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**IDAPA 35
TITLE 01
CHAPTER 05**

35.01.05 - MOTOR FUELS TAXES

000. LEGAL AUTHORITY (Rule 000).

According to Sections 63-513, 63-2427 and 41-4908, Idaho Code, the Tax Commission promulgates rules implementing the provisions of the Idaho Motor Fuels Tax Act and the provisions of the Idaho Clean Water Trust Fund Act relating to the Idaho Clean Water Trust Fund Transfer Fee. (6-23-94)

001. (RESERVED).

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 the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that these documents are not confidential under Sections 63-2434, 41-4908, 63-3076, 63-3077 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the State Tax Commission. (6-23-94)

003. ADMINISTRATIVE APPEALS (Rule 003).

This chapter does allow administrative relief in the provisions outlined under Sections 63-2434, 41-4908, and 63-3045 through 63-3049, Idaho Code and pursuant to Rules promulgated by the Commission found in the Commission's administration and enforcement rules relating to income taxation, IDAPA 35, Title 02, Chapter 01. (7-1-97)

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-2434, 41-4908, 63-3076, 63-3077 or 9-340, Idaho Code. Non-confidential records are available for public inspection and copying at the main office of the State Tax Commission. (7-1-97)

005. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

The definitions provided by statute, including the definitions in Section 63-2401, Idaho Code, apply to these rules. Additionally, the following definitions shall apply. (6-23-94)

01. Bond. A person required to post a bond may, instead of posting a surety bond, deposit with the Commission any of the following amounts equivalent to the amount of the bond required: (6-23-94)

a. Investment Certificates. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in Idaho and insured by the Federal Savings & Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Commission along with a properly executed assignment form by which the funds on deposit are assigned and made payable to the Idaho State Tax Commission. (6-23-94)

b. Lawful Money. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order or other certified funds that are payable to the Commission. (6-23-94)

c. Letters of Credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Commission. The terms of the letter of credit must allow the Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (6-23-94)

d. Time Certificates. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation,

made in the name of the depositor, payable to the "Idaho State Tax Commission" and containing the provisions that interest earned shall be payable to the depositor. (6-23-94)

02. Commercial Motor Boat. A commercial motor boat, as defined in Section 63-2401(4), Idaho Code, includes a motor boat used in a business that rents boats to others who use the boats for pleasure. (6-23-94)

03. IFTA. Means the International Fuel Tax Agreement referred to in the Intermodal Surface Transportation Act of 1991, Public Law 102-240 Section 4008, 105 Stat. 1414 and in Section 63-2442A, Idaho Code. (6-23-94)

04. Pay, Paid, Payable or Payment. When used in reference to any amount of tax, penalty, interest, fee or other amount of money due to the Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States; provided however, acceptance by the Commission of any check that is subsequently dishonored by the bank upon which it is drawn shall not constitute payment. Additionally, nothing herein shall limit the authority of the Commission to refuse to accept any check drawn upon the account of a taxpayer who has previously tendered any check that was dishonored by the bank upon which it was drawn. All amounts due the state must be paid by electronic funds transfer whenever the total amount of tax due plus any related fee, interest, penalty or other additional amount is one hundred thousand dollars (\$100,000) or more, according to rules promulgated by the Idaho State Board of Examiners. (6-23-94)

05. These rules. The term "these rules" refers to this chapter, IDAPA 35.01.05, of rules relating to the Idaho Motor Fuels Tax and the Idaho Petroleum Transfer Fee. (6-23-94)

011. -- 099. (RESERVED).

100. USE TAX ON GASOLINE (Rule 100).

The tax imposed by Section 63-2402, Idaho Code, is a use tax complementary to the principal tax imposed by Section 63-2405, Idaho Code. It does not apply to any gasoline upon which the tax has already been paid by a licensed distributor. The tax shall be paid by the user filing with the Commission a report of the number of gallons used that are subject to this tax and by remitting the amount of tax due under this section. The report shall be filed no later than thirty (30) days after the end of the calendar quarter during which the use occurred. (6-23-94)

101. -- 114. (RESERVED).

115. HELICOPTER COMPANIES WHO IMPORT AIRCRAFT ENGINE FUEL INTO IDAHO FOR USE IN THEIR OWN AIRCRAFT (Rule 115).

01. In General. The state of Idaho imposes an excise tax and transfer fee on all aircraft engine fuel received in Idaho. Aircraft engine fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the aircraft engine fuel when the fuel arrives in Idaho. The excise tax and transfer fee due on the aircraft engine fuel received in Idaho during a month are normally reported on an Idaho Motor Fuels Distributor Return. (6-23-94)

02 Alternative Reporting for Qualified Helicopter Companies. As an option to obtaining an Idaho motor fuel distributor's license and the filing of monthly returns, a qualified helicopter company may file a Form 75 together with its Idaho income tax return to remit aircraft engine fuel tax due to the state of Idaho or to receive a refund of excess tax paid. (6-23-94)

03. Qualifications. To be a qualified helicopter company under this rule, a person must: (6-23-94)

a. Use the imported aircraft engine fuel only in its own aircraft; and (6-23-94)

b. Import less than one hundred thousand (100,000) gallons of aircraft engine fuel into Idaho for the company's taxable year; and (6-23-94)

c. Have in place a reliable and systematic method of reporting the number of gallons of aircraft engine fuel purchased in Idaho, and the number of gallons of aircraft engine fuel imported and exported, other than in the fuel supply tank of a helicopter. (6-23-94)

116. -- 119. (RESERVED).

120. MEASUREMENT OF GALLONS. (Rule 120.)

All reports requiring reporting the number of gallons of gasoline or aircraft engine fuel shall be stated in gross gallons. (6-23-94)

121. -- 129. (RESERVED).

130. DISTRIBUTOR'S FUEL TAX REPORTS (Rule 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels to the distributor during the month and the number of gallons supplied by each supplier, on a load by load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (7-1-98)

- a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b. The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c. The total quantity of motor fuels and other petroleum products disbursed to licensed distributors tax not collected or exported, and gasoline and aircraft engine fuel sold to the Idaho National Guard during the month; (7-1-98)
- d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one fuel type to another; (7-1-98)
- e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h. The tax-paid purchases; (7-1-98)
- i. The net taxable gallons; (7-1-98)
- j. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. See Subsections 140.02 and 140.03 of these rules; (7-1-98)
- k. The tax computation; (7-1-98)
- l. The bad debt amounts, refer to Rule 140 of these rules; (7-1-98)
- m. The gaseous fuels permit fees; (7-1-98)
- n. The net tax due; (7-1-98)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, penalty or interest due. See Motor Fuels Tax Administrative Rule, Subsection 010.04 relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-98)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth (10th) day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Not reported on a timely monthly report shall be subject to interest and may be subject to penalty; (7-1-98)

and

b. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

06. Motor Fuels-Receipts. All gasoline, gasohol, aircraft engine fuel, and undyed diesel fuel received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other non-propulsion petroleum products are not subject to the special fuels tax but are subject to the transfer fee. The special fuels tax is not imposed on gaseous special fuels when the fuels are received. Refer to Subsections 140.06 and 140.07 of these rules for the taxation of gaseous special fuels used in motor vehicles. (7-1-98)

131. -- 139. (RESERVED).

140. DEDUCTIONS (Rule 140).

01. Motor Fuels and Petroleum Products Presumed to Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

02. Distributor's and Retail Dealer's Allowances for Gasoline and/or Aircraft Engine Fuels. The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for gasoline and aircraft engine fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of gasoline and/or aircraft engine fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: (7-1-98)

- a. That the amount of the allowance has been passed on; or (7-1-98)
- b. A statement that the allowance has been deducted in determining the price. (7-1-98)
- 03. Distributor's Allowance for Special Fuels. The distributor who reports and pays the special fuels tax retains all of the two percent (2%) allowance and is not required to pass down a portion of the allowance to the retail dealer. (7-1-98)
- 04. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)
 - a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)
 - b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or (7-1-98)
 - c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)
 - d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. (7-1-98)
 - e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)
- 05. Bad Debt Write-Off. A tax credit may be taken on the distributor's fuel tax report for fuel taxes paid on sales made after July 1, 1995. The credit is claimed when the debt has been written off for income tax purposes in the business records of the distributor. The credit may be claimed on distributor's fuel tax report each month or at the end of the distributor's tax year after a debt has been written off. (7-1-98)
 - a. First-in/first-out method for partial payments. When partial payments are received on a specific account that includes taxable fuel sales, non-taxable fuel sales, and/or other sales, the distributor must apply the payments to the unpaid sales on a first-in/first-out basis before claiming a bad debt credit. (7-1-98)
 - b. Proration of partial payments. When partial payments are received on a specific account, before and/or after a bad debt credit has been claimed on the distributor's fuel tax report, the distributor must prorate the taxable fuel sales, nontaxable fuel sales, and/or other sales which occurred on the same day or on the same invoice for each such account. (7-1-98)
- 06. Gaseous Special Fuels. Propane or natural gas will be presumed to be tax-exempt unless delivered into the supply tank of a licensed, or required to be licensed, motor vehicle. (7-1-98)
- 07. Sales of Gaseous Special Fuels. Gaseous special fuels delivered into the fuel supply tank of a licensed, or required to be licensed, motor vehicle are taxable except for: (7-1-98)
 - a. Government. Gaseous special fuels used by vehicles owned or leased, and operated by the federal government, or by an instrumentality of the state of Idaho, including all of its political subdivisions, are exempt from the special fuels tax on gaseous fuels. In this case, the licensed distributor must record on the document of sale, the name of the governmental entity, the license or identification number, and the type of vehicle. (7-1-98)
 - b. Gaseous special fuels permits. Special fuels dispensed into the fuel supply tank of a motor vehicle displaying a valid Gaseous Special Fuels Decal are exempt from tax. For the exempt status to be valid, sales documentation must have the purchaser's name, address, vehicle license number, and the words "gaseous fuels decal." (7-1-98)

141. -- 149. (RESERVED).

150. DOCUMENTATION REQUIRED. (Rule 150).

01. Retail Sales Invoices for Delivered, Bulk Plant, and Station Sales. Any distributor who sells motor fuels and other petroleum products in this state must issue an original invoice to the purchaser; provided, however, that when sales are accounted for on a monthly basis the invoices may be issued to the purchaser at the time of billing. All sales invoices for motor fuels and other petroleum products sold at retail stations, bulk plants, or delivered to the customer's location must contain the following: (7-1-98)

- a. A pre-printed serial number, except when invoices are automatically assigned a consecutive serial number by a computer or similar machine when issued; (7-1-98)
- b. Name and address of the distributor; (7-1-98)
- c. Name of the purchaser; (7-1-98)
- d. Date of sale or delivery; (7-1-98)
- e. Type of fuel; (7-1-98)
- f. Gallons invoiced - reported as required in Section 120 of these rules; (7-1-98)
- g. Price per gallon and total amount charged. When taxable motor fuels products are sold, at least one (1) of the following must be used to establish that the Idaho state fuel tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. (7-1-98)
- h. Delivered sales invoices must also contain the purchaser's address along with the Origin and Destination of the motor fuels and other petroleum products. (7-1-98)
- i. The sales invoice shall contain double-faced carbons on the original of the first copy, unless invoices are automatically prepared by a computer or similar machine when issued. (7-1-98)

02. Correcting Sales Invoice Errors. When an original invoice is issued containing incorrect information, it may be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the transaction being corrected. If a second sales invoice is issued, it shall show the date and serial number of the original invoice and that the second invoice is in replacement or correction thereof. (7-1-98)

03. Documentation Is Required. Failure to include all the above documentation will result in an invalid sales invoice for a tax-paid fuel claim by the distributor's customer. (7-1-98)

04. Documentation Requirements for Dyed Diesel Fuel. The state of Idaho is following the Internal Revenue Service requirements for sales of dyed diesel fuel. The Internal Revenue Code requires that a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be: (7-1-98)

- a. Provided by the terminal operator to any person who receives dyed diesel fuel at a terminal rack of that operator, and (7-1-98)
- b. Provided by any seller of dyed diesel fuel to the buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a posted retail pump, and (7-1-98)
- c. Posted by a seller on any retail pump where the dyed diesel fuel is sold for use by the buyer. (7-1-98)
- d. The documentation notice found in this rule must be provided at the time of removal or sale and must appear on shipping papers, bills of lading, and sales invoices accompanying the sale or removal of the fuel. Any

person who fails to provide or post the required notice is presumed to know that the fuel will be used for a taxable use and is subject to penalties imposed by the Internal Revenue Service. (7-1-98)

151. -- 159. (RESERVED).

160. AIRCRAFT ENGINE FUEL TAX (Rule 160).

All provisions of Chapter 24, Title 63, Idaho Code, and of these rules relating to collection of the tax on gasoline shall be applicable to the collection of the aircraft engine fuel tax imposed by Section 63-2408, Idaho Code. (6-23-94)

161. -- 169. (RESERVED).

170. ADDITIONAL INFORMATION (Rule 170).

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes paid on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (7-1-98)

- a. Properly documenting information on the sales invoice, and; (7-1-98)
- b. Providing the customer with a Form 75-HF "Heating Fuel Only." (7-1-98)

02. Red-dyed High-sulfur Fuel. It is illegal to use red-dyed high-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state. (7-1-98)

03. Red-dyed Low-sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the federal government, state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur diesel fuel may be used: (7-1-98)

- a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)
- b. In the engine of a train; (7-1-98)
- c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)
- d. By a qualified local bus while the bus is engaged in furnishing intracity passenger land transportation for compensation, if the bus is available to the general public, operates along scheduled, regular routes, has a seating capacity of at least twenty (20) adults (not including the driver), and is under contract with, or receiving more than a nominal subsidy from, any state or local government to furnish such transportation; and (7-1-98)
- e. By an intercity bus to furnish, for some level of compensation, passenger transportation that is available to the general public, and the transportation is scheduled and follows regular routes, or the seating capacity of the bus is at least twenty (20) adults (not including the driver). (7-1-98)
- f. The buses identified in Subsections 170.03.d. and 170.03.e. above are available to the general public if the buses are available for hire to more than a limited number of persons, groups, or organizations. (7-1-98)

04. Motor Fuels Exemption from Sales Tax. Any sale of motor fuels by any fuel distributor which is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel, including dyed diesel fuel, is sold without the motor fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel delivered into bulk storage tanks, where the motor fuels tax is not charged, are exempt from Idaho sales tax only if the distributor has taken from the purchaser a sales tax exemption certificate in the manner required by Sales Tax Administrative Rule 75. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (7-1-98)

171. -- 179. (RESERVED).

180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (Rule 180).

01. Refund Claim. Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than that properly imposed may file a written claim with the State Tax Commission for a refund of such excess fuel taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule. (7-1-98)

02. Refund Claim Documentation. The claim must be in writing and must include the full name and address of the claimant and his fuel distributor's license number. The claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the tax relates and must state the period for which the claimed excess tax or transfer fee amount was paid. The claim for refund must include a statement that the amount refunded to the licensed fuel distributor has been, or will be, refunded by the fuel distributor to the purchaser, or that such fuel taxes or transfer fees have never been collected from the purchaser. (7-1-98)

03. Refund as a Credit. A claimant may claim a refund as a credit against motor fuels taxes or transfer fee due. The credit may be taken against the distributor's fuel tax report but the report must be preceded by a claim for refund in the manner required by Subsection 180.02 of this rule. (7-1-98)

04. Statute of Limitation. No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed excess taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first. (7-1-98)

05. Appeal Procedures. No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that fuels taxes or transfer fees have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (7-1-98)

06. Notice of Denial. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Idaho Administration and Enforcement Rule 300, as incorporated herein by Rule 330 of these rules. Such a petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to, or served upon, the claimant. (7-1-98)

181. -- 199. (RESERVED).

200. USE TAX ON SPECIAL FUELS (Rule 200).

01. In General. The tax imposed by Section 63-2416, Idaho Code, is a use tax complementary to the principal tax imposed by that section. In the case of special fuels used to operate or propel motor vehicles, which do not display a ninety-six (96) hour trip permit issued by the Idaho Transportation Department or are not licensed under IFTA, or to operate non-commercial motor boats within Idaho, and on which the Idaho special fuels tax was not paid at the time of purchase, the special fuels tax must be paid in the manner provided in Section 63-2421, Idaho Code, and Rule 230 of these rules. Motor vehicles which display a ninety-six (96) hour trip permit shall pay the special fuels tax in the manner provided in Section 63-2439, Idaho Code, and Rule 400 of these rules. Motor vehicles licensed under IFTA shall pay the fuels tax in the manner provided in that agreement. (7-1-98)

201. -- 229. (RESERVED).

230. SPECIAL FUELS SUBJECT TO USE TAX--REPORTING (Rule 230).

01. In General. Any person who has purchased tax-exempt special fuels and subsequently uses the special fuels in a licensed motor vehicle, not subject to Rule 400 of these rules, upon highways in Idaho, shall annually report to the State Tax Commission the amount of special fuels tax due. (7-1-98)

a. Reporting. A person who wishes to pay their fuel taxes due more frequently may file Form 75 for any time period that is not less than one (1) month. The report shall be made on forms prescribed by the State Tax Commission and may be made together with the claimant's Idaho income tax return, if such a return is required. The amount of fuels tax due on special fuels may be off-set against any refund due from other motor fuels taxes or income taxes. In the case of persons not required to file an income tax return, the amount of special fuels tax due or any refund claim shall be filed for a time period of not less than one (1) month on forms provided by the State Tax Commission for that purpose. See Rule 250 of these rules. (7-1-98)

b. Lack of records to compute fuel consumption rate. In the event that the special fuels consumer fails to keep sufficiently detailed records to determine special fuels consumed by its motor vehicles, the consumption rates found in Subsection 290.01.c. of these rules shall be presumed to be correct. (7-1-98)

c. Fuel records. If the special fuels consumer fails to keep sufficiently detailed records to determine taxable gallons, all tax-exempt special fuels purchased will be subject to the fuels tax unless the number of such gallons placed into the supply tank of the licensed or required to be licensed motor vehicle can be determined. (7-1-98)

231. -- 249. (RESERVED).

250. REFUND CLAIMS--REPORTING (Rule 250).

01. Refund Claim. Consumers claiming refunds of motor fuels taxes may file the claim together with their Idaho income tax return in the manner required for gasoline tax refunds, under Section 63-2410, Idaho Code, or in the case of claimants not required to file an income tax return, in the manner required by Section 63-2410(5)(b), Idaho Code. (7-1-98)

02. Minimum Filing Period for Refund Claims. Any taxpayer entitled to a refund of motor fuels taxes may file a refund claim which covers a time period of not less than one (1) month. (7-1-98)

03. Refund May Be Claimed Only by Final Consumer. Refunds of motor fuels taxes may be claimed on Form 75 by the person who purchased and used the motor fuels upon which the tax has been paid and for which a refund may be claimed. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or shareholders. (7-1-98)

04. Refund May Be Filed Separately. Refunds of motor fuels taxes are claimed using Form 75 and must be filed by the final purchaser and user of the motor fuels in conjunction with that person's Idaho income tax return or separately as a stand-alone refund claim. (7-1-98)

05. Refund Applied to Taxes Due. Any refund due to a consumer will be applied first to any liability due under any law administered by the State Tax Commission, including any liability under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has failed to file any tax return required to be filed with the State Tax Commission. Any balance of the refund exceeding taxes due shall be paid as a refund to the entity filing the return. (7-1-98)

251. -- 259. (RESERVED).

260. CALCULATION OF TAX ON GASEOUS FUELS (Rule 260).

01. In General. In all cases in which any tax under Chapter 24, Title 63, Idaho Code, must be calculated

for any special fuel that is a gaseous fuel, the following equivalency formulas shall be used to calculate the amount of tax due. (6-23-94)

- a. One (1) therm of natural gas will be the equivalent of one (1) gallon of liquid. (6-23-94)
- b. Four and one-fourth (4 1/4) pounds of propane will be the equivalent of one (1) gallon of liquid. (6-23-94)

02. Equivalent BTU's. Special fuels tax on gaseous fuels will be computed based upon the equivalent BTU's per gallon of gaseous fuels. The following values will be used in a formula establishing the rate:

Gasoline	127,000	BTU's per gallon
Propane	92,000	BTU's per gallon
Natural Gas	100,000	BTU's per gallon

(Natural gas 100,000 BTU x current tax rate) _____ = tax per therm gasoline 127,000 BTU

(Propane 92,000 BTU x current tax rate) _____ = tax per 4 1/4 gasoline 127,000 BTU pounds (6-23-94)

03. Annual Fee. Vehicles powered by gaseous special fuels may pay an annual fee instead of the special fuel taxes on propane or natural gas for a gaseous fuels permit. Special fuels dealers who sell these permits must issue a decal to be displayed in a conspicuous spot visible on the outside of the permitted vehicle. The fees for a gaseous fuels permit are based on the gross vehicle weight of the vehicle and are set out in Section 63-2424, Idaho Code. The annual fee for gaseous fuels permits, together with any penalty and interest due shall be remitted with the special fuels dealer report required in Section 63-2420, Idaho Code. (6-23-94)

04. Liability to the Commission. Any gaseous special fuels dealer required to collect the fee imposed by Section 63-2424(2), Idaho Code, who fails to collect such fee or any gaseous special fuels dealer required to remit the fee pursuant to this section who fails to make such remittance shall be liable to the commission for the amount of fee not collected or remitted plus any applicable penalty or interest. The commission may collect such amounts in the manner provided in Section 63-2434, Idaho Code. (6-23-94)

261. WHEN THE GASOLINE TAX RATE INCREASES, USE CONVERSION FACTOR TO ADJUST ANNUAL GASEOUS FUELS PERMIT FEES (Rule 261).

01. Gasoline Tax Rate Increase Conversion Factors. When the gasoline tax rate increases, the following conversion factors for each vehicle weight class should be multiplied by the new tax rate for gasoline found in Idaho Code, Section 63-2405 and rounded to nearest dollar to adjust the annual gaseous fuels permit fees. (7-1-97)

- a. A conversion factor of two hundred thirty eight (238) for vehicles weighing zero (0) to eight thousand (8,000) lbs. (7-1-97)
- b. A conversion factor of three hundred fifty seven (357) for vehicles weighing eight thousand and one (8,001) to sixteen thousand (16,000) lbs. (7-1-97)
- c. A conversion factor of seven hundred fourteen (714) for vehicles weighing sixteen thousand and one (16,001) to twenty six thousand (26,000) lbs. (7-1-97)
- d. A conversion factor of eight hundred thirty three (833) for vehicles weighing twenty six thousand and one (26,001) lbs. and above. (7-1-97)

262. -- 269. (RESERVED).

270. REFUND CLAIMS--DOCUMENTATION (Rule 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. In addition to the requirements outlined above, each invoice must contain or show the following: (7-1-98)

- a. A pre-printed serial number; (7-1-98)
- b. Name and address of seller; (7-1-98)
- c. Name of purchaser; (7-1-98)
- d. Date of delivery; (7-1-98)
- e. Type of motor fuel; (7-1-98)
- f. Gallons invoiced; (7-1-98)
- g. Price per gallon; (7-1-98)
- h. At least one (1) of the following to establish that tax has been charged: The amount of Idaho state fuels tax; the rate of Idaho state fuels tax; or a statement that the Idaho state fuels tax is included in the price. (7-1-98)

02. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided and retained by the seller for at least three (3) years from the date issued. (7-1-98)

03. Invoice Retention. The original invoices required by Subsection 270.01 of this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)

04. Refund Documents. For refund claims under Section 63-2410(5)(c), Idaho Code, an original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98)

05. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both refundable and nonrefundable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (7-1-98)

- a. Use of fuel from a single storage tank. Tax-paid fuel (other than fuel purchased by persons who operate motor vehicles that are over twenty-six thousand (26,000) pounds maximum gross weight) purchased and delivered into a single bulk storage tank and withdrawn for both nontaxable and taxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless another percentage is requested by the taxpayer and authorized by the State Tax Commission. The request shall itemize anticipated uses by type of equipment based on previously experienced use. The State Tax Commission will refund taxes paid on the percentage of taxed fuel presumed to be exempt. If refunds are claimed based on records of actual use, the records must be made

available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. (7-1-98)

b. Use of fuel from multiple storage tanks. When separate bulk storage tanks are maintained for both exempt and taxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel is used by motor vehicles licensed under IFTA. All fuel invoices must be retained as required by Subsection 270.03 of this rule. Exempt fuel may not be used in motor vehicles licensed or required to be licensed. (7-1-98)

c. Use of fuel for other than bulk storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motor boats, or vehicles other than licensed motor vehicles, must be identified on the purchase invoice. No other records will be required. (7-1-98)

271. -- 279. (RESERVED).

280. NONTAXABLE USES OF MOTOR FUELS (Rule 280).

01. Refunds for Nontaxable Uses of Motor Fuels Must Be Claimed on Form 75. The Idaho Form 75 must be used to claim a fuels tax refund for all nontaxable uses of Idaho tax-paid motor fuels, except for refunds claimed by IFTA carriers for nontaxable miles. (7-1-98)

02. Exempt Uses of Gasoline. The exempt uses of gasoline include operating stationary engines, commercial motor boats, equipment and vehicles other than motor vehicles. (7-1-98)

03. Exempt Uses of Special Fuels. In general, any use of special fuels is exempt, except propelling or operating a motor vehicle on a highway. (7-1-98)

281. -- 289. (RESERVED).

290. NONTAXABLE SPECIAL FUELS USED IN MOTOR VEHICLES (Rule 290).

01. Required Reporting. Reporting required for claims of nontaxable uses by special fuels motor vehicle users, except IFTA carriers. Refund claims for nontaxable uses of special fuels used in motor vehicles must be submitted on Form 75 with the relevant supplemental worksheet. The records required to document a refund request are as follows: (7-1-98)

a. Total miles. The total miles traveled should be included for motor vehicles which have nontaxable uses of special fuels. Special fuel carriers who qualify to use one of the "Standard MPGs" found in Subsection 290.02.g. of these rules need only record and report Idaho taxable miles. (7-1-98)

b. Total fuel. The total number of gallons of fuel delivered into the supply tanks of the motor vehicles should be included for motor vehicles which have nontaxable uses of special fuels. The total miles figure and the total fuel figure must be for the same vehicles. (7-1-98)

c. Miles per gallon. The miles per gallon shall be computed by dividing gallons reported according to Subsection 290.01.b. of this rule into the number of miles reported according to Subsection 290.01.a. of this rule. Round the miles per gallon to the nearest hundredth (0.00). The computation of fleet miles per gallon should be carried to three (3) decimal places and rounded to two (2) decimal places. Example: $4.514 = 4.51$ and $4.515 = 4.52$. In the event that the claimant fails to keep sufficiently detailed records showing the number of miles actually operated per gallon of special fuel consumed, it shall be presumed that not less than one (1) gallon of special fuel was consumed for every: (7-1-98)

i. Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight; or (7-1-98)

ii. Five and one-half (5 1/2) miles traveled by vehicles from twenty-six thousand and one (26,001) to forty thousand (40,000) pounds gross registered vehicle weight; or (7-1-98)

iii. Seven (7) miles traveled by vehicles from twelve thousand and one (12,001) to twenty-six thousand (26,000) pounds gross registered vehicle weight; or (7-1-98)

iv. Ten (10) miles traveled by vehicles from six thousand and one (6,001) to twelve thousand (12,000) pounds gross registered vehicle weight; or (7-1-98)

v. Sixteen (16) miles traveled by vehicles six thousand (6,000) pounds or less gross registered vehicle weight. (7-1-98)

d. The total taxable miles traveled in Idaho. Only taxable miles traveled in Idaho by the motor vehicles which have nontaxable uses of special fuels should be included. Taxable miles are miles driven on any road that is open to the use of the public and maintained by a governmental entity. Such roads may be constructed using concrete, asphalt, gravel, composition, dirt, or other surfaces. (7-1-98)

e. The number of gallons of special fuels consumed in Idaho. The gallons consumed in Idaho shall be computed by dividing the miles per gallon determined according to Subsection 290.01.c. of this rule into the total taxable miles in Idaho according to Subsection 290.01.d. of this rule. (7-1-98)

02. Nontaxable Uses of Special Fuels in Motor Vehicles. Records must be kept to show the actual number of gallons of tax-paid special fuel placed into the supply tank of the motor vehicle to receive a refund of the special fuels tax for nontaxable uses of special fuels. Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power-take-off (PTO) equipment. (7-1-98)

a. Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 290.02.b. of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. (7-1-98)

b. Special fuels users may exclude from total taxable miles traveled in Idaho the miles traveled on roadways, as defined in Section 63-2401(10), Idaho Code and described in this subsection, when computing their special fuels tax liability or refund if: (7-1-98)

i. The cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them; and (7-1-98)

ii. They operate motor vehicles that weigh over twenty-six thousand (26,000) pounds maximum gross weight on that roadway. (7-1-98)

iii. If the special fuels user is not using the "standard MPG" for its industry found in Subsection 290.02.g. of this rule, the special fuels user must maintain records documenting nontaxable miles traveled that qualify for exclusion under this provision. The roadways referred to in this subsection are those constructed and maintained by: The United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. (7-1-98)

c. Off-loading allowances. Total gallons of fuel may be reduced when special fuels are used for purposes other than to operate or propel a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for off-loading allowances are turning a vehicle-mounted cement mixer or off-loading product. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (7-1-98)

i. Gasoline/fuel oil: One and one half (1.5) gallons per ten thousand (10,000) gallons pumped; (7-1-98)

- ii. Bulk cement: Four (4) gallons per twenty-two and one half (22.5) tons pumped; (7-1-98)
 - iii. Lime: Three and fourteen one hundredths (3.14) gallons per hour; (7-1-98)
 - iv. Calcium crystals: Four and thirteen one hundredths (4.13) gallons per hour; (7-1-98)
 - v. Concrete: One (1) gallon per five (5) cubic yards; (7-1-98)
 - vi. Refrigeration Unit (Reefer): Three fourths (.75) gallon per hour; (7-1-98)
 - vii. Grain (dairy pellets): Thirteen one hundredths (.13) gallon per ton; (7-1-98)
 - viii. Grain meal (mash): Two hundred twenty-five thousandths (.225) gallon per ton; (7-1-98)
 - ix. Pulp: Fifty-three hundredths (.53) gallon/cord; one and eighty-nine hundredths (1.89) cords/gallon; four and seventy-three hundredths (4.73) gallons/hour; (7-1-98)
 - x. Tree length pulp: Five hundred three ten thousandths (.0503) gallon/ton; nineteen and eighty-eight hundredths (19.88) tons/gallon; three and forty-six hundredths (3.46) gallons/hour. (7-1-98)
- d. The gallons of fuel reported shall be the total number of gallons, as defined in Subsection 290.01.b. of this rule, consumed after deduction of the gallons allowed for the off-loading allowance. (7-1-98)
- e. An off-loading allowance which is not listed in Subsection 290.02.c. of this rule must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed off-loading allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to: (7-1-98)

FUELS TAX POLICY SPECIALIST
TAX POLICY SECTION
IDAHO TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722
(208) 334-7530

- f. Off-loading allowances listed in Subsection 290.02.c. of this rule may be granted for IFTA accounts by recomputing the total gallons of fuel consumed in all jurisdictions but must be applied for separately from the IFTA quarterly or annual reports. IFTA licensees claiming refunds of Idaho fuels tax resulting from the off-loading allowances established in Subsections 290.02.c. and 290.02.e. of this rule, must file the claim on an Idaho Fuels Use Report, Form 75. (7-1-98)
- i. The IFTA licensee must recompute the total fuel consumed in all jurisdictions by deducting the gallons allowed for the off-loading allowance from the total number of gallons of fuel consumed that was reported on the IFTA report. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. (7-1-98)
- ii. Additionally, a copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how the off-loading allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to audit, therefore, adequate documentation must be retained by the licensee. (7-1-98)
- g. A special rule may be applied for motor vehicles, except IFTA carriers, that use special fuels and accrue both taxable and nontaxable miles. These operators of motor vehicles that use special fuels, except those licensed under IFTA, may, instead of using the computations provided in Subsection 290.01.c., of this rule, presume

that when engaged in operations in the following industries and accruing taxable miles in Idaho, that such motor vehicles consume fuel at the following rates:

Logging	4.3 MPG
Agricultural	4.5 MPG
Sand, gravel & rock hauling	4.0 MPG
Construction	4.4 MPG

(7-1-98)

h. If an operator has reason to believe the standard on-road miles per gallon (MPG) in Subsection 290.02.g. is not an accurate reflection of his specific operation, the operator can calculate an actual MPG using the computations provided in Subsection 290.01.c. of this rule. (7-1-98)

291. -- 299. (RESERVED).

300. ADMINISTRATION, RULES AND DELEGATION OF AUTHORITY (Rule 300).

01. Rules Do Not Stand Alone. Where statutes appear to be clear and unambiguous without need for interpretation, expansion or construction, no rules have been promulgated. An effort has been made to prevent the rules from being merely repetitive of statutory provisions. Consequently, the rules do not stand alone as a statement of the motor fuels tax laws of this state. Instead, each rule must be read together with the statute to which it relates. The titles that introduce each rule are provided for the convenience of the reader and are not part of the rules. (6-23-94)

02. Transportation Department Personnel as Deputies of the Commission. Pursuant to the authority of Sections 63-2434 and 63-2442, Idaho Code, those individuals employed by the Idaho Transportation Department in the operation of stationary or mobile Ports of Entry are designated as deputies of the Commission for exercising the powers necessary to enforce the provisions of the special fuels tax laws. Such authority includes exercise of the powers described in Rule 400 of these rules. (6-23-94)

301. -- 309. (RESERVED).

310. EXEMPTION FROM REQUIREMENT FOR BONDS, DETERMINATION OF FINANCIAL RESPONSIBILITY (Rule 310).

01. Exemption to Bond Requirements for Licensed Distributors. Bonds, as referred to in Rule 010 of these rules are required of all licensed distributors unless the distributor is found financially responsible. A licensed distributor seeking exemption from the bonding requirement must apply for the exemption by filing a written petition with the Commission. The petition must contain information relating to the requirements of Section 63-2428, Idaho Code, for establishing financial solvency and responsibility. Together with the petition, the distributor must submit any information required in the following Subsections 310.01.a. through 310.01.e. (7-1-97)

a. If all or any part of the unencumbered property offered to show financial solvency is real property, the petition must include both a title report from an independent title company reporting on the state of the title of the real property as of a time not more than fifteen (15) days before the filing of the petition and a copy of the most recent valuation notice issued by the county assessor for ad valorem property tax purposes. (6-23-94)

b. If all or any part of the unencumbered property is licensed motor vehicles, the petition must include copies of the titles of the vehicles and evidence of the value of the vehicles from a source independent from the distributor. (6-23-94)

c. If all or any part of the unencumbered property is personal property other than motor vehicles, the petition must include a description of the property, evidence of ownership of the property, an independent appraisal of the property, and evidence that the property is unencumbered. Copies of all documents relating to all of the

distributor's current and long-term liabilities, including contingent liabilities, lawsuits or potential lawsuits to which the distributor is or may become a party, are required to establish that no security interests or other encumbrances exist. (6-23-94)

d. The petitioner must arrange, at the petitioner's expense, for an established, independent commercial credit rating company to submit directly to the Commission a current and complete credit report about the licensed distributor; or, the distributor must include with the petition its most recent financial statements, including a current income statement, balance sheet, and statement of cash flows. If the petitioner is a publicly held company, the financial statements must be certified by an independent certified public accountant and a responsible company officer must certify that the financial statements provided present fairly the financial position of the company. If the petitioner is a privately held company, the financial statements must be reviewed by a certified public accountant or licensed public accountant and a responsible company officer must certify that the financial statements provided present fairly the financial position of the company. (7-1-97)

e. The Commission may require the distributor to supplement its petition with such further information as the Commission, in its discretion, finds necessary to determine financial responsibility. (6-23-94)

02. Conditions for Termination of Exemption. If granted, the exemption from the bonding requirement shall terminate: (6-23-94)

a. One (1) year after the date on which it was granted. (6-23-94)

b. Upon the occurrence of any delinquency in motor fuels tax. (6-23-94)

c. Upon the occurrence of any encumbrance of any of the property upon which the finding of financial responsibility was based. (6-23-94)

d. Upon the occurrence of any change in the business activity of the distributor that would cause the amount of bond required to be increased to an amount greater than the value of the distributor's unencumbered assets. (6-23-94)

e. Upon the occurrence of any event prejudicing the distributor's solvency or financial responsibility. (6-23-94)

03. Bond Requirement upon Termination of Exemption. Immediately upon any termination of the exemption from the requirement for a bond the distributor must supply the required bond according to Section 63-2408, Idaho Code. (6-23-94)

04. Pending Application Does Not Excuse the Bond Requirement. Having an application pending for exemption from the requirement for a bond does not excuse the bond. If a bond exemption is due to expire, the distributor must submit a new petition applying for a continuation of the exemption no later than ninety (90) days before the day the exemption is due to expire to prevent a lapse in the exemption. The petition must meet all of the requirements of this rule. (6-23-94)

05. Conditions for Renewal of Bond Exemption. The following must be submitted to renew a bond exemption: (7-1-97)

a. A written request for renewal of waiver; (7-1-97)

b. The information required in Subsections 310.01.a. through 310.01.e. of this rule. (7-1-97)

311. -- 319. (RESERVED).

320. RECORDS RETENTION REQUIREMENTS (Rule 320).

01. Records Required. Any person importing, manufacturing, refining, dealing in, transporting, storing or selling any motor fuels in this state shall keep such records, receipts and invoices as will show all purchases, sales,

receipts, or deliveries of motor fuels in this state. Such records shall be maintained for at least three (3) years.

(6-23-94)

02. Motor Fuels Subject to Use Tax. Any person who has purchased tax-exempt motor fuel and subsequently uses the fuel in a manner that is subject to a motor fuel use tax, shall maintain records sufficient to establish the quantity of motor fuel subject to tax.

(7-1-98)

03. Original Invoice Retention. The original invoices required by Rule 270 of these rules, relating to refunds of gasoline and special fuels tax paid on certain fuel used off-road, shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer.

(7-1-98)

321. -- 329. (RESERVED).

330. INCORPORATION BY REFERENCE OF RELEVANT INCOME TAX RULES (Rule 330.)

Section 63-2434, Idaho Code, incorporates by reference various provisions of the Idaho Income Tax Act to apply to administering and enforcing the taxes on motor fuels. For applying and construing those sections as they apply to taxes on motor fuels, the administration and enforcement rules previously promulgated or to be promulgated or amended by the Commission are hereby adopted as part of these rules as if set out in full. In addition, Administration and Enforcement Rule 110 (IDAPA 35.02.01, Section 110) is hereby adopted as part of these rules as if set out in full.

(7-1-97)

331. -- 399. (RESERVED).

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND (26,000) POUNDS MAXIMUM GROSS WEIGHT. (Rule 400.)

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA.

(7-1-98)

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels as defined in Section 63-2401(20), Idaho Code, on the highways of this state without having obtained one (1) of the following:

(7-1-98)

a. A registration to operate the motor vehicle solely within this state under section 49-434, Idaho Code.

(7-1-98)

b. A ninety-six (96) hour trip permit from the Idaho Transportation Department.

(7-1-98)

c. An IFTA license.

(7-1-98)

d. In the case of vehicles powered by gaseous fuels, a gaseous fuel permit as provided by Section 63-2424, Idaho Code.

(7-1-98)

e. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements.

(7-1-98)

02. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions.

(7-1-98)

03. Trip Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code or IFTA licensed, shall secure a ninety-six (96) hour temporary trip permit from the Idaho Transportation Department in the manner provided and required by that department.

(7-1-98)

04. Failure to Obtain an IFTA License or a Temporary Trip Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under section 49-434, Idaho Code, an IFTA license or an Idaho ninety-six (96) hour trip permit is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a ninety-six (96) hour trip permit. (7-1-98)

401. -- 409. (RESERVED).

410. ADOPTION OF INTERNATIONAL FUEL TAX AGREEMENT (Rule 410).

Under the authority of Sections 63-2434, 63-3039, 67-5203A, and 63-2442A, Idaho Code, the Commission and special fuels users licensed or required to be licensed pursuant to IFTA, are governed by the provisions of the International Fuel Tax Agreement, including the IFTA Procedures and Audit Manuals in effect on the effective date of this rule and as subsequently amended. Special fuels users who operate under the International Fuel Tax Agreement also must comply with all applicable Rules contained in these rules. (6-23-94)

411. -- 419. (RESERVED).

420. DOCUMENTATION FOR IFTA CARRIER REPORTING AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUEL IN A MOTOR VEHICLE (Rule 420).

01. Records Required for Idaho IFTA Carriers and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle. Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a ninety-six (96) hour trip permit, or a special fuels user claiming nontaxable use of tax-paid special fuels in a motor vehicle using a Form 75, shall retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. (7-1-98)

02. Fuel Records. In order for the IFTA carrier or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the special fuels user showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but not be limited to, the following: (7-1-98)

- a. The date of each receipt of fuel; (7-1-98)
- b. The name and address of the person from whom purchased or received; (7-1-98)
- c. The number of gallons received; (7-1-98)
- d. Both taxable and nontaxable usage of fuel; (7-1-98)
- e. The type of fuel; (7-1-98)
- f. The specific vehicle or equipment into which the fuel was placed; (7-1-98)
- g. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; (7-1-98)
- h. Documents necessary to substantiate volume, time or weight for off-loading allowances described in Subsection 290.02.c. of these rules. (7-1-98)

03. Mileage Records. Non-IFTA carriers who qualify to use one of the "Standard MPG's" found in

Subsection 290.02.g. of these rules need only record and report Idaho taxable miles. All IFTA carriers and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records shall contain, but not be limited to: (7-1-98)

a. Total trip miles, including vicinity miles, except for non-IFTA motor vehicle(s) using one (1) of the "standard miles per gallon" (MPG) found in Subsection 290.02.g. of these rules; (7-1-98)

b. Miles traveled for taxable and nontaxable use. Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the "standard miles per gallon" found in Subsection 290.02.g. of these rules; (7-1-98)

c. Mileage recaps for each vehicle. IFTA carriers are required to keep mileage recaps for each state or jurisdiction in which the IFTA vehicle operated; (7-1-98)

d. Starting and ending dates of trips; (7-1-98)

e. Trip origin, interim stops and destination; (7-1-98)

f. Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each jurisdiction's border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods; (7-1-98)

g. Complete routes of travel, including pick up and delivery locations; (7-1-98)

h. Vehicle license number or unit number; (7-1-98)

i. Driver's name. (7-1-98)

04. Additional Records Requirements. Other records may be required such as bills of lading or manifest documents; vehicle dispatch ledgers; accounts payable and receivable; lease agreements; quarterly mileage returns filed with the Idaho Transportation Department; driver pay records; driver logs; fuel use trip permits; and other documents used in preparing fuel tax reports. (7-1-98)

05. Trip Summaries. Individual trips shall be accumulated into monthly, quarterly, or annual summaries. These summaries shall be used as the basis for the miles submitted on the IFTA quarterly or annual reports, and on the worksheet submitted with the Form 75. (7-1-98)

06. Computer Printout Support. Hard copies of summary computer printouts must be supported by trip sheets or logs verifying mileage traveled. (7-1-98)

07. Mileage Information. Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. Non-IFTA carriers who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho. (7-1-98)

08. Records Retention. The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return. Records shall be retained for four (4) years for IFTA license holders. (7-1-98)

09. U.S./Metric Conversion. The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

One (1) Liter	=	.2642 gallons
One (1) Gallon	=	3.785 liters

One (1) Mile	=	1.6093 kilometers
One (1) Kilometer	=	.62137 miles

(7-1-98)

10. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point to point mileage differences. (7-1-98)

421. -- 499. (RESERVED).

500. IDAHO CLEAN WATER TRUST FUND TRANSFER FEE (Rule 500).

01. Petroleum Transfer Fee. The fee imposed by Section 41-4908, Idaho Code, is The Idaho Clean Water Trust Fund Transfer Fee. For simplicity, it shall be called the Petroleum Transfer Fee in these rules. (6-23-94)

02. Petroleum Transfer Fee Described. The Petroleum Transfer Fee is not a tax on motor fuels. It is a fee directly related to the costs of services provided by the Idaho Petroleum Clean Water Trust Fund. The inclusion of these rules relating to the Petroleum Transfer Fee with these Motor Fuels Tax Rules and the incorporation of other tax rules in these rules is for administrative convenience only. The Tax Commission intends no implication that the Petroleum Transfer Fee is in any way a tax on motor fuels and no such inference should be drawn from these rules. (6-23-94)

501. -- 509. (RESERVED).

510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (Rule 510).

01. Application. (6-23-94)

a. The Petroleum Transfer Fee applies to the act of delivering or storing any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product delivered or stored. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid for the same petroleum or petroleum product. (6-23-94)

b. The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

02. Receipt of Petroleum Products. Receipt of petroleum or petroleum products shall be determined according to Rule 110 of these rules. (6-23-94)

03. Exemption to Application of the Transfer Fee. The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 150 of these rules. (6-23-94)

c. Transferred by a railroad or railroad corporation or any employee of them. Petroleum products sold by a licensed distributor, other than a licensed distributor that is a railroad or railroad company, to a railroad or railroad company or any employee of them is not subject to the Petroleum Transfer Fee. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad company. (6-23-94)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. Casualty Loss and Shrinkage Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. The deductions allowed to gasoline distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for cost of collection and loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (6-23-94)

05. Petroleum and Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty(60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as gasohol, including the alcohol content of blended fuel, diesel fuel, heating oil, aviation fuel, motor oil, brake fluid, and transmission fluids. (6-23-94)

06. Licensed Distributors and Limited Licenses. Any person holding a gasoline distributor's license issued by the Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who first receives any petroleum or petroleum product in this state, the delivery or storage of which is subject to the fee, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-97)

07. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2409, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the gasoline tax imposed by Section 63-2405, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the gasoline tax on the same fuel. (6-23-94)

b. Persons holding a limited license shall file a monthly report with the Tax Commission on forms prescribed by the Commission on or before the last day of the month following the month to which the report relates. (6-23-94)

c. The provisions of Rule 140 of these rules, apply to reports of the Petroleum Transfer Fee. (6-23-94)

08. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

09. Incorporation of Other Relevant Rules. Section 41-4908, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (7-1-97)

511. -- 999. (RESERVED).

APPENDIX A

**IDAHO DIESEL/PROPANE FUEL
TAX EXEMPTION CERTIFICATE**

Company Name: Date:

Address:

The undersigned purchaser hereby certifies that diesel/propane fuel ordered by the purchaser will be delivered into stationary bulk storage tanks with a capacity of fifty five (55) gallons or more.

The purchaser certifies the diesel fuel's intended use is primarily (more than fifty percent (50%)) for purposes other than propelling a motor vehicle designed for operation or required to be licensed for operation upon public roadways maintained by any government entity. (See IDAPA 35.01.05.220.05.)

Describe the diesel fuels intended off-road use.

If any portion of the fuel purchased under this certificate is used on public roadways or used for a purpose other than as stated in this certificate, then the purchaser assumes all responsibility for payment of any tax due to the state of Idaho.

Purchaser agrees to notify in writing,

_____ (Special Fuel Dealer Name)
if at any time the primary use of the fuel becomes subject to fuels tax.

Purchaser will be prepared to verify by satisfactory evidence the purpose for which purchaser used the product bought under this certification.

Purchaser understands that any fraudulent use of this certificate to buy any fuel free to tax may subject purchaser to civil or criminal penalties.

Customer Account No. _____ Phone No. _____
Account Name (print): _____
Address: _____ City: _____
Signature: _____ Title: _____

APPENDIX B
KEYLOCK/CARDLOCK CUSTOMER AFFIDAVIT

Customer Name: Acct. No. _____

Business Name (dba): _____

Address: _____

City: _____ State: _____ Zip Code: _____

THIS FORM MAY BE USED TO PURCHASE EXEMPT DIESEL/PROPANE FUEL ONLY FOR THE USES SPECIFIED BELOW.

I certify, under penalty of perjury, that I purchase diesel fuel from the keylock/cardlock system of _____ in containers for a use that is not taxable by the state of Idaho under Idaho Code, Title 63 or in the fuel tank of equipment which is not required by Idaho law to be licensed. Specific equipment is as follows:

-- OR --

I certify, under penalty of perjury, that I purchase propane fuel from the keylock/cardlock system of _____ in cylinders or the fuel tank of equipment which is not required by Idaho law to be licensed or a licensed vehicle which displays a valid gaseous fuels decal. Specific equipment is as follows:

-- OR --

I certify, under penalty of perjury, that the diesel, propane, or natural gas that I purchase from the keylock/cardlock of _____ is for use in vehicles over sixteen thousand (16,000) pounds gross weight which are owned or leased and operated by the state of Idaho or other exempt state or local government.

-- OR --

I certify, under penalty of perjury, that the diesel, propane, or natural gas that I purchase from the keylock/cardlock of _____ is for use in vehicles owned or leased and operated by the federal government.

I, the undersigned, further agree that if any taxable use of such fuel should arise from my purchases, I will assume responsibility for payment of such taxes.

Signature _____

Date _____