, a C corporation with fifty percent (50%) or more of its income taxable to Idaho, an S corporation, or a partnership may be required to include in its Idaho taxable income the amounts in Subsections 107.01.a. and 01.b. (3-20-97)

a. Compensation Reportable to Idaho. (3-20-97)

i. Corporations. A corporation described in Subsection 107.01 may be required to add the Idaho compensation paid by the corporation to a nonresident officer, director, shareholder, or member. (3-20-97)

ii. Partnerships. A partnership may be required to add the Idaho compensation paid by the partnership to a nonresident partner or member. (3-20-97)

iii. Idaho compensation is determined pursuant to Rule 262 of these rules. (3-20-97)

b. Pass-Through Items Reportable to Idaho. (3-20-97)

i. S Corporations. An S corporation may be required to add the pass-through items reportable as Idaho source income by a nonresident shareholder. (3-20-97)

ii. Partnerships. A partnership may be required to add the pass-through items reportable as Idaho source income by a nonresident partner or member. (3-20-97)

02. Capital Loss. As provided in Section 63-3022(k), Idaho Code, S corporations and partnerships are required to add a capital loss provided for in Section 1212, Internal Revenue Code, when paying the tax for nonresident shareholders and partners. (3-20-97)

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

Section 63-3022, Idaho Code. (3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(n), Idaho Code, add the taxable amount of a lump sum distribution deducted pursuant to Section 402(d)(3), Internal Revenue Code. (3-20-97)

02. Withdrawals from a Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from a medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (3-20-97)

109. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF ESTATES AND TRUSTS (Rule 109).

Section 63-3022, Idaho Code. As provided in Section 63-3022(i), Idaho Code, an estate or trust may be required to add the distributable net income reportable as Idaho source income by a nonresident beneficiary. (3-20-97)

110. -- 119. (RESERVED).

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

Section 63-3022, Idaho Code. (3-20-97)

01. State Income Tax Refund. Subtract from taxable income a state income tax refund included in taxable income, unless the refund has already been subtracted pursuant to Section 63-3022(b), Idaho Code. (3-20-97)

02. Idaho Net Operating Loss. As provided in Section 63-3022(d), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 and 201 of these rules. (3-20-97)

03. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (3-20-97)

a. Interest income from obligations issued by the United States. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset applicable to corporations, see Rule 106 of these rules. (3-20-97)

b. Idaho lottery winnings exempt by Section 67-7439, Idaho Code. (3-20-97)

04. Federal Alcohol Fuels Credit. As provided by Section 63-3022(m), Idaho Code, subtract the federal alcohol fuels tax credit included in taxable income pursuant to Section 87, Internal Revenue Code. (3-20-97)

05. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the value of technological equipment donated to qualifying institutions. (3-20-97)

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

Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(g), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (3-20-97)

a. Certain income earned by Native Americans. See Rule 033 of these rules. (3-20-97)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(j),

Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-20-97)

03. Standard or Itemized Deduction. As provided in Section 63-3022(l), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If state income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. See Subsection 105.02 of these rules. (3-20-97)

a. Additional deductions allowed if claiming the standard or itemized deduction. The deductions provided in Subsections 121.03.a.i. and 121.03.a.ii. are allowed in addition to claiming the standard or itemized deduction. (3-20-97)

i. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for contributions to the state of Idaho for credit to the medical assistance account if the contributions have not been previously deducted in computing Idaho taxable income. (3-20-97)

ii. An additional deduction is allowed by Section 63-3022(l), Idaho Code, for certain expenditures incurred in providing a qualified family member with personal care services if the expenditures have not been previously deducted in computing Idaho taxable income. (3-20-97)

b. Additional deductions allowed if claiming itemized deductions. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (3-20-97)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(o), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. The term railroad retirement benefits means Tier I, Tier II, and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include railroad unemployment and sickness benefits. (3-20-97)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(p), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-20-97)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Participation in a Residential Conservation or Weatherization Program. As provided in Section 63-3022F, Idaho Code, a deduction is allowed for amounts included in taxable income as a result of the taxpayer's participation in a qualified residential conservation or weatherization program. (3-20-97)

12. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

13. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

14. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

15. Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to a medical savings account. (3-20-97)

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

Section 63-3022, Idaho Code. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. (3-20-97)

123. -- 127. (RESERVED).

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

01. In General. An adjustment to a partnership, S corporation, estate or trust allowed or required by Idaho statute generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

a. Partnerships. An adjustment passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

b. S Corporations. An adjustment passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

c. Estates and Trusts. An adjustment passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

02. Limitations. Deductions claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

03. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the adjustment shall be claimed in the same taxable year that income or loss from that entity is reported for federal income tax purposes. (3-20-97)

04. Information Provided by a Pass-Through Entity. The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each adjustment. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the adjustment is allowed or required. (3-20-97)

05. Pass-Through Entities That Pay Tax. Generally, a pass-through entity shall report the same Idaho adjustments as those allowed to the nonresident partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, a pass-through entity is not allowed a deduction for an Idaho net operating loss, a capital loss pursuant to Section 1212, Internal Revenue Code, an Idaho capital gains deduction, or any other adjustment that

is not specifically allowed by statute or rule to an entity such as the one paying the tax. (3-20-97)

129. (RESERVED).

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (Rule 130).

Section 63-3022A, Idaho Code. (3-20-97)

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

a. Civil service retirement annuities paid by the United States Government. (3-20-97)

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967 or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. (3-20-97)

03. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he is retired and receives qualified benefits pursuant to a disability provision of the retirement fund. (3-20-97)

04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

131. -- 139. (RESERVED).

140. DEDUCTION FOR INSULATION OF RESIDENCES (Rule 140).

Section 63-3022B, Idaho Code. (3-20-97)

01. Additional Insulation. The deduction may be taken for additional insulation installed in a residence, or existing addition to a residence but may not be taken for insulation to replace existing insulation. (3-20-97)

02. Qualifying Date. The insulation must be installed in a residence, or addition to a residence, that existed on or before January 1, 1976. A residence, or addition to a residence, constructed after January 1, 1976, does not qualify. (3-20-97)

03. Types of Insulation. To qualify for the deduction, the insulation must be commonly used as insulation material in the building industry. In addition to the fiberglass insulation indicated in the statute, other types of insulation material may also qualify for the deduction including: (3-20-97)

a. Rockwool; (3-20-97)

b. Urethane foam; (3-20-97)

- c. Polyurethane foam; (3-20-97)
- d. Styrofoam; and (3-20-97)
- e. Calcium silicate. (3-20-97)

04. Siding. Siding is not considered insulation. If a layer of insulation is placed beneath siding, the cost of the insulation is deductible if it otherwise qualifies. If the siding consists of an outer shell for protection against the weather and an inner layer of insulating material, the insulating material qualifies if the cost is separately identified by the seller. (3-20-97)

141. -- 149. (RESERVED).

150. DEDUCTION FOR ALTERNATIVE ENERGY DEVICES (Rule 150).

Section 63-3022C, Idaho Code. (3-20-97)

01. Qualifying Residence. The deduction applies only to a residence of an individual and does not apply to rental housing, unless the renter, rather than the owner, installs and pays for the device. (3-20-97)

02. Converted Rental Unit. If a residence served by an alternative energy device is converted by the owner from a rental unit to his residence, the owner is entitled to any remaining allowable deduction for the year of the conversion based on the portion of the year that the residence served as his residence. For each subsequent year, the owner is entitled to the full amount of the allowable deduction for that year assuming the residence continues to be the owner's residence. (3-20-97)

03. Purchase of a Residence. If a residence served by an alternative energy device is sold, both the seller and the buyer are entitled to a portion of the allowable deduction for the year of the sale based on the fraction of the year each individual had ownership of the residence. The new owner is entitled to any allowable deduction remaining for each subsequent year. The deduction is allowed even if the new owner previously rented the residence as his personal residence. No more than a five thousand dollar (\$5,000) deduction may be prorated in any year. (3-20-97)

04. Common Distribution System. (3-20-97)

a. If the alternative energy device is dependent on and a part of a common distribution system such as a common solar collector facility or a common pipeline that distributes geothermally heated water, the common system is an alternative energy device if owned by the users of the facility. (3-20-97)

b. For purposes of determining the amount of the deduction, each common owner may claim the cost of the portion of the alternative energy system owned solely by that owner that serves only his residence, plus his pro rata share of the costs of installation of the common system. The pro rata share of the cost shall be the actual cost charged to the residential owner for the common system if the costs are allocated by a method that is reasonably related to the actual cost of providing the alternative energy to the various residential owners. (3-20-97)

c. The developer of a common system should provide a statement to each common owner identifying his allocable cost of the common system. If a statement is not provided, the common owners may agree to a reasonable allocation. If the common owners are unable to determine a reasonable allocation, they may petition the Tax Commission to make the determination. (3-20-97)

151. -- 159. (RESERVED).

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

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

the qualified payees. (3-20-97)

161. -- 164. (RESERVED).

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

Section 63-3022E, Idaho Code. (3-20-97)

01. Developmentally Disabled Defined. For purposes of the deduction allowed by Section 63-3022E, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: (3-20-97)

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services. The other condition must result in impairments of general intellectual functioning or adaptive behavior similar to those required for individuals with mental retardation. (3-20-97)

b. Has continued or can be expected to continue indefinitely. (3-20-97)

c. Has substantial functional limitations in three (3) or more areas of major life activity. Individuals with mild mental retardation, controlled epilepsy, and mild cerebral palsy may not be viewed as developmentally disabled since the criteria of substantial handicap may not be met. Individuals who succeed in developing skills to function adequately in five (5) or more major life skill areas will no longer meet the definition of developmental disability. The following are areas of major life activity: (3-20-97)

i. Self-care; (3-20-97)

ii. Receptive and expressive language; (3-20-97)

iii. Learning; (3-20-97)

iv. Mobility; (3-20-97)

v. Self-direction; (3-20-97)

vi. Capacity for independent living; and (3-20-97)

vii. Economic self-sufficiency. (3-20-97)

d. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated. Individuals who have limited or no need for services specific to disabilities do not qualify. (3-20-97)

02. Qualifying Individual. (3-20-97)

a. Immediate Family Member. An immediate family member is an individual who meets the member of household or relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. (3-20-97)

b. Additional Household Deduction for Elderly. For purposes of the additional household deduction for the elderly, a qualifying individual must be an immediate family member. (3-20-97)

c. Additional Household Deduction for Developmentally Disabled Dependents. For purposes of the additional household deduction for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. (3-20-97)

03. Fractions of Years. The deduction shall be prorated at eighty-three dollars (\$83) per month if the qualified individual lives in the taxpayer's household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days shall be treated as a full month. (3-20-97)

166. -- 169. (RESERVED).

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (Rule 170).

Section 63-3022H, Idaho Code.

(3-20-97)

01. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction will not reduce the amount of the deduction, unless the Idaho capital gains deduction would otherwise exceed net capital gain included in Idaho taxable income. See Subsection 170.03 for an explanation of the net capital gain limitation. (3-20-97)

02. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property held more than five (5) years. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in a net capital gain from qualified property of two thousand five hundred dollars (\$2,500) and an Idaho capital gains deduction of one thousand five hundred dollars (\$1,500). (3-20-97)

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held more than five (5) years. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction, resulting in a deduction of twelve thousand dollars (\$12,000). (3-20-97)

03. Net Capital Gain Limitation. (3-20-97)

a. The Idaho capital gains deduction is allowed only if the taxpayer reports a net capital gain, as defined in Section 1222(11), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the net capital gain included in taxable income. (3-20-97)

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property held more than five (5) years. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the net capital gain from qualified property is greater than the net capital gain included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the net capital gain included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the net capital gain from the qualified property. (3-20-97)

04. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. (3-20-97)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (Rule 171).

Section 63-3022H, Idaho Code.

(3-20-97)

01. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221,

Internal Revenue Code; and (3-20-97)

b. Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

02. Holding Periods. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. (3-20-97)

03. Holding Periods of S Corporation and Partnership Interests. (3-20-97)

a. Property Distributed by an S Corporation to a Shareholder or a Partnership to a Partner. The holding period of property received from an S corporation or partnership includes the S corporation's or partnership's holding period, limited to the length of time the shareholder or partner held his interest in the income of the S corporation or partnership. See Subsection 173.02 of these rules. (3-20-97)

b. Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The non-contributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, limited to the length of time the shareholder or partner has held his interest in the S corporation or partnership. (3-20-97)

172. IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (Rule 172).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. Only the activities listed in Section 63-3022H(7), Idaho Code, qualify as a revenue-producing enterprise. A revenue-producing enterprise does not include retail sales, professional, managerial, or repair services. (3-20-97)

02. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. (3-20-97)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (Rule 173).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for a nonresident individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (3-20-97)

02. Limitation of Interest in Pass-Through Entity. (3-20-97)

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. (3-20-97)

b. Example. A shareholder in an S corporation had a fifty percent (50%) interest in income in years one (1) through three (3). In year four (4) the shareholder sold half his stock. During years four (4) through eight (8)

the shareholder had a twenty-five percent (25%) ownership interest. In year nine (9) the shareholder purchased additional stock and his ownership interest increased to fifty percent (50%). In year ten (10) the S corporation recognizes a capital gain on the sale of Idaho real property held since year one (1). The shareholder reports fifty percent (50%) of the gain on his tax return for year ten (10), but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full five (5) years preceding the date of the sale of the property. (3-20-97)

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

04. Examples. (3-20-97)

a. XYZ Farms, a multistate 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 profits. Each partner may claim an Idaho capital gains deduction of nine thousand dollars (\$9,000), computed as follows: $(\$60,000 \times 75\% = \$45,000 \text{ gain apportioned to Idaho} \times 1/3 = \$15,000 \text{ attributable to each partner} \times 60\% = \$9,000 \text{ capital gains deduction allowable on each partner's nonresident return})$. (3-20-97)

b. XYZ Farms, a multistate 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 profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), computed as follows: $(\$60,000 \text{ gain allocated to Idaho} \times 1/3 = \$20,000 \text{ partner's share} \times 60\% = \$12,000 \text{ Idaho capital gains deduction allowable on each partner's nonresident return})$. (3-20-97)

c. A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000). (3-20-97)

174. -- 179. (RESERVED).

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

Section 63-3022J, Idaho Code. (3-20-97)

01. Limitations. The deduction for donations of technological equipment is limited to the taxable income of the taxpayer. Any amount in excess of taxable income is not allowed as a carryback or carryover. (3-20-97)

02. Fair Market Value. Fair market value is determined pursuant to Section 170, Internal Revenue Code. (3-20-97)

03. Pass-Through of Deduction. (3-20-97)

a. See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. (3-20-97)

b. The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. (3-20-97)

181. -- 184. (RESERVED).

185. ADOPTION EXPENSES (Rule 185).

Section 63-3022I, Idaho Code.

(3-20-97)

01. In General. Subject to the limitations of Subsection 185.02, adoptive parents may deduct from taxable income legal and medical expenses related to the adoption of a child. Travel expenses related to the adoption may not be deducted. (3-20-97)

02. Maximum Deduction. The deduction allowed for a successful adoption is limited to a maximum of three thousand dollars (\$3,000), regardless of whether the deduction is claimed in one (1) or more years. If a taxpayer adopts more than one (1) child, he is allowed a deduction not to exceed three thousand dollars (\$3,000) for the adoption of each child. (3-20-97)

03. Ineligible Expenses. (3-20-97)

a. The costs associated with an unsuccessful attempt to adopt a child do not qualify for the deduction. (3-20-97)

b. A deduction is not allowed for expenses incurred in violation of state or federal law or for a surrogate parenting arrangement. (3-20-97)

04. Year Deduction Allowed. The deduction is allowed in the taxable year the expense is paid. A taxpayer shall file an amended return if he claimed any adoption expenses related to an unsuccessful attempt to adopt in a previous taxable year. (3-20-97)

05. Financial Assistance. Eligible expenses shall be reduced by amounts received as financial aid for the adoption, or from a grant pursuant to a federal, state, or local program. (3-20-97)

186. -- 189. (RESERVED).

190. MEDICAL SAVINGS ACCOUNTS (Rule 190).

Section 63-3022K, Idaho Code.

(3-20-97)

01. Submitting Information Returns. Information returns reporting medical savings account information shall be submitted to the Tax Commission by the depository on Idaho Form MSA-1, or on magnetic media if filing two hundred fifty (250) or more returns. Depositories reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)

02. Withdrawal to Pay Eligible Medical Expenses. (3-20-97)

a. A withdrawal from a medical savings account to reimburse the taxpayer for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (3-20-97)

b. Example. A taxpayer's medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). (3-20-97)

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

191. -- 199. (RESERVED).

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

Section 63-3021, Idaho Code.

(3-20-97)

01. Unitary Taxpayers. Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. (3-20-97)

02. Net Operating Losses That Survive a Merger. Subject to the provisions of Sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger. (3-20-97)

a. Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements. (3-20-97)

b. If 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 taxable year preceding the date of the merger. (3-20-97)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (Rule 201).

Section 63-3022(d), Idaho Code.

(3-20-97)

01. Definitions For Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted in computing Idaho taxable income. (3-20-97)

02. Adjustments to Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss shall be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments in Carryback and Carryover Years. (3-20-97)

a. Adjustments to income in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (3-20-97)

b. Adjustments are made pursuant to the law applicable to carryback or carryover year. (3-20-97)

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks. (3-20-97)

a. Except as provided in Subsection 201.04.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. (3-20-97)

b. For a unitary group of corporations, each corporation having a net operating loss that results from its share of the Idaho apportioned loss adjusted for its nonbusiness income or nonbusiness loss is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (3-20-97)

c. The taxpayer may elect to forego the carryback provision of Subsection 201.04.a., and deduct the net operating loss in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (3-20-97)

d. **Timing and Method of Electing to Forego Carryback.** The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. The election referred to in this subsection is made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-20-97)

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and (3-20-97)

iii. The amount of the net operating loss. (3-20-97)

e. If the election is made on an amended or original return filed subsequent to the time allowed in Subsection 201.04.d. of this rule, it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.a. (3-20-97)

05. **Order in Which Losses Are Applied in a Year.** Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

06. **Documentation Required When Claiming a Net Operating Loss Deduction.** A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

202. -- 249. (RESERVED).

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

Sections 63-3026A(1) and (2), Idaho Code. (3-20-97)

01. **Tax on Income From Idaho Sources.** All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho shall be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 265 of these rules. (3-20-97)

02. **Tax on Income Received by Individuals Residing in or Domiciled in Idaho.** All income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income. (3-20-97)

03. **Receipt of Income.** For cash basis taxpayers, income is considered earned or received when it is actually or constructively received, except as provided in Subsection 250.04. (3-20-97)

04. **Receipt of Pass-Through Items of Income and Losses.** (3-20-97)

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

corporation or partner of the partnership. (3-20-97)

b. For a cash basis taxpayer who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the period the taxpayer was a beneficiary of the estate or trust. (3-20-97)

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

Section 63-3026A, Idaho Code. (3-20-97)

01. Idaho Gross Income. To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho gross income. (3-20-97)

a. For a nonresident, Idaho gross income means gross income derived from or related to sources within Idaho. (3-20-97)

b. For a part-year resident, Idaho gross income means gross income derived from or related to sources within Idaho that was earned or received during the portion of the taxable year when the individual was not residing in and not domiciled in Idaho, plus gross income derived from all sources that was earned or received during the portion of the taxable year when the individual was residing in or domiciled in Idaho. (3-20-97)

02. Idaho Adjusted Gross Income. From Idaho gross income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. (3-20-97)

03. Idaho Adjusted Income. From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. (3-20-97)

04. Idaho Taxable Income. From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. (3-20-97)

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

Section 63-3026A(6), Idaho Code. (3-20-97)

01. Payments to an Individual Retirement Account (IRA). To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Proposed Treasury Regulation Section 1.219(a)-1(b)(3). Idaho compensation is determined pursuant to Rule 262 of these rules. (3-20-97)

02. Payments to a Keogh Retirement Plan, Simplified Employee Pension (SEP) Plan, Self-Employment Tax, and Self-Employment Health Insurance. To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. Multiply the self-employment deductions allowed for federal purposes by the percentage. (3-20-97)

03. Penalty on Early Withdrawal of Savings. To determine the allowable adjustment, calculate a percentage by dividing the interest income of the time savings deposit subject to the penalty that is required to be included as Idaho income by the total interest income of the time savings deposit. Multiply the penalty deduction allowed for federal purposes by the percentage. (3-20-97)

04. Alimony Payments. The deduction for alimony payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho gross income bears to gross income. (3-20-97)

05. Moving Expenses. The deduction for moving expenses allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho gross income bears to gross income. (3-20-97)

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

Section 63-3026A(6), Idaho Code.

(3-20-97)

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. Add interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho. However, do not include interest received from obligations of the state of Idaho or any political subdivision of Idaho. This interest is exempt from Idaho income tax. (3-20-97)

02. Net Operating Loss Deduction. Add any net operating loss deduction included in Idaho gross income. (3-20-97)

03. Capital Loss. Add capital losses included in Idaho gross income if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. (3-20-97)

04. Lump Sum Distributions. Add the taxable amount of a lump sum distribution, deducted from gross income pursuant to Section 402(d), Internal Revenue Code, received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. (3-20-97)

05. Medical Savings Account. Add the amount withdrawn from a medical savings account to the extent the withdrawal is treated as income by Idaho law. (3-20-97)

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

Section 63-3026A(6), Idaho Code.

(3-20-97)

01. Net Operating Loss Carryover. Subtract the net operating loss carryover allowed by Section 63-3022(d), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from business activity taking place in Idaho. A net operating loss incurred from a business activity not taxable by Idaho may not be subtracted. (3-20-97)

02. State Income Tax Refund. Subtract state income tax refunds included in Idaho gross income. (3-20-97)

03. Income Not Taxable by Idaho. Subtract income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, if that income is included in Idaho gross income and has not been previously subtracted. Income not taxable by Idaho includes: (3-20-97)

a. Interest from United States Government Obligations. Subtract interest received from securities issued by the United States Government to the extent the interest is included in Idaho gross income. (3-20-97)

b. Idaho Lottery Winnings. Idaho lottery winnings exempt pursuant to Section 67-7439, Idaho Code. (3-20-97)

c. Native Americans. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived from within the reservation. See Rule 033 of these rules. (3-20-97)

d. Transportation Employees. Certain income earned by transportation employees covered by Title 49, Section 11504, United States Code, and air carrier employees covered by Title 49, Section 40116(f), United States Code. See Rule 045 of these rules. (3-20-97)

04. Military Pay. Subtract qualified military pay included in Idaho gross income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time

duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not report his military pay as Idaho gross income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces.

(3-20-97)

05. Social Security and Railroad Retirement Benefits. Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho gross income.

(3-20-97)

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

(3-20-97)

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

(3-20-97)

08. Deduction for Dependents Sixty-five (65) or Older or With Developmental Disabilities. Subtract one thousand dollars (\$1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month.

(3-20-97)

09. Adoption Expenses. Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho gross income by total gross income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage.

(3-20-97)

10. Capital Gains Deduction. Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code.

(3-20-97)

11. Medical Savings Account.

(3-20-97)

a. Subtract contributions to a medical savings account that meet the requirements of Section 63-3022K, Idaho Code.

(3-20-97)

b. Subtract interest earned on a medical savings account to the extent included in Idaho gross income.

(3-20-97)

12. Contributions to a Medical Assistance Account. Subtract contributions to the state of Idaho for credit to the medical assistance account.

(3-20-97)

13. Expenditures for Personal Care Services. Subtract expenses incurred for personal care services that meet the requirements of Section 63-3022(l)(1)(b) or 63-3022(l)(2)(c), Idaho Code. The deduction is limited to one thousand dollars (\$1,000) for each qualified individual for expenses that have not been reimbursed or previously subtracted in computing Idaho taxable income.

(3-20-97)

14. Technological Equipment Donation. Subtract donations of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules.

(3-20-97)

15. Federal Alcohol Fuels Credit. As allowed by Section 63-3022(m), Idaho Code, subtract the amount included in Idaho gross income for the federal alcohol fuels credit.

(3-20-97)

16. Worker's Compensation Insurance. As allowed by Section 63-3022(p), Idaho Code, a self-

employed individual may subtract the cost of premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-20-97)

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

Section 63-3026A(4). (3-20-97)

01. In General. The exemptions and deductions allowable for federal purposes, except for the deduction of state income taxes, are allowed in part in computing Idaho taxable income. (3-20-97)

02. Proration Percentage. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(l), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. Round the percentage to the nearest whole percent. The percentage may not exceed one hundred percent (100%), nor be less than zero (0). (3-20-97)

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(j), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-20-97)

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage shall be between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage shall be one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage shall be zero (0). (3-20-97)

256. -- 259. (RESERVED).

260. INCOME FROM IDAHO SOURCES (Rule 260).

Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 265 of these rules. (3-20-97)

02. Income From Intangible Property. Generally, gross income from intangible property is sourced to the state of the owner's domicile. There are three (3) exceptions to this rule. (3-20-97)

a. If the intangible property is utilized in connection with the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (3-20-97)

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (3-20-97)

c. Interest income paid by an S corporation to a shareholder or a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (3-20-97)

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

Section 63-3026A(3), Idaho Code. All income of an estate or trust distributed or distributable to a nonresident beneficiary is income derived from or related to sources within Idaho if the estate or trust is treated as a resident pursuant to Rules 034 and 035 of these rules. If the estate or trust is treated as a nonresident, only those items of income, gain, loss and deduction of the estate or trust that are derived from or related to sources within Idaho are Idaho source income of the beneficiary. (3-20-97)

262. IDAHO COMPENSATION (Rule 262).

Section 63-3026A(3). (3-20-97)

01. In General. If an individual performs personal services, either as an employee, agent, independent contractor or otherwise, both within and without Idaho, the portion of his total compensation that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. (3-20-97)

02. Definitions. (3-20-97)

a. The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days. (3-20-97)

b. The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. (3-20-97)

c. Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off. (3-20-97)

d. Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the Idaho Income Tax Act if earned by a resident of Idaho. (3-20-97)

03. Work Days. Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. (3-20-97)

04. Multiple Employers. If a taxpayer performs personal services both within and without Idaho for more than one employer or principal, he shall determine an Idaho compensation percentage separately for each employer or principal. (3-20-97)

05. Alternative Method. If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may submit an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-20-97)

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-20-97)

b. The alternative method may be used in lieu of the method in Subsection 262.01 unless the Tax Commission expressly denies its use. (3-20-97)

263. DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (Rule 263).

Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of

business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

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

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

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

264. INCOME FROM REAL AND TANGIBLE PERSONAL PROPERTY (Rule 264).
Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. Rents, royalties, profits, gains, losses and other items of income from the ownership or disposition of real or tangible personal property located in Idaho is Idaho source income. (3-20-97)

02. Property Located Within and Without Idaho. (3-20-97)

a. If the property is located or used within and without Idaho, specific allocation of the income, gain, or loss is appropriate if the gross receipts and related deductions and expenses are readily identifiable from the location or use of the property in Idaho. (3-20-97)

b. To the extent income derived from real property located both within and without Idaho cannot be specifically allocated, the rents, profits, gains, losses or other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the average value of the property located in Idaho and the denominator is the average value of the property located both within and without Idaho. The value of real property is determined by the original cost of the land and improvements. The average value is determined by averaging the values at the beginning and end of the taxable year. However, the Tax Commission may require the averaging of monthly values during the taxable year if required to properly reflect the average value of the taxpayer's property. (3-20-97)

c. To the extent income derived from tangible personal property used both within and without Idaho cannot be readily allocated, the rents, royalties, gains, losses, and other items of income that constitute Idaho source income are determined by multiplying each item of income by a fraction. The numerator of the fraction is the total number of days the property was used in Idaho during the taxable year, and the denominator is the total number of days the property was used both within and without Idaho during the taxable year. (3-20-97)

03. Alternative Method. If either fraction in Subsection 264.02 does not fairly represent the extent of the property's use in Idaho, the taxpayer may propose an alternative method. For example, acres may be a more appropriate measure than average value in some cases. (3-20-97)

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-20-97)

b. The method proposed by the taxpayer may be used in lieu of the method in Subsection 264.02 unless the Tax Commission expressly denies its use. (3-20-97)

265. SOLE PROPRIETORSHIPS OPERATING WITHIN AND WITHOUT IDAHO (Rule 265).
Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. A sole proprietorship that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of proprietorship income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (3-20-97)

02. Application of Rule. This rule also applies to farming activities operated as a sole proprietorship. (3-20-97)

266. -- 299. (RESERVED).

300. TAX ON CORPORATIONS (Rule 300).
Sections 63-3025 and 63-3025A, Idaho Code. (3-20-97)

01. Excise Tax. A corporation excluded from the tax on corporate income imposed by Section 63-3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. (3-20-97)

02. Minimum Tax. A name-holder or inactive corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 300.03. (3-20-97)

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (3-20-97)

301. -- 309. (RESERVED).

310. ELECTIONS FOR MULTISTATE CORPORATIONS (Rule 310).
Section 63-3027, Idaho Code. (3-20-97)

01. Available Options. A multistate corporation transacting business in Idaho may elect to be taxed pursuant to the provisions of the Idaho Income Tax Act or pursuant to the Multistate Tax Compact, Section 63-3701, Idaho Code. This provides three (3) options: (3-20-97)

a. Apportionment and allocation pursuant to Section 63-3027, Idaho Code. (3-20-97)

b. Apportionment and allocation pursuant to Article III, Section 1 of the Multistate Tax Compact. However, if this option is elected, business income shall be apportioned using the apportionment formula pursuant to Section 63-3027(i), Idaho Code. (3-20-97)

c. Tax based on one percent (1%) of sales pursuant to Article III, Section 2 of the Multistate Tax Compact and Section 63-3702, Idaho Code. This option is available to corporations whose only activity in Idaho consists of sales that are not in excess of one hundred thousand dollars (\$100,000) during the taxable year. (3-20-97)

02. Electing an Option. A multistate corporation shall file pursuant to Section 63-3027, Idaho Code, unless it elects to report and pay income tax pursuant to one of the options specified in Subsections 310.01.b. and 01.c. The election is made by attaching a written statement of the election to the return. The statement must affirmatively state each element required by statute to qualify for the option elected. The return must include any additional schedules needed to show how the tax due was computed. The election may not be changed for a taxable year after the return for that year has been filed. (3-20-97)

311. -- 319. (RESERVED).

320. APPLICATION OF MULTISTATE RULES (Rule 320).

Section 63-3027, Idaho Code. (3-20-97)

01. Prologue. Rules 320 through 699 of these rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code. The only exceptions to these allocation and apportionment rules are those set forth in these rules pursuant to the authority of Sections 63-3027(s) and 63-3027(u), Idaho Code. (3-20-97)

02. Taxpayers Conducting Business Within and Without Idaho. Section 63-3027, Idaho Code, and related rules apply to C corporations conducting business within and without Idaho, and to other taxpayers if required by other provisions of the Idaho Code and related rules. However, only C corporations may use the combined report to determine Idaho taxable income. See Rule 360 of these rules. (3-20-97)

321. -- 324. (RESERVED).

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

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-20-97)

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly owned group of which the taxpayer is also a member. The commonly owned group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. (3-20-97)

02. Allocation. Allocation refers to the assignment of nonbusiness income to a particular state. (3-20-97)

03. Apportionment. Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. (3-20-97)

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. (3-20-97)

05. Combined Group. Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. (3-20-97)

06. Combined Report. Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. (3-20-97)

07. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these

rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-20-97)

08. MTC. The Multistate Tax Commission. (3-20-97)

09. Multistate Corporation. A multistate corporation is a corporation that operates in more than one state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. (3-20-97)

10. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. (3-20-97)

326. -- 329. (RESERVED).

330. BUSINESS INCOME (Rule 330).

Sections 63-3027(a)(1), Idaho Code. (3-20-97)

01. In General. All transactions and activities of the taxpayer that depend on or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and are transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administering these rules, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income. (3-20-97)

02. Classification of Income. (3-20-97)

a. Classifying income by labels such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., does not determine 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. (3-20-97)

b. The critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. The transactional test is met if income or loss is derived from a transaction in the regular course of business. The functional test is met if income or loss is derived from property acquired, managed or disposed of in the regular course of business. If either the transactional or the functional test is met, the resulting income or loss is business income or loss. (3-20-97)

03. Investment Income. Income arising from the ownership or sale or other disposition of investments is presumed to be business income because of the following: (3-20-97)

a. The regularity with which most corporate taxpayers engage in investment activities; (3-20-97)

b. The source of capital for investments arises in the ordinary course of a taxpayer's business; (3-20-97)

c. The income from investments is used in the ordinary course of the taxpayer's business; and (3-20-97)

d. The investment assets are used for general credit purposes. (3-20-97)

04. Dividends and Other Intangible Income. Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. (3-20-97)

331. -- 334. (RESERVED).

335. NONBUSINESS INCOME (Rule 335).

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

(3-20-97)

01. Nonbusiness Income. Nonbusiness income is all income other than business income. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. Any allowable deduction that applies to both business and nonbusiness income of the taxpayer shall be prorated to those classes of income to determine income subject to tax. When used in these rules, the term nonbusiness income includes nonbusiness losses unless the context clearly indicates otherwise. (3-20-97)

02. Allocated to Idaho. Nonbusiness income, net of interest and other related expense offsets, that is attributable to Idaho is allocated to Idaho. (3-20-97)

03. Allocated to Other States. Nonbusiness income, together with interest and other related expense offsets, is allocated to other states if it is not attributable to Idaho. (3-20-97)

336. -- 339. (RESERVED).

340. SINGLE TRADE OR BUSINESS OF A CORPORATION OR AN AFFILIATED GROUP OF CORPORATIONS -- APPLICATION OF DEFINITIONS (Rule 340).

Section 63-3027, Idaho Code.

(3-20-97)

01. Apportionment. All income of a trade or business shall be reported and apportioned even though only one (1), or less than all, of the corporation's business divisions or unitary group's affiliates operated in Idaho during the taxable year. The apportionment formula cannot be computed separately for each division, department, or affiliate of a single trade or business. (3-20-97)

02. Single Trade or Business. The determination of whether the activities of a corporation or an affiliated group constitute a single trade or business or more than one trade or business is based on the facts in each case. The activities of the corporation or affiliated group are considered a single business if evidence indicates that the segments being considered are integrated with, depend on, or contribute to each other and the operations of the corporation or affiliated group as a whole. The following factors indicate a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the corporation or affiliated group constitute a single trade or business: (3-20-97)

a. Same Type of Business. A corporation or affiliated group is generally engaged in a single trade or business if all its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores is almost always engaged in a single trade or business. (3-20-97)

b. Steps in a Vertical Process. A corporation or affiliated group is almost always engaged in a single trade or business if its various divisions or affiliates are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer that explores for and mines 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 independent of each other with only general supervision from the enterprise's executive offices. (3-20-97)

c. Strong Centralized Management. A corporation or affiliated group is considered one trade or business if there is a strong central management, coupled with the existence of centralized departments for functions such as financing, advertising, research, or purchasing. For example, a corporation or affiliated group is considered one trade or business if the central executive officers are normally involved in the operations of the divisions or affiliates and centralized offices perform the normal matters for the divisions or affiliates that a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing. (3-20-97)

03. More Than One Trade or Business. A taxpayer may have more than one trade or business. In this

case the taxpayer shall determine the business income attributable to each separate trade or business. The income of each business is apportioned taking into consideration the instate and outstate factors that relate to that trade or business. (3-20-97)

341. -- 344. (RESERVED).

345. BUSINESS AND NONBUSINESS INCOME -- APPLICATION OF DEFINITIONS (Rule 345).

Section 63-3027, Idaho Code.

(3-20-97)

01. In General. This rule is used to determine whether 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 in this rule are illustrative only and do not cover all pertinent facts. (3-20-97)

02. Rental Income. Rental income from real and tangible property is business income if the property for which the rental income was received is used in the taxpayer's trade or business or is incidental to it. (3-20-97)

03. Examples of Rental Income. (3-20-97)

a. A taxpayer operates a multistate car rental business. The income from car rentals is business income. (3-20-97)

b. A taxpayer is engaged in the construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of equipment when the equipment is not needed on any particular project. The rental income is business income. (3-20-97)

c. A taxpayer operates a multistate 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 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. (3-20-97)

d. A taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and offered for sale. The plant was rented temporarily 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. (3-20-97)

04. 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 is business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. (3-20-97)

05. Examples of Gains or Losses. (3-20-97)

a. In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from the sales are business income. (3-20-97)

b. A taxpayer constructed a plant for use in its multistate manufacturing business. Twenty (20) years later the property was sold at a gain while the taxpayer was using it. The gain is business income. (3-20-97)

c. Assume the same facts as in Subsection 345.05.b., except that the plant was closed and offered for sale. The plant was sold eighteen (18) months later. The gain is business income. (3-20-97)

d. Assume the same facts as in Subsection 345.05.b., except that the plant was rented while being held for sale. Both the rental income and the gain on the sale of the plant are business income. (3-20-97)

06. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is related to or incidental to the trade or business operation. (3-20-97)

07. Examples of Interest Income. (3-20-97)

a. A taxpayer operates a multistate chain of department stores, selling for cash or credit. Service charges, interest, or time-price differentials and similar payments are received with respect to installment sales and revolving charge accounts. These amounts are business income. (3-20-97)

b. A taxpayer conducts a multistate 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 earned interest. The interest income is business income. (3-20-97)

c. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer has special accounts to cover items such as worker's compensation claims, rain and storm damage, machinery replacement, etc. The money in those accounts is invested. Also, the taxpayer temporarily invests funds intended to pay federal, state, and local tax obligations. The interest income is business income. (3-20-97)

d. A taxpayer is engaged in a multistate 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. (3-20-97)

e. A taxpayer is engaged in a multistate 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. (3-20-97)

08. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to the trade or business operations. (3-20-97)

09. Examples of Dividends. (3-20-97)

a. A taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income. (3-20-97)

b. A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer has special accounts to cover items such as worker's compensation claims, etc. A part of the money 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 dividends are business income. (3-20-97)

c. A taxpayer and several unrelated corporations own all 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 to obtain a source of supply of materials used in its manufacturing business. The dividends are business income. (3-20-97)

d. A taxpayer is engaged in a multistate construction business. Much of its construction work is performed for various federal and state governmental agencies. According to state and federal laws that apply 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. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and dividends received are business income. (3-20-97)

e. A taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income. (3-20-97)

10. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the

patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is related to or incidental to the trade or business operations. (3-20-97)

11. Examples of Patent and Copyright Royalties. (3-20-97)

a. A taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on some of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties are business income. (3-20-97)

b. A 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 used later by the taxpayer in its business. Royalties received on these copyrights are business income. (3-20-97)

346. -- 349. (RESERVED).

350. PRORATION OF DEDUCTIONS (Rule 350).
Section 63-3027, Idaho Code. (3-20-97)

01. In General. In most cases a taxpayer's allowable deduction applies only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction applies to the business income of more than one trade or business, to several items of nonbusiness income, or to both. In these cases the deduction shall be prorated among the trades or businesses and the items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it applies. (3-20-97)

02. Year to Year Consistency. If a taxpayer departs from or modifies the method used for prorating any deduction in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. (3-20-97)

03. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in applying or prorating any deduction, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. (3-20-97)

351. -- 354. (RESERVED).

355. APPLICATION OF SECTION 63-3027 -- APPORTIONMENT (Rule 355).
Section 63-3027, Idaho Code. If a corporation has business activity both within and without Idaho, and is taxable in another state as a result of this business activity, the portion of the net income or net loss derived from sources in Idaho shall be determined by apportionment pursuant to Section 63-3027, Idaho Code. (3-20-97)

356. -- 359. (RESERVED).

360. APPLICATION OF SECTION 63-3027 -- COMBINED REPORT (Rule 360).
Section 63-3027, Idaho Code. If a particular trade or business is carried on by a corporation and one (1) or more affiliates, nothing in these rules shall preclude using a combined report in which the entire business income of the trade or business is apportioned pursuant to Section 63-3027, Idaho Code. The use of the combined report is restricted to C corporations. (3-20-97)

361. -- 364. (RESERVED).

365. USE OF THE COMBINED REPORT (Rule 365).
Section 63-3027, Idaho Code. (3-20-97)

01. In General. Use of the combined report does not disregard the separate corporate identities of the

members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. (3-20-97)

02. Separate Computations. Each included corporation shall: (3-20-97)
a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report. (3-20-97)

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules. (3-20-97)

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. (3-20-97)

03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See Rule 200 of these rules. (3-20-97)

04. Nexus. Each corporation shall determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. (3-20-97)

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in *Appeal of Joyce, Inc.*, California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, shall apply. Therefore, only the activities conducted by or on behalf of the corporation shall be considered for this purpose. (3-20-97)

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. (3-20-97)

366. -- 369. (RESERVED).

370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (Rule 370).

Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho shall allocate all of its nonbusiness income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. (3-20-97)

371. -- 374. (RESERVED).

375. CONSISTENCY AND UNIFORMITY IN REPORTING (Rule 375).

Section 63-3027, Idaho Code. (3-20-97)

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for classifying income as business income or nonbusiness income in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. (3-20-97)

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in classifying business and nonbusiness income, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. (3-20-97)

376. -- 384. (RESERVED).

385. TAXABLE IN ANOTHER STATE -- IN GENERAL (Rule 385).

Section 63-3027(c), Idaho Code. (3-20-97)

01. In General. A taxpayer is subject to the allocation and apportionment provisions of Section 63-3027, Idaho Code, if it has income from business activity that is taxable both within and without Idaho. A taxpayer's income from business activity is taxable without Idaho if the taxpayer is taxable in another state within the meaning of Section 63-3027(c), Idaho Code, as a result of that business activity. A taxpayer is taxable in another state if it meets either of the following tests: (3-20-97)

a. The taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, as a result of its business activity in another state; or (3-20-97)

b. Another state has jurisdiction to subject the taxpayer to a net income tax as a result of its business activity, regardless of whether the state imposes the tax on the taxpayer. (3-20-97)

02. Not Taxable in Another State. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business. (3-20-97)

386. -- 389. (RESERVED).

390. TAXABLE IN ANOTHER STATE -- WHEN A TAXPAYER IS SUBJECT TO TAX (Rule 390).
Section 63-3027(c)(1), Idaho Code. (3-20-97)

01. Subject to Tax. A taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, if it carries on business activity in a state and that state imposes one of those taxes on it. A taxpayer that claims it is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, shall furnish the Tax Commission, at its request, evidence to support this claim. The Tax Commission may request that evidence include proof the taxpayer has filed the required tax return in the other state and has paid any taxes imposed by the law of that state. The taxpayer's failure to provide proof may be considered in determining whether the taxpayer is subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code. (3-20-97)

02. Concept of Taxability. The concept of taxability in another state is based on the premise that every state in which the taxpayer transacts business may impose an income tax even though every state does not do so. A state may impose other types of taxes as a substitute for an income tax. Only those taxes specified in Section 63-3027(c)(1), Idaho Code, that are revenue producing rather than regulatory in nature shall be considered in determining taxability in another state. (3-20-97)

03. Examples of Taxability. (3-20-97)

a. State A requires each corporation that qualifies or registers in State A to pay the Secretary of State an annual license fee or tax for the privilege of doing business in the state, regardless of whether it exercises the privilege. The amount paid is determined according to the total authorized capital stock of the corporation; the rates progressively increase. The statute sets a minimum fee of fifty dollars (\$50) and a maximum fee of five hundred dollars (\$500). Failure to pay the tax bars a corporation from using the state courts to enforce its rights. State A also imposes a corporation income tax. Corporation X is qualified in State A and pays the required fee to the Secretary of State, but does not transact business in State A, although it may use the courts of State A. Corporation X is not taxable in State A. (3-20-97)

b. Assume the same facts as in Subsection 390.03.a., except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is subject to the net income tax of State A and is taxable in State A. (3-20-97)

c. State B requires all corporations qualified or registered in State B to pay the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of: outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3) factor apportionment formula. Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is taxable in State B. (3-20-97)

d. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state, but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax. (3-20-97)

04. Voluntary Tax Payment. A taxpayer is not subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code, if the taxpayer voluntarily files and pays the tax when not required to do so by the laws of that state. (3-20-97)

05. Minimum Tax or Fee. A taxpayer is not subject to one of the taxes specified in Section 63-3027(c)(1), Idaho Code if it pays a minimal fee for qualification, organization, or the privilege of doing business in that state, but: (3-20-97)

a. Does not transact business in that state; or (3-20-97)

b. Engages in business activity not sufficient for nexus, and the minimum tax bears no relationship to the taxpayer's business activity within that state. (3-20-97)

c. Example. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty dollar (\$50) minimum tax, although it does not transact business in State A. Corporation X is not taxable in State A. (3-20-97)

391. -- 394. (RESERVED).

395. TAXABLE IN ANOTHER STATE -- WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (Rule 395).

Section 63-3027(c)(2), Idaho Code. (3-20-97)

01. In General. The test in Section 63-3027(c)(2), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity pursuant to the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax due to Public Law 86-272, Title 15, Sections 381 through 385, United States Code. (3-20-97)

a. When determining if a state has jurisdiction to subject a taxpayer to a net income tax, the jurisdictional standards applicable to a state of the United States shall also apply to the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. (3-20-97)

b. The provisions of a treaty between a state and the United States are not considered when determining jurisdiction to tax. (3-20-97)

02. Example. Corporation X is engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B. (3-20-97)

396. -- 449. (RESERVED).

450. APPORTIONMENT FORMULA (Rule 450).

Section 63-3027(i), Idaho Code. (3-20-97)

01. Apportionment Factors. All of a taxpayer's business income shall be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. (3-20-97)

02. Intercompany Transactions. All intercompany transactions shall be eliminated when computing the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. (3-20-97)

03. Rounding. The individual factors and the average apportionment factor shall be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. (3-20-97)

451. -- 459. (RESERVED).

460. PROPERTY FACTOR -- IN GENERAL (Rule 460).

Section 63-3027(k), Idaho Code. (3-20-97)

01. In General. The property factor of the apportionment formula for each trade or business of the taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the taxable year in the regular course of its trade or business. The term real and tangible personal property includes land, buildings, fixtures, inventory, equipment, and other property of a tangible nature, but does not include coin or currency. (3-20-97)

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 the 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 the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. (3-20-97)

03. Average Value. The property factor shall reflect the average value of property includable in the factor. See Rule 490 of these rules. (3-20-97)

04. Denominator. The denominator of the factor may not exceed the sum of all the numerators. (3-20-97)

461. -- 464. (RESERVED).

465. PROPERTY FACTOR -- PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (Rule 465).

Section 63-3027(k), Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. Property shall be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials 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. (3-20-97)

b. Property or equipment under construction during the taxable year, except inventorable goods in process, shall be excluded from the factor until the property is used in the regular course of the taxpayer's trade or business. (3-20-97)

c. If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property shall be included in the property factor to the extent used. (3-20-97)

d. Property used in the regular course of the taxpayer's trade or business shall remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or

business. (3-20-97)

02. Examples. (3-20-97)

a. A taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold. (3-20-97)

b. Assume the same facts as in Subsection 465.02.a., except the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold. (3-20-97)

466. -- 469. (RESERVED).

470. PROPERTY FACTOR -- CONSISTENCY IN REPORTING (Rule 470).

Section 63-3027(k), Idaho Code. (3-20-97)

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for valuing property, or for excluding or including property in the property factor in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. (3-20-97)

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in valuing property and in excluding or including property in the property factor, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. (3-20-97)

471. -- 474. (RESERVED).

475. PROPERTY FACTOR -- NUMERATOR (Rule 475).

Section 63-3027(k), Idaho Code. (3-20-97)

01. In General. 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 Idaho during the taxable year in the regular course of the taxpayer's trade or business. (3-20-97)

02. Property in Transit. Property of the taxpayer that is in transit between locations shall be considered to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it shall be included in the numerator according to the state of destination. (3-20-97)

03. Mobile or Movable Property. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year shall be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. An automobile assigned to a traveling employee shall be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. (3-20-97)

476. -- 479. (RESERVED).

480. PROPERTY FACTOR -- VALUATION OF OWNED PROPERTY (Rule 480).

Section 63-3027(l), Idaho Code. (3-20-97)

01. In General. Property owned by a 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 and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property shall be included in the property factor whether or not they have been expensed for either

federal or state tax purposes. (3-20-97)

02. Examples. (3-20-97)

a. A taxpayer acquired a factory building in Idaho at a cost of five hundred thousand dollars (\$500,000). Eighteen (18) months later the taxpayer remodeled the building for a cost of one hundred thousand dollars (\$100,000). The taxpayer files its return on the calendar year basis. The taxpayer claimed a depreciation deduction of twenty-two thousand dollars (\$22,000) on its current year return. The value of the building included in the numerator and denominator of the property factor is six hundred thousand dollars (\$600,000). The depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. (3-20-97)

b. During the current taxable year, X Corporation merged into Y Corporation in a tax-free reorganization pursuant to the Internal Revenue Code. At the time of the merger, X Corporation owned a factory that it built five (5) years earlier at a cost of one million dollars (\$1,000,000). X has been depreciating the factory at the rate of two percent (2%) per year. Its basis in X's hands at the time of the merger is nine hundred thousand dollars (\$900,000). Since Y acquired the property in a tax-free transaction, Y includes the property in its property factor at X's original cost of one million dollars (\$1,000,000). (3-20-97)

03. Unknown Original Cost. If the original cost of property cannot be determined, the property is included in the factor at its fair market value on the date it was acquired. (3-20-97)

04. Inventory. Inventory shall be included in the factor according to the valuation method used for federal income tax purposes. (3-20-97)

05. Gifts or Inheritance. Property acquired by gift or inheritance shall be included in the factor at its basis pursuant to the Internal Revenue Code. (3-20-97)

481. -- 484. (RESERVED).

485. PROPERTY FACTOR -- VALUATION OF RENTED PROPERTY (Rule 485).
Section 63-3027(l), Idaho Code. (3-20-97)

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. (3-20-97)

02. Examples of Subrents. (3-20-97)

a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market. (3-20-97)

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to other businesses. 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. (3-20-97)

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year shall be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month to month basis, the rent may not be annualized. (3-20-97)

04. Examples of Annual Rental Rate. (3-20-97)

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or $(\$2,500 \times 12)$. (3-20-97)

b. Assume the same facts as in Subsection 485.04.a., except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or $(\$2,500 \times 8)$. (3-20-97)

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: (3-20-97)

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. (3-20-97)

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent shall be determined by considering the relative values of the rent and the other items. (3-20-97)

06. Examples of Annual Rent. (3-20-97)

a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or $(\$12,000 + (1\% \times \$400,000))$. (3-20-97)

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). (3-20-97)

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). (3-20-97)

07. Exclusions. Annual rent does not include any of the following: (3-20-97)

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. (3-20-97)

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. (3-20-97)

08. Leasehold Improvements. Leasehold improvements shall be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements shall be included in the lessee's factor. (3-20-97)

09. Safe Harbor Lease. Property subject to a safe harbor lease shall be reported in the factor of the actual user of the property at original acquisition cost. (3-20-97)

486. -- 489. (RESERVED).

490. PROPERTY FACTOR -- AVERAGING PROPERTY VALUES (Rule 490).

Section 63-3027(m), Idaho Code.

(3-20-97)

01. In General. The average value of property owned by a taxpayer shall be determined by averaging the values at the beginning and end of the taxable year. (3-20-97)

02. Monthly Averaging. The Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the taxable year. Averaging by monthly values generally applies if there are substantial fluctuations in the property values during the taxable year or if property is acquired or disposed of during the taxable year. (3-20-97)

03. Rented Property. Rented property is averaged automatically by determining the net annual rental rate of the property as set forth in Rule 485 of these rules. (3-20-97)

491. -- 499. (RESERVED).

500. PAYROLL FACTOR -- IN GENERAL (Rule 500).

Section 63-3027(n), Idaho Code.

(3-20-97)

01. In General. The payroll factor of the apportionment formula for each trade or business of the taxpayer includes the total amount paid for compensation during the taxable year by the taxpayer in the regular course of its trade or business. (3-20-97)

02. Compensation. For purposes of the payroll factor, compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. (3-20-97)

a. Compensation includes the value of board, rent, housing, lodging, and other benefits or services the taxpayer furnished to employees in return for personal services if the amounts constitute income to the recipient pursuant to the Internal Revenue Code. (3-20-97)

b. If employees are not subject to the Internal Revenue Code, for example, those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees is made as if the employees were subject to the Internal Revenue Code. (3-20-97)

c. If wages paid to employees are capitalized into the cost of an asset that is used in the regular course of the taxpayer's trade or business, these wages are included in the payroll factor. (3-20-97)

03. Amount Paid. The total amount paid to employees is determined by the taxpayer's accounting method. If the taxpayer uses the accrual method of accounting, all compensation properly accrued is deemed to have been paid. At the election of the taxpayer, compensation paid to employees may be included in the payroll factor by using the cash method if the taxpayer is required to use that method to report compensation for unemployment insurance purposes. (3-20-97)

04. Employee. For purposes of the payroll factor, employee means any officer of a corporation, or any individual who, pursuant to the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person is considered an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term employees in the FICA who would not be employees pursuant to the usual common-law rules, it may be established that a person who is included as an employee for purposes of the FICA is not an employee for purposes of this rule. (3-20-97)

05. Exclusions. The following are excluded from the payroll factor: (3-20-97)

a. Compensation paid to an employee for services connected with the production of nonbusiness income; (3-20-97)

b. Payments to an independent contractor or a person not properly classifiable as an employee.

(3-20-97)

06. Year to Year Consistency. If a taxpayer departs from or modifies the method used for treating compensation paid in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return. (3-20-97)

07. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in treating compensation paid, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return. (3-20-97)

501. -- 504. (RESERVED).

505. PAYROLL FACTOR -- DENOMINATOR (Rule 505).

Section 63-3027(n), Idaho Code.

(3-20-97)

01. In General. The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. The denominator may not exceed the sum of all numerators. (3-20-97)

02. Example. A taxpayer has employees in States A, B, and C. However, in State C the taxpayer is immune from taxation by Public Law 86-272. The compensation paid to employees for services performed in State C is assigned to that state. This compensation is included in the denominator even though the taxpayer is not taxable in State C. (3-20-97)

506. -- 509. (RESERVED).

510. PAYROLL FACTOR -- NUMERATOR (Rule 510).

Section 63-3027(n), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(o), Idaho Code, apply in determining whether compensation is paid in Idaho. It shall be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. (3-20-97)

511. -- 514. (RESERVED).

515. PAYROLL FACTOR -- COMPENSATION PAID IN IDAHO (Rule 515).

Section 63-3027(o), Idaho Code.

(3-20-97)

01. In General. Compensation is paid in Idaho if one of the tests in Section 63-3027(o), Idaho Code, is met. (3-20-97)

02. Definitions. The following definitions shall be used for purposes of the payroll factor: (3-20-97)

a. Incidental means a service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction. (3-20-97)

b. Base of operations means the place of a more or less permanent nature where the employee starts his work and where he customarily returns to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to his trade or profession. (3-20-97)

c. Place from which the service is directed or controlled means the place where the power to direct or control is exercised by the taxpayer. (3-20-97)

516. -- 524. (RESERVED).

525. SALES FACTOR -- IN GENERAL (Rule 525).

Section 63-3027(p), Idaho Code.

(3-20-97)

01. In General. Sales means all gross receipts of a taxpayer not allocated as nonbusiness income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business.

(3-20-97)

02. Examples.

(3-20-97)

a. If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if these taxes are passed on to the buyer or included in the product's selling price.

(3-20-97)

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.

(3-20-97)

c. If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items.

(3-20-97)

d. If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property.

(3-20-97)

e. If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions.

(3-20-97)

f. If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor.

(3-20-97)

g. If a taxpayer derives receipts from foreign source dividends that are apportionable business income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales.

(3-20-97)

03. Disregarding Gross Receipts. In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules.

(3-20-97)

04. Year to Year Consistency. If a taxpayer departs from or modifies the basis used for excluding or including gross receipts in the sales factor in prior year Idaho returns, the taxpayer shall disclose the nature and extent of all modifications in its current year return.

(3-20-97)

05. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in including or excluding gross receipts, the taxpayer shall disclose the nature and extent of the variance in its current year Idaho return.

(3-20-97)

526. -- 529. (RESERVED).

530. SALES FACTOR -- DENOMINATOR (Rule 530).

Section 63-3027(p), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the

taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded by Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators. (3-20-97)

531. -- 534. (RESERVED).

535. SALES FACTOR -- NUMERATOR (Rule 535).

Section 63-3027(p), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (3-20-97)

536. -- 539. (RESERVED).

540. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (Rule 540).

Section 63-3027(q), Idaho Code. (3-20-97)

01. Gross Receipts. Gross receipts from sales of tangible personal property, except sales to the United States Government as discussed in Rule 545 of these rules, are in Idaho if: (3-20-97)

a. The property is delivered or shipped to a purchaser in Idaho regardless of the f.o.b. point or other conditions of sale; or (3-20-97)

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho and the taxpayer is not taxable in the state of the purchaser. (3-20-97)

02. Destination Sales. (3-20-97)

a. Property is deemed to be delivered or shipped to a purchaser in Idaho if the recipient is in Idaho even though the property is ordered from outside Idaho. Example: A taxpayer, with inventory in State A, sold one hundred thousand dollars (\$100,000) of its products to a purchaser with branch stores in several states including Idaho. The order for the purchase was placed by the purchaser's central purchasing department in State B. Twenty-five thousand dollars (\$25,000) of the purchase order was shipped directly to purchaser's branch store in Idaho. The branch store in Idaho is the purchaser in Idaho with respect to twenty-five thousand dollars (\$25,000) of the taxpayer's sales. (3-20-97)

b. Property is delivered or shipped to a purchaser in Idaho if the shipment terminates in Idaho, even if the property is subsequently transferred to another state by the purchaser. Example: A taxpayer makes a sale to a purchaser who maintains a central warehouse in Idaho where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Idaho constitute property delivered or shipped to a purchaser in Idaho. (3-20-97)

03. Purchaser. The term purchaser in Idaho includes the ultimate recipient of the property if at the request of the purchaser the taxpayer in Idaho delivers to or has the property shipped to the ultimate recipient in Idaho. Example: A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Idaho according to the purchaser's instructions. The sale by the taxpayer is in Idaho. (3-20-97)

04. Diverted Shipment. If a seller ships property from the state of origin to a consignee in another state, and the property is diverted while en route to a purchaser in Idaho, the sales are in Idaho. Example: The taxpayer, a produce grower in State A, begins shipping perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in Idaho where the taxpayer is subject to tax. The sale by the taxpayer is in Idaho. (3-20-97)

05. Throwback Sales. If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example:

A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. (3-20-97)

06. Third-Party Throwback Sales. If a taxpayer's salesman operating from an office in Idaho makes a sale to a purchaser in another state where the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: (3-20-97)

a. If the taxpayer is taxable in the state from which the third-party ships the property, the sale is in that state. (3-20-97)

b. If the taxpayer is not taxable in the state from which the property is shipped, the sale is in Idaho. (3-20-97)

c. Example. A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer is not taxable in State A. On direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Idaho. (3-20-97)

541. -- 544. (RESERVED).

545. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (Rule 545).

Section 63-3027(q), Idaho Code. (3-20-97)

01. In General. Gross receipts from sales of tangible personal property to the United States Government are in Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. For purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Generally, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, are not sales to the United States Government. (3-20-97)

02. Examples. (3-20-97)

a. A taxpayer contracts with the General Services Administration to deliver a truck that was paid for by the United States Government. The sale is a sale to the United States Government. (3-20-97)

b. A taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a rocket component for one million dollars (\$1,000,000). The sale by the subcontractor to the prime contractor is not a sale to the United States Government. (3-20-97)

546. -- 549. (RESERVED).

550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (Rule 550).

Section 63-3027(r), Idaho Code. (3-20-97)

01. In General. Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. (3-20-97)

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. The 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: (3-20-97)

- a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service; (3-20-97)
- b. The sale, rental, leasing, licensing or other use of real property; (3-20-97)
- c. The rental, leasing, licensing or other use of tangible personal property; (3-20-97)
- d. The sale, licensing or other use of intangible personal property; and (3-20-97)
- e. The mere holding of intangible personal property is not, by itself, an income producing activity. (3-20-97)

03. Costs of Performance. Costs of performance are the direct costs determined according to generally accepted accounting principles and accepted conditions or practices of the taxpayer's trade or business. (3-20-97)

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: (3-20-97)

- a. The income producing activity is performed wholly in Idaho; or (3-20-97)
- b. The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. (3-20-97)

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: (3-20-97)

a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. (3-20-97)

b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. (3-20-97)

c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) /(ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. (3-20-97)

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. (3-20-97)

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X

and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-20-97)

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000): (200 man hours /600 man hours) x \$9,000. (3-20-97)

551. -- 559. (RESERVED).

560. SPECIAL RULES (Rule 560).

Section 63-3027(s), Idaho Code. (3-20-97)

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases. Section 63-3027(s), Idaho Code, may be invoked only when unusual fact situations that ordinarily are unique and nonrecurring produce incongruous results pursuant to the apportionment and allocation provisions contained in Section 63-3027, Idaho Code. (3-20-97)

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: (3-20-97)

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

03. Special Industry Methods. Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in Section 63-3027(s), Idaho Code, or in Rules 560 through 599 of these rules precludes the Tax Commission from establishing appropriate procedures pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code, for determining the apportionment factors for each of these industries. These procedures shall be applied uniformly. See Rule 580 of these rules for the list of the special industries. (3-20-97)

561. -- 564. (RESERVED).

565. SPECIAL RULES -- PROPERTY FACTOR (Rule 565).

Section 63-3027(s), Idaho Code. (3-20-97)

01. Subrents. (3-20-97)

a. In General. If the subrents taken into account in determining the net annual rental rate pursuant to Rule 485 of these rules produce a negative or clearly inaccurate value for any item of property, another method that properly reflects the value of rented property may be required by the Tax Commission or requested by the taxpayer. The value may not be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. (3-20-97)

b. Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars (\$1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars (\$1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate

for the entire year, or two hundred thousand dollars (\$200,000). (3-20-97)

02. Market Rental Rate. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property is determined based on a reasonable market rental rate for the property. (3-20-97)

566. -- 569. (RESERVED).

570. SPECIAL RULES -- SALES FACTOR (Rule 570).
Section 63-3027(s), Idaho Code. (3-20-97)

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 the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts from Intangibles. If the income producing activity in respect to business income from intangible personal property can be readily identified, the income is included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Rule 525 of these rules, and income from the sale, licensing or other use of intangible personal property, see Rule 550 of these rules. (3-20-97)

571. -- 579. (RESERVED).

580. SPECIAL RULES -- SPECIAL INDUSTRIES (Rule 580).
Section 63-3027(s), Idaho Code. (3-20-97)

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States, May, 1996 Edition," published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. The following special industries shall apportion income in accordance with the applicable MTC regulation:(3-20-97)

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor shall be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-20-97)

b. Airlines. The apportionment of income derived by an airline shall be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-20-97)

c. Railroads. The apportionment of income derived by a railroad shall be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-20-97)

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others shall be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989; (3-20-97)

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting shall be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-20-97)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material shall be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-20-97)

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations. (3-20-97)

581. SPECIAL RULES -- REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (Rule 581).

Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations shall mean the following: (3-20-97)

01. Article IV. of the Multistate Tax Compact. (3-20-97)
 - a. Article IV. shall mean Section 63-3027, Idaho Code. (3-20-97)
 - b. Article IV.1 shall mean Section 63-3027(a), Idaho Code. (3-20-97)
 - c. Article IV.2 shall mean Section 63-3027(b), Idaho Code. (3-20-97)
 - d. Article IV.3 shall mean Section 63-3027(c), Idaho Code. (3-20-97)
 - e. Article IV.4 shall mean Section 63-3027(d), Idaho Code. (3-20-97)
 - f. Article IV.5 shall mean Section 63-3027(e), Idaho Code. (3-20-97)
 - g. Article IV.6 shall mean Section 63-3027(f), Idaho Code. (3-20-97)
 - h. Article IV.7 shall mean Section 63-3027(g), Idaho Code. (3-20-97)
 - i. Article IV.8 shall mean Section 63-3027(h), Idaho Code. (3-20-97)
 - j. Article IV.9 shall mean Section 63-3027(i), Idaho Code. (3-20-97)
 - k. Article IV.10 shall mean Section 63-3027(k), Idaho Code. (3-20-97)
 - l. Article IV.11 shall mean Section 63-3027(l), Idaho Code. (3-20-97)
 - m. Article IV.12 shall mean Section 63-3027(m), Idaho Code. (3-20-97)
 - n. Article IV.13 shall mean Section 63-3027(n), Idaho Code. (3-20-97)
 - o. Article IV.14 shall mean Section 63-3027(o), Idaho Code. (3-20-97)
 - p. Article IV.15 shall mean Section 63-3027(p), Idaho Code. (3-20-97)
 - q. Article IV.16 shall mean Section 63-3027(q), Idaho Code. (3-20-97)
 - r. Article IV.17 shall mean Section 63-3027(r), Idaho Code. (3-20-97)
 - s. Article IV.18 shall mean Section 63-3027(s), Idaho Code. (3-20-97)
02. MTC Regulations. (3-20-97)
 - a. Regulation IV.1 shall mean Rules 330 through 354 of these rules. (3-20-97)
 - b. Regulation IV.2 shall mean Rule 325 and Rules 355 through 384 of these rules. (3-20-97)
 - c. Regulation IV.3 shall mean Rules 385 through 399 of these rules. (3-20-97)
 - d. Regulation IV.9 shall mean Rules 450 through 459 of these rules. (3-20-97)
 - e. Regulation IV.10 shall mean Rules 460 through 479 of these rules. (3-20-97)

- f. Regulation IV.11 shall mean Rules 480 through 489 of these rules. (3-20-97)
- g. Regulation IV.12 shall mean Rules 490 through 499 of these rules. (3-20-97)
- h. Regulation IV.13 shall mean Rules 500 through 514 of these rules. (3-20-97)
- i. Regulation IV.14 shall mean Rules 515 through 524 of these rules. (3-20-97)
- j. Regulation IV.15 shall mean Rules 525 through 539 of these rules. (3-20-97)
- k. Regulation IV.16 shall mean Rules 540 through 549 of these rules. (3-20-97)
- l. Regulation IV.17 shall mean Rules 550 through 559 of these rules. (3-20-97)
- m. Regulation IV.18.(a) shall mean Rules 560 through 564 of these rules. (3-20-97)
- n. Regulation IV.18.(b) shall mean Rules 565 through 569 of these rules. (3-20-97)
- o. Regulation IV.18.(c) shall mean Rules 570 through 574 of these rules. (3-20-97)
03. Tax Administrator. Tax Administrator shall mean Tax Commission. (3-20-97)
04. This State. This state shall mean Idaho. (3-20-97)
05. The Apportionment Percentage. (3-20-97)
- a. References in MTC Regulation IV.18.(d) to the computation of the apportionment percentage being the total of the property, payroll and sales percentages divided by three (3), shall be replaced with the total of property, payroll, and two (2) times the sales percentages divided by four (4) as required by Section 63-3027(i), Idaho Code. (3-20-97)
- b. Examples. Since the Idaho sales factor is double-weighted, examples using a single-weighted sales factor shall be adjusted accordingly. (3-20-97)

582. -- 584. (RESERVED).

585. EXCEPTIONS TO APPORTIONMENT FORMULA -- SEPARATE ACCOUNTING (Rule 585).

Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. This determination shall be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. (3-20-97)

586. -- 589. (RESERVED).

590. EXCEPTIONS TO APPORTIONMENT FORMULA -- EXCLUSION OF A FACTOR (Rule 590).

Section 63-3027(s), Idaho Code. The apportionment of income provided in Section 63-3027, Idaho Code, requires the use of the three (3) factor apportionment formula described in Section 63-3027(i), Idaho Code. However, if one of the prescribed three (3) factors is inapplicable, the remaining two (2) factors shall be included as numerators of the fraction and the denominator of the fraction shall be two (2) or three (3) if necessary to maintain double weighting of the sales factor. (3-20-97)

591. -- 594. (RESERVED).

595. EXCEPTIONS TO APPORTIONMENT FORMULA -- ADDITIONAL OR SUBSTITUTE FACTORS (Rule 595).

Section 63-3027(s), Idaho Code. A factor other than the property, payroll, or sales factor may be used only with prior

approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. (3-20-97)

596. -- 599. (RESERVED).

600. ENTITIES INCLUDED IN A COMBINED REPORT. (Rule 600).

Section 63-3027(t), Idaho Code. (3-20-97)

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. (3-20-97)

02. Domestic International Sales Corporations. If 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) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (3-20-97)

03. Foreign Sales Corporations. If 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) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (3-20-97)

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. (3-20-97)

05. Insurance Companies. Pursuant to Section 41-405, Idaho Code, an insurance company subject to the premium tax may not be included in a combined group. (3-20-97)

601. -- 604. (RESERVED).

605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (Rule 605).

Section 63-3027(t), Idaho Code. (3-20-97)

01. Income -- In General. Income for the worldwide combined group shall be computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. (3-20-97)

02. Income -- Foreign Corporations Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are included in a federal consolidated return shall include in the combined report the taxable income reported on the federal consolidated return. (3-20-97)

03. Income -- Foreign Corporations Not Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are not included in a federal consolidated return, shall include in the combined report either the amount in Subsection 605.03.a. or 03.b. as the equivalent of taxable income. The option chosen must be used for all unitary foreign corporations not included in a federal consolidated return. (3-20-97)

a. The taxpayer may use the financial net income before income taxes as reported to the United States Securities and Exchange Commission (SEC) if required to file with the SEC. If not required to file with the SEC, the taxpayer may use the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. (3-20-97)

b. The taxpayer may use the financial net income of each foreign corporation adjusted to conform to tax accounting standards as would be required by the Internal Revenue Code if the corporation were a domestic corporation required to file a federal income tax return. (3-20-97)

04. Consistent Application of Book to Tax Adjustments. If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations shall be made for each unitary foreign corporation included in the combined report and shall 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.

(3-20-97)

05. Apportionment Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used.

(3-20-97)

606. -- 614. (RESERVED).

615. COMBINED REPORTS INCLUDING FOREIGN COUNTRY OPERATIONS (Rule 615).

Section 63-3027(t), Idaho Code.

(3-20-97)

01. Reporting Pursuant to the Internal Revenue Code. If a unitary business has foreign country operations that are required or allowed to report income pursuant to the Internal Revenue Code, the translation method for determining income for Idaho reporting purposes shall be the same as that used for federal reporting purposes.

(3-20-97)

02. Not Reporting Pursuant to the Internal Revenue Code. If a unitary business has foreign country operations that are not subject to the reporting requirements of the Internal Revenue Code, the following translation methods may be used for determining income:

(3-20-97)

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; or

(3-20-97)

b. Any other translation method that does not recognize unrealized exchange rate gain or loss resulting from the restatement of assets or liabilities and that reasonably reflects income from operations in the foreign country.

(3-20-97)

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

(3-20-97)

616. -- 619. (RESERVED).

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (Rule 620).

Section 63-3027, Idaho Code.

(3-20-97)

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture.

(3-20-97)

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement.

(3-20-97)

03. Multistate Partnerships. If a partnership operates in more than one state, its income shall be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership.

(3-20-97)

04. Partnership Income as Business Income of the Partner. (3-20-97)

a. Income. If the income or loss of a partnership is business income or loss to a corporate partner, its share of this net business income or loss shall be apportioned together with all other net business income or loss of the corporation. Business income or loss is defined by Section 63-3027(a)(1), Idaho Code, and Rules 330 through 334 of these rules. (3-20-97)

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, shall be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(p), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. (3-20-97)

05. Partnership Income as Nonbusiness Income of Partner. (3-20-97)

a. Income. If the partnership income or loss is not business income to a corporate partner, the income is nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner shall allocate the nonbusiness income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, shall specifically allocate to Idaho its share of the nonbusiness income attributable to Idaho. (3-20-97)

b. Factors. If the partnership income or loss is nonbusiness income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation. (3-20-97)

621. -- 639. (RESERVED).

640. WATER'S EDGE -- MAKING THE ELECTION (Rule 640).
Section 63-3027B, Idaho Code. (3-20-97)

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. (3-20-97)

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined report for Idaho income tax purposes. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-20-97)

a. The election can be made for a year beginning on or after January 1, 1993. See Rule 643 of these rules for Change of Election. (3-20-97)

b. All taxpayers required to file an Idaho return and included in the water's edge combined group must make the election. The election must be made on a form provided by the Tax Commission. If the group makes a joint election, a list of each corporation required to file must be provided. A joint election must be signed by an individual authorized to bind all companies to the election. (3-20-97)

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 Rules 640 through 649 of these rules. (3-20-97)

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho

Code. (3-20-97)

641. WATER'S EDGE -- ELEMENTS OF A COMBINED REPORT (Rule 641).

Section 63-3027B, Idaho Code. (3-20-97)

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group shall be eliminated. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included in the computation of the income of the water's edge combined group. (3-20-97)

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. When computing the apportionment factors of the water's edge combined group, intercompany transactions between members of the group shall be eliminated. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, shall be included in the sales factor computation. (3-20-97)

642. WATER'S EDGE -- LEGAL AND PROCEDURAL REQUIREMENTS (Rule 642).

Section 63-3027B, Idaho Code. (3-20-97)

01. Required Form. Proper filing of the water's edge election and consent for production of records must be made on the form provided by the Tax Commission and included in the original income tax return for the first tax year to which the election applies. (3-20-97)

02. Required Information. The following information must be included with each year's tax return for which a water's edge election applies: (3-20-97)

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; (3-20-97)

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; (3-20-97)

c. A copy of the federal consolidated return, if applicable; and (3-20-97)

d. A schedule of taxable income for each possession corporation excluded from the water's edge group pursuant to Section 63-3027B(a), Idaho Code. (3-20-97)

643. WATER'S EDGE -- CHANGE OF ELECTION (Rule 643).

Section 63-3027C, Idaho Code. (3-20-97)

01. In General. Except as provided in Section 63-3027C(a) (1), Idaho Code, the taxpayer must submit a written petition to the Tax Commission and be granted written permission to change its reporting method from water's edge for any subsequent tax year. (3-20-97)

a. A change in the reporting method includes conversion from the water's edge filing method to the worldwide filing method as well as the addition of companies previously omitted or the exclusion of companies previously included in the water's edge combined group, except in the case of companies acquired or disposed of during the taxable year. (3-20-97)

b. The Tax Commission may determine that one or more affiliated corporations should be included or excluded from the water's edge combined group. Income and apportionment factors shall be modified accordingly. (3-20-97)

02. Written Petition. A written petition must include the following: (3-20-97)
- a. An explanation of the legal or factual basis for requesting the change of reporting method; and (3-20-97)
- b. A computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. (3-20-97)
03. Due Date for Filing The Written Petition. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. (3-20-97)
04. Failure to Provide Required Information. Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. (3-20-97)
05. Approval Attached to Original Return. A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. (3-20-97)
06. Appeal Rights. A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer shall continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. (3-20-97)
- 644. WATER'S EDGE -- DISREGARDING THE ELECTION (Rule 644).**
Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. (3-20-97)
- 645. WATER'S EDGE -- TREATMENT OF DIVIDENDS (Rule 645).**
Section 63-3027C, Idaho Code. (3-20-97)
01. Dividends Received From Payors Incorporated Outside the United States. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. These dividends are treated 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. (3-20-97)
02. Dividends Received From Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water's edge combined group. (3-20-97)
03. Deemed Dividends from Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(a), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income. Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. (3-20-97)
04. Interest Expense Offset. The interest expense offset provided in Section 63-3022(a), Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. (3-20-97)
- 646. WATER'S EDGE -- DOMESTIC DISCLOSURE SPREADSHEET (Rule 646).**
Section 63-3027E, Idaho Code. (3-20-97)

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed with each original return to satisfy Idaho's legal and procedural requirements, unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. (3-20-97)

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 that disclose the same information. (3-20-97)

647. -- 703. (RESERVED).

704. CREDITS -- PASS-THROUGH ENTITIES (Rule 704).

01. In General. A credit earned by a partnership, S corporation, estate, or trust generally is claimed on the income tax returns of the partners, shareholders, or beneficiaries of the entity. (3-20-97)

a. Partnerships. A credit passes through to a partner based on that partner's distributive share of partnership profits. (3-20-97)

b. S Corporations. A credit passes through to a shareholder based on that shareholder's pro rata share of income or loss. (3-20-97)

c. Estates and Trusts. A credit passes through to a beneficiary in the same ratio that income is allocable to that beneficiary. (3-20-97)

02. Limitations. (3-20-97)

a. In General. Credits claimed on a partner's, shareholder's, or beneficiary's tax return may not exceed the limitations imposed by statute or rule. (3-20-97)

b. Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/3) share of the partnership profits. The partnership contributed three thousand dollars (\$3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars (\$1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of one hundred dollars (\$100) or twenty percent (20%) of his total income tax liability. (3-20-97)

c. Example. Assume the same facts as in Subsection 704.02.b., except Partner X also contributed two hundred dollars (\$200) to a qualifying educational institution. Subject to other limitations, the credit is six hundred dollars (\$600) computed as follows: $((\$1,000 + \$200) \times .5)$. (3-20-97)

03. Carryovers. Carryovers of credit are allowed to the partner, shareholder, or beneficiary to the extent provided by statute or rule. (3-20-97)

04. Different Taxable Year Ends. If a pass-through entity has a taxable year end different from that of a partner, shareholder, or beneficiary, the credit is available in the same taxable year that income or loss from that entity is reported. (3-20-97)

05. Information Provided by a Pass-Through Entity. The pass-through entity shall prepare and distribute to each partner, shareholder, or beneficiary a schedule detailing the proportionate share of each credit earned and any recapture that is required. Copies of these schedules shall be attached to the pass-through entity's Idaho income tax return or information return for the taxable year that the credit is earned and to each return on which the credit is claimed. (3-20-97)

06. Pass-Through Entities That Pay Tax. A pass-through entity is entitled to credits that generally pass through to the nonresident partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to

each owner's or beneficiary's tax liability being paid by the pass-through entity. (3-20-97)

705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS (Rule 705).

Section 63-3029A, Idaho Code. (3-20-97)

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. (3-20-97)

02. Limitations -- Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. Twenty percent (20%) of his total income tax liability; or (3-20-97)
b. Fifty dollars (\$50) if filing other than a joint return or one hundred dollars (\$100) if filing a joint return. (3-20-97)

03. Limitations -- Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. Ten percent (10%) of the total income tax liability; or (3-20-97)
b. Five hundred dollars (\$500). (3-20-97)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 704 of these rules. (3-20-97)

05. Other Limitations. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 760 of these rules for the priority of credits. (3-20-97)

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

07. Nonprofit Public and Private Museums. To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. (3-20-97)

706. -- 709. (RESERVED).

710. IDAHO INVESTMENT TAX CREDIT -- IN GENERAL (Rule 710).

Section 63-3029B, Idaho Code. (3-20-97)

01. Credit Allowed. The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules. (3-20-97)

02. Limitations. The investment tax credit allowable in any taxable year shall be limited by the following: (3-20-97)

a. The total amount of any investment tax credit claimed during a taxable year may not exceed forty-five percent (45%) of the tax, after credit for taxes paid another state, regardless of whether the investment tax credit results from a carryover earned in prior years, the current year, or both. For taxable years beginning prior to January 1, 1995, the credit claimed may not exceed fifty percent (50%) of the tax, after credit for taxes paid another state. (3-20-97)

b. If the investment tax credit and the Idaho new jobs credit are claimed or carried over, the investment tax credit is limited further by the provisions of Section 63-3029F, Idaho Code. See Rules 735 through 738 of these rules. (3-20-97)

c. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-20-97)

d. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 760 of these rules. (3-20-97)

03. Carryovers. (3-20-97)

a. Carryovers of investment tax credit for property acquired prior to January 1, 1995, may not include property acquired as replacement for reasons other than technical obsolescence. (3-20-97)

b. Investment tax credit earned on investments made before January 1, 1990, but not claimed against tax in the year earned is eligible for a five (5) year carryover. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. (3-20-97)

04. Motor Vehicle. Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

05. Expended Property. The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-20-97)

711. IDAHO INVESTMENT TAX CREDIT -- TAXPAYERS ENTITLED TO THE CREDIT (Rule 711).
Section 63-3029B, Idaho Code. (3-20-97)

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code, or Rule 736 of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-20-97)

02. Conversion of C Corporation to S Corporation. (3-20-97)

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on built-in gains, net capital gains, and excess net passive income. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. (3-20-97)

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

a. The distribution to members is made as provided in Rule 704 of these rules. (3-20-97)

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. (3-20-97)

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

712. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON MOVABLE PROPERTY IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1992 (Rule 712).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. The qualified investment for movable property is computed by multiplying the investment in that property by the Idaho apportionment factor, provided it otherwise qualifies for the investment tax credit. For example, a taxpayer determines the qualified investment for a fleet of new trucks based on the investment in the new trucks multiplied by the Idaho apportionment factor. The apportionment factor must be used to compute the credit for movable property unless the taxpayer can prove, pursuant to Section 63-3027(s), Idaho Code, the apportionment factor distorts the measure of Idaho business activity. (3-20-97)

02. Unitary Taxpayers. A corporation that is a member of a combined group must use its measure of business activity in Idaho to compute the qualified investment in movable property. The measure of business activity in Idaho must be computed using the denominators of the combined group. (3-20-97)

03. Recomputation of Carryover. If investment tax credit earned in taxable years beginning prior to January 1, 1992, is available to be carried over to taxable years beginning on or after January 1, 1992, the carryover must be recomputed if the credit earned included credit on movable property. Only the credit earned on property used in Idaho qualifies for the carryover as provided in Section 63-3029B, Idaho Code, and Rule 713 of these rules. This recomputation is made only for purposes of determining the allowable carryover. (3-20-97)

713. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (Rule 713).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. Carryovers of investment tax credit earned on property that first qualified for the credit in taxable years beginning prior to January 1, 1992, are subject to the provisions of this rule. (3-20-97)

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the Idaho property factor method. The credit for all property used both in and outside Idaho must be computed using the method elected. (3-20-97)

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. (3-20-97)

b. If the Idaho property factor method is elected, the total basis of all assets used in and outside Idaho that otherwise qualify for the credit is multiplied by the Idaho property factor of the taxpayer. (3-20-97)

03. Unitary Taxpayers. The property factor of a corporation that is a member of a combined group is

computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator. (3-20-97)

04. Examples. (3-20-97)

a. Idaho Percentage-of-Use Method. In January, 1992, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). (3-20-97)

b. Idaho Property Factor Method. Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars (\$50,000), the dump truck cost seventy-five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992. (3-20-97)

714. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (Rule 714).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. (3-20-97)

02. Election of Methods. The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (3-20-97)

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. See Subsection 713.04.a. of these rules for an example of the percentage-of-use method. (3-20-97)

b. If the property factor numerator option is elected, the qualified investment is the basis of the asset included in the numerator of the Idaho property factor for the year the credit is earned. For example, if a taxpayer is in the freight transportation business and thirty percent (30%) of his trucks' fleet miles were logged in Idaho during the year, 30% of the cost of a truck acquired that year would be included in the Idaho property factor numerator. If one of the trucks acquired that year traveled in Idaho, and cost one hundred thousand dollars (\$100,000), the amount included in the Idaho property factor numerator would be thirty thousand dollars (\$30,000). The qualified investment in this truck would also be thirty thousand dollars (\$30,000) resulting in a credit of nine hundred dollars (\$900). (3-20-97)

715. IDAHO INVESTMENT TAX CREDIT -- RECAPTURE (Rule 715).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. (3-20-97)

02. Recomputation of the Investment Tax Credit. (3-20-97)

a. The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify. (3-20-97)

b. The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04. (3-20-97)

c. The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture. (3-20-97)

03. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-20-97)

04. Applicable Recapture Percentages. For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows: (3-20-97)

a. If less than one (1) year, use one hundred percent (100%); (3-20-97)

b. If more than one (1) year but less than two (2) years, use eighty percent (80%); (3-20-97)

c. If more than two (2) years but less than three (3) years, use sixty percent (60%); (3-20-97)

d. If more than three (3) years but less than four (4) years, use forty percent (40%); (3-20-97)

e. If more than four (4) years but less than five (5) years, use twenty percent (20%). (3-20-97)

716. IDAHO INVESTMENT TAX CREDIT -- RECORD-KEEPING REQUIREMENTS (Rule 716).

Section 63-3029B, Idaho Code. (3-20-97)

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: (3-20-97)

a. A description of the property; (3-20-97)

b. The asset number assigned to the item of property, if applicable; (3-20-97)

c. The acquisition date and date placed in service; (3-20-97)

d. The basis of the property; (3-20-97)

e. The class of the property for recovery property or the estimated useful life for nonrecovery property; (3-20-97)

f. The designation as new or used property; (3-20-97)

g. The location and utilization (the usage both in and outside Idaho) of the property; (3-20-97)

h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and (3-20-97)

i. The reason for acquisition if acquired prior to January 1, 1995. (3-20-97)

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to

document acquisition, disposition, location, and utilization of assets include the following: (3-20-97)

a. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. (3-20-97)

b. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. (3-20-97)

c. Records verifying ownership including purchase contracts and cancelled checks. (3-20-97)

d. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. (3-20-97)

e. Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. (3-20-97)

f. Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars shall be calculated according to actual mileage in and outside Idaho. (3-20-97)

g. A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-20-97)

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-20-97)

04. Unitary Taxpayers. Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-20-97)

717. IDAHO INVESTMENT TAX CREDIT -- REPLACEMENT PROPERTY (Rule 717).

Section 63-3029B, Idaho Code. (3-20-97)

01. In General. The replacement property provisions apply to property acquired prior to January 1, 1995. (3-20-97)

02. Replacement Property Defined. Replacement property means property that is newly acquired, constructed, reconstructed, erected or placed into service and that performs functions that are the same as or similar to functions performed by other property used in a taxpayer's trade or business. (3-20-97)

03. Technical Obsolescence. Replacement property is presumed to have been acquired, constructed, reconstructed, erected or placed into service 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 acquired, constructed, reconstructed, erected, or placed into service only for reasons of technical obsolescence of existing property or property previously used in the taxpayer's trade or business. If any other reason for purchasing an asset exists, such as the need to replace worn out equipment, normal replacement cycles, relocations, etc., the property does not qualify. (3-20-97)

718. -- 729. (RESERVED).

730. CREDIT FOR CONTRIBUTIONS TO REHABILITATION FACILITIES (Rule 730).

Section 63-3029C, Idaho Code. (3-20-97)

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the

credit is claimed. Unpaid pledges do not qualify as contributions. (3-20-97)

02. Limitations -- Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

- a. Twenty percent (20%) of his total income tax liability; or (3-20-97)
- b. One hundred dollars (\$100) if filing other than a joint return or two hundred dollars (\$200) if filing a joint return. (3-20-97)

03. Limitations -- Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

- a. Ten percent (10%) of its total income tax liability; or (3-20-97)
- b. Five hundred dollars (\$500). (3-20-97)

04. Pass-through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 704 of these rules. (3-20-97)

05. Other Limitations. This credit plus any other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 760 of these rules for the priority of credits. (3-20-97)

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

731. -- 734. (RESERVED).

735. CREDIT FOR NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (Rule 735).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. (3-20-97)

01. In General. Only the activities listed in Section 63-3022H(7), Idaho Code, qualify as a revenue-producing enterprise. A revenue-producing enterprise does not include retail sales, professional, managerial or repair services. (3-20-97)

02. Multistate Businesses. To compute the credit, a business operating both within and without Idaho includes only the employees employed in Idaho in the revenue-producing enterprise. (3-20-97)

03. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities and at least fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-producing activity, the business as a whole qualifies as a revenue-producing enterprise. If less than fifty percent (50%) of the taxpayer's total Idaho employees are employed in the revenue-producing activity, the business as a whole does not qualify as a revenue-producing enterprise. (3-20-97)

04. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-20-97)

736. CREDIT FOR NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE JOBS CREDIT AND JOBS CREDIT CARRYOVER (Rule 736).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. (3-20-97)

01. In General. The number of new employees is used to compute the credit earned in the taxable year. To compute the credit for new employees, the taxpayer shall first calculate the number of employees in the revenue-producing enterprise. (3-20-97)

- 02. Calculating Number of Employees. (3-20-97)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. (3-20-97)

b. Idaho Department of Employment Reports. The taxpayer should begin with his Idaho Department of Employment reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-20-97)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-20-97)

03. Calculating the Number of New Employees. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-20-97)

a. The number of employees for the prior taxable year; or (3-20-97)

b. The average of the number of employees for the three (3) prior taxable years. (3-20-97)

04. Computing the Credit Earned. The number of new employees shall be rounded to the nearest tenth (.1) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: (3-20-97)

a. The number of new employees multiplied by five hundred dollars (\$500); or (3-20-97)

b. The net income of the revenue-producing enterprise, as determined pursuant to Rule 737 of these rules, multiplied by three and one-quarter percent (3.25%). (3-20-97)

05. Limitations. This credit and all other nonrefundable credits may not exceed thirty-three percent (33%) of the income tax liability in the year earned or claimed. The credit for taxes paid to other states is not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 760 of these rules for the priority order of credits. (3-20-97)

06. Carryover. To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-20-97)

07. Pass-Through Entities. See Rule 704 of these rules for pass-through entities and the calculation of credits. (3-20-97)

08. Unitary Taxpayers. (3-20-97)

a. A corporation may not use the credit for new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-20-97)

b. Each corporation in a unitary group that claims the new jobs credit is subject to Section 63-3029H, Idaho Code, and Rule 760 of these rules for the priority order of credits. (3-20-97)

737. CREDIT FOR NEW EMPLOYEES -- NET INCOME OF A REVENUE-PRODUCING ENTERPRISE (Rule 737).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996. The net income of a revenue-producing enterprise is calculated as follows: (3-20-97)

01. Proprietorships or Farms. The amount of income from Idaho activities as determined by the Internal Revenue Code that is reported as net profit or net loss on Schedule C or Schedule F on the federal income tax return. (3-20-97)

02. Corporations and Combined Corporate Returns. The amount of Idaho 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 a unitary combined report shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-20-97)

03. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to nonresident shareholders who do not report this income on Idaho income tax returns. (3-20-97)

04. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to nonresident partners who do not report this income on Idaho income tax returns. (3-20-97)

738. CREDIT FOR NEW EMPLOYEES -- DOCUMENTATION (Rule 738).

Section 63-3029E and Section 63-3029F, Idaho Code, as in effect prior to January 1, 1996. (3-20-97)

01. Adequate Records. 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 credit, the continued maintenance of adequate employment levels into carryover years, and the computation of any carryovers. (3-20-97)

02. Record Retention. These records must be maintained for as long as the credit may be carried over or until further assessments or deficiency determinations are barred by a period of limitation, whichever is longer. (3-20-97)

739. -- 759. (RESERVED).

760. PRIORITY ORDER OF CREDITS (Rule 760).

Section 63-3029H, Idaho Code. (3-20-97)

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

b. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

c. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

d. Credit for contributions to Idaho youth and rehabilitation facilities as authorized by Section 63-3029C, Idaho Code; (3-20-97)

e. New jobs tax credit as authorized by Sections 63-3029E and 63-3029F, Idaho Code, as in effect prior to January 1, 1996; and (3-20-97)

f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code. (3-20-97)

761. -- 769. (RESERVED).

770. GROCERY CREDIT (Rule 770).

Section 63-3024A, Idaho Code.

(3-20-97)

01. Residents Required to File.

(3-20-97)

a. A resident may claim a credit of fifteen dollars (\$15) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. (3-20-97)

b. A resident age sixty-five (65) or older may claim a credit of thirty dollars (\$30) for each personal exemption described in Subsection 770.01.a. that represents an individual age sixty-five (65) or over. (3-20-97)

c. A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (3-20-97)

02. Residents Not Required to File. A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for refund of the credit on a form approved by the Tax 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, including extensions. The following resident individuals are eligible for the credit: (3-20-97)

a. Individuals age sixty-two (62) or older; (3-20-97)

b. Disabled veterans; and (3-20-97)

c. Blind individuals. (3-20-97)

03. Part-year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (3-20-97)

04. Members of the Armed Forces. A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: (3-20-97)

a. Domiciled in Idaho is entitled to this credit; (3-20-97)

b. Residing in Idaho but who is a nonresident pursuant to the Soldiers' and Sailors' Civil Relief Act is not entitled to this credit. (3-20-97)

05. Spouse or Dependents of Armed Forces Members. A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (3-20-97)

06. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (3-20-97)

771. -- 799. (RESERVED).

800. VALID INCOME TAX RETURNS (Rule 800).

Section 63-3030, Idaho Code.

(3-20-97)

01. Requirements of a Valid Income Tax Return. In addition to the requirements set forth in Rule 150, Administration and Enforcement Rules, an income tax return shall meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income

tax return is considered to have filed no return. (3-20-97)

02. Copy of Federal Return Required. A taxpayer shall include a copy of his federal income tax return with his Idaho return unless he files an Idaho Form 40EZ. (3-20-97)

03. Partnerships That Do Not Transact Business in Idaho. If a partnership does not transact business in Idaho but has one or more resident partners, the partnership must file an Idaho Form 65 along with the first four (4) pages from its federal partnership return, Form 1065, and a copy of each Schedule K-1 reflecting distributions allocated to each Idaho resident partner. Submitting the Form 1065, Schedules K-1, and supporting schedules on microfiche or three and one-half (3-1/2) inch diskette along with Idaho Form 65 is acceptable. Taxpayers wishing to submit these schedules on a diskette should contact the Tax Commission for information regarding the acceptable format. (3-20-97)

801. -- 804. (RESERVED).

805. JOINT RETURNS (Rule 805).

Section 63-3031, Idaho Code. (3-20-97)

01. Effect of Filing Status Used on Federal Returns. A taxpayer shall use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. (3-20-97)

02. In General. (3-20-97)

a. A married couple may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. (3-20-97)

b. If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. (3-20-97)

03. Resident Aliens or United States Citizens Married to Nonresident Aliens. A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election shall be attached to the return for the first taxable year for which the election is to apply. In addition, the statement shall include the name, address, and taxpayer identification number of each spouse, and shall be signed by both individuals making the election. (3-20-97)

806. -- 809. (RESERVED).

810. TIME FOR FILING INCOME TAX RETURNS (Rule 810).

Section 63-3032, Idaho Code. (3-20-97)

01. Requirement to File. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year, as defined by the Internal Revenue Code. (3-20-97)

02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday or legal holiday, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. (3-20-97)

03. Mail. Section 63-2221, Idaho Code, specifies that an income tax return sent through the mail is

filed timely if it is postmarked on or before the due date of the return. (3-20-97)

04. Fifty-Two Fifty-Three (52-53) Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. (3-20-97)

811. -- 814. (RESERVED).

815. EXTENSIONS OF TIME (Rule 815).

Section 63-3033, Idaho Code. (3-20-97)

01. Individuals. An individual 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 show the same filing status and social security numbers that will be used on the tax return. (3-20-97)

02. Estates, Trusts and Partnerships. An estate, trust, or partnership 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. (3-20-97)

03. Corporations. A 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. Extension requests must be filed using the name and federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. If an extension request is filed for a group return, a list of all corporations required to file in Idaho must be attached. (3-20-97)

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 extends the time for filing, without delinquency penalty, up to six (6) months after the due date of the return. The completed return may be filed at any time prior to the expiration of the six (6) month period. Once the completed return is filed, the extension period expires. Any remaining tax is due when the completed return is filed. The taxpayer will be notified only if the extension request is denied. (3-20-97)

05. Taxpayers Abroad. In addition to the automatic two (2) month extension provided in Section 63-3033(a), Idaho Code, an additional four (4) month extension is granted if the individual files a valid Idaho Form 51 before the end of the automatic two (2) month extension period. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. (3-20-97)

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. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. (3-20-97)

07. Interest. If an extension of time to file an income tax return is granted, it does not alter the due date of the return for computing interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. However, if an extension of time was granted, the taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (3-20-97)

08. Penalties. The estimated tax paid with the request for extension, when combined with the tax previously withheld or paid, must be at least eighty percent (80%) of the total tax due pursuant to the provisions of this chapter, or must equal or exceed the total tax reported on the tax return for the preceding year. If the taxpayer did not file a return last year, he must pay at least eighty percent (80%) of the total tax due for this taxable year. Total tax due means a tax that is correctly determined on the tax return. Any deficiency may be subject to a five percent (5%)

penalty in addition to interest. (3-20-97)

816. -- 819. (RESERVED).

820. CORPORATE ESTIMATED PAYMENTS -- IN GENERAL (Rule 820).

Section 63-3036A, Idaho Code. (3-20-97)

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho investment tax credit, less the sum of any credits. Estimated payments are not included as a credit. (3-20-97)

02. Computation of Estimated Payments. (3-20-97)

a. Estimated tax is paid in four (4) payments. Each estimated payment shall be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. (3-20-97)

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of investment tax credit, less credits excluding estimated payments. (3-20-97)

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. (3-20-97)

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it shall recompute its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. (3-20-97)

04. Net Operating Loss Carryover. The allowable net operating loss carryover shall be deducted from income for the period before the estimated tax is computed. (3-20-97)

821. CORPORATE ESTIMATED PAYMENTS -- PAYMENTS (Rule 821).

Section 63-3036A, Idaho Code. (3-20-97)

01. Underpayments. A payment of estimated tax shall be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it shall be applied to the estimated payment then due. (3-20-97)

02. Overpayments. (3-20-97)

a. If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit against the next payment only to the extent it exceeds all underpayments of prior estimated payments. (3-20-97)

b. The overpayment shall be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. (3-20-97)

c. A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. (3-20-97)

03. Obligation to File Returns. The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. (3-20-97)

822. CORPORATE ESTIMATED PAYMENTS -- ANNUALIZED INCOME INSTALLMENT METHOD (Rule 822).

Section 63-3036A, Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. (3-20-97)

b. See Section 6655, Internal Revenue Code, for the determination of annualized income. (3-20-97)

02. Required Installment. The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: (3-20-97)

a. Twenty-two and one-half percent (22.5%) for the first period; (3-20-97)

b. Forty-five percent (45%) for the second period; (3-20-97)

c. Sixty-seven and one-half percent (67.5%) for the third period; and (3-20-97)

d. Ninety percent (90%) for the fourth period. (3-20-97)

03. Computation of Tax. The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. (3-20-97)

823. CORPORATE ESTIMATED PAYMENTS -- SHORT TAXABLE YEAR (Rule 823).

Section 63-3036A, Idaho Code. (3-20-97)

01. In General. If a short taxable year ends before an estimated payment due date, remaining estimated payments shall be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. (3-20-97)

02. Examples. (3-20-97)

a. X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1993 and ending August 31, 1994. For the short taxable year, January 1, 1993, to August 31, 1993, X must make estimated payments of twenty-five percent (25%) of its minimum payment on April 15, 1993, and June 15, 1993. The remaining payment of fifty percent (50%) of the minimum payment, twenty-five percent (25%) for the third payment plus twenty-five percent (25%) for the fourth payment, is due on August 15, 1993, the fifteenth day of the last month of the short taxable year. (3-20-97)

b. If, in the example in Subsection 823.02.a., X does not meet the requirement to make estimated payments until June 15, 1993, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third payment and twenty-five percent (25%) for the fourth payment. No payment for the first and second reporting period is required on August 15, 1993, the fifteenth day of the last month of the short taxable year. (3-20-97)

824. CORPORATE ESTIMATED PAYMENTS -- MISCELLANEOUS PROVISIONS (Rule 824).

Section 63-3036A, Idaho Code. (3-20-97)

01. Unitary Groups Filing Group Returns. (3-20-97)

a. Each corporation included in a group return that is required to make estimated payments shall separately compute its estimated tax. (3-20-97)

b. Estimated payments shall be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. (3-20-97)

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its taxes on built-in gains, capital gains, excessive passive investment income, and recapture of investment tax credit. (3-20-97)

03. Tax-exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. (3-20-97)

825. -- 829. (RESERVED).

830. INFORMATION RETURNS (Rule 830).

Section 63-3037, Idaho Code. (3-20-97)

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1099-MISC, Miscellaneous Income, if it is issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (3-20-97)

b. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax is withheld. (3-20-97)

c. Form 1099-S, Proceeds From Real Estate Transactions, if it is issued for transactions related to property located in Idaho. (3-20-97)

d. Form MSA-1, Medical Savings Accounts. (3-20-97)

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on federal Form 1099 or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)

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. (3-20-97)

831. -- 839. (RESERVED).

840. ELECTION CAMPAIGN FUND (Rule 840).

Section 63-3088, Idaho Code. (3-20-97)

01. In General. The individual income tax return has 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 1 of each calendar year or he may designate no specific party. (3-20-97)

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. (3-20-97)

841. -- 844. (RESERVED).

845. DESIGNATION OF SCHOOL DISTRICT (Rule 845).

Section 63-3089, Idaho Code. For purposes of designating the school district, the taxpayer's permanent place of residence is determined as of the last day of the taxable year. (3-20-97)

846. -- 854. (RESERVED).

855. PERMANENT BUILDING FUND TAX (Rule 855).

Sections 63-3082 through 63-3087, Idaho Code.

(3-20-97)

01. In General. The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code.

(3-20-97)

02. Pass-through Entities. The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A pass-through entity reporting and paying taxes of a nonresident partner, shareholder, or beneficiary is subject to the permanent building fund tax for each nonresident who is required to file an Idaho income tax return.

(3-20-97)

03. Corporations Included in a Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return.

(3-20-97)

04. Inactive or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax shall pay the permanent building fund tax.

(3-20-97)

856. -- 859. (RESERVED).

860. DONATIONS TO TRUST ACCOUNTS (Rule 860).

Sections 63-3067A and 63-3067B, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed.

(3-20-97)

861. -- 869. (RESERVED).

870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).

Sections 63-3035 and 63-3036, Idaho Code.

(3-20-97)

01. Idaho Withholding Account Number Required. An Idaho withholding account number is required of:

(3-20-97)

a. Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and

(3-20-97)

b. Each person who withholds Idaho income tax, whether required or voluntary.

(3-20-97)

02. Idaho Withholding Account Numbers Are Not Transferable. If a business is sold, the new employer shall apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity shall 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.

(3-20-97)

871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).

Sections 63-3035 and 63-3036, Idaho Code.

(3-20-97)

01. In General. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if:

(3-20-97)

a. The employee is a resident of Idaho; or

(3-20-97)

b. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to a nonresident employee; or

(3-20-97)

c. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to an agricultural, household or domestic employee. (3-20-97)

02. Services Performed Within and Without Idaho. An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on hours, mileage, or commissions. (3-20-97)

03. Exceptions to Withholding Requirements. Withholding is not required if: (3-20-97)

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. (3-20-97)

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; (3-20-97)

c. The compensation is paid to an interstate transportation employee of a rail, motor or water carrier covered by Title 49, Section 11504, United States Code, who is a nonresident of Idaho; or (3-20-97)

d. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 1512, United States Code, who is a nonresident of Idaho and earns less than fifty percent (50%) of his compensation in Idaho; or (3-20-97)

e. The compensation is exempt from federal withholding, except as described in Section 63-3036, Idaho Code, and Subsection 871.01.c. (3-20-97)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Filing of Returns. Generally, an employer shall file returns monthly to report payroll and remit any state income tax withheld. (3-20-97)

a. Employers who owe less than five hundred dollars (\$500) per calendar quarter and have established a satisfactory record of timely filing and payment of the tax may be allowed to file returns and remit the tax withheld quarterly. (3-20-97)

b. Agricultural, household and domestic employers shall file returns annually to report payroll and remit any state income tax withheld. (3-20-97)

c. A return shall be filed for each reporting period. For reporting periods in which the employer had no payroll or withheld no tax, the return shall be completed and filed by the due date. (3-20-97)

02. Extension of Time to File Returns. The Tax Commission may allow a one (1) month extension of time to file the withholding return. (3-20-97)

a. The employer shall file a written request that identifies the reason for the extension and include the required minimum payment by the due date of the withholding return. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (3-20-97)

b. The employer shall file a return reporting the actual tax withheld for the period within one (1) month of the due date. The tax paid with the extension request shall be shown on the adjustment line of the return. Interest from the due date applies to any additional tax due. (3-20-97)

03. Employer's Annual Reconciliation. On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding

reported on the W-2s. (3-20-97)

04. Employee's Wage and Tax Statements. Federal Form W-2 or a form of similar size and design may be used. Total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (3-20-97)

a. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (3-20-97)

b. On or before the last day of February, each employer shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. (3-20-97)

c. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (3-20-97)

d. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, 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 include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e), Idaho Code, and treated as if no W-2s were filed. (3-20-97)

05. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).

Section 63-3035, Idaho Code. (3-20-97)

01. Form W-4. Federal Form W-4, Employee's Withholding Allowance Certificate, shall be used for Idaho income tax withholding purposes. (3-20-97)

a. Employees subject to Idaho income tax withholding shall report the same marital status and total number of withholding allowances for Idaho as for federal income tax withholding purposes. (3-20-97)

b. Employers who are required to report exempt withholding status or excess withholding allowances to the Internal Revenue Service pursuant to Treasury Regulation 31.3402(f)(2)-1(g) shall submit a copy of this information to the Tax Commission. (3-20-97)

02. Verification and Notice. (3-20-97)

a. The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on a W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission shall issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. (3-20-97)

b. The Tax Commission shall notify the employer of the order. The order is effective immediately on receipt by the employer and shall remain in effect the rest of the calendar year, unless the employee files a W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. (3-20-97)

c. An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission shall issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. (3-20-97)

874. -- 879. (RESERVED).

880. CREDITS AND REFUNDS (Rule 880).

Section 63-3072, Idaho Code. (3-20-97)

01. Overpayment. The term overpayment includes: (3-20-97)
- a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
- b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
- c. All amounts erroneously or illegally assessed or collected. (3-20-97)
- d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)
02. Timely Claim Required for Refund. (3-20-97)
- a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)
- b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-20-97)
- c. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (3-20-97)
03. Amended Returns as Refund Claims. A properly signed amended tax return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended. Individuals use Form 40X, Amended Idaho Individual Income Tax Return. Corporations, partnerships, and fiduciaries use Form 41X, Amended Business Income Tax Return. (3-20-97)
04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)
05. Limitations on Refunds of Withholding and Estimated Payments. The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3035(e), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. (3-20-97)
06. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required

by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)

07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. (3-20-97)

08. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

881. -- 884. (RESERVED).

885. INTEREST ON REFUNDS (Rule 885).

Section 63-3073, Idaho Code.

(3-20-97)

01. In General. Taxpayers shall receive interest on refunds of all amounts illegally or erroneously assessed or collected. No interest is payable on refunds of amounts that are voluntary or unrequested payments exceeding the tax due. (3-20-97)

02. Computation. The Tax Commission shall compute interest on refunds as follows: (3-20-97)

a. Taxes erroneously or illegally assessed or collected. Interest shall be computed from the date the excess amount was received or the due date for filing the return to which the amount relates, whichever is later. (3-20-97)

b. Refunds of income tax withheld. The Tax Commission will pay interest on refunds of withholding if the refund is paid more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. For purposes of this rule, the refund is considered paid on the date it is postmarked. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine whether interest shall be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return. (3-20-97)

c. Tentative payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment. (3-20-97)

d. Refunds from net operating loss and capital loss carrybacks. Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year. (3-20-97)

886. -- 889. (RESERVED).

890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (Rule 890).

Section 63-3069, Idaho Code.

(3-20-97)

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. (3-20-97)

02. Written Notice. (3-20-97)

a. Written notice shall include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. (3-20-97)

b. Written notice 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. (3-20-97)

03. Immediate Notification. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within sixty (60) days of the final determination. (3-20-97)

891. -- 894. (RESERVED).

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (Rule 895).
Section 63-3068, Idaho Code. (3-20-97)

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

02. Protest of a Notice of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

03. Requests on Behalf of a Decedent for Prompt Action by the Tax Commission. After a return has been filed, the personal representative, executor, administrator, or other fiduciary representing the estate of a decedent may file a written request for prompt action pursuant to Section 63-3068(e), Idaho Code. The request: (3-20-97)

- a. Must be filed separately from any other document; (3-20-97)
- b. Must identify the period for which the prompt action is requested; (3-20-97)
- c. Must clearly say that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code; (3-20-97)
- d. Does not apply to any return filed after the date of the request; and (3-20-97)
- e. Applies only to returns reflecting income earned during the lifetime of a decedent, as defined for federal income tax purposes. (3-20-97)

04. Waiver of the Period of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. (3-20-97)

896. -- 899. (RESERVED).

900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (Rule 900).
Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals shall have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. (3-20-97)

901. -- 999. (RESERVED).