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**IDAPA 35
TITLE 01
Chapter 06**

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

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-105, 67-4718, and 67-4917B, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Code relating to hotel/motel room charges. These rules do not apply to sales taxes imposed by resort cities, unless such taxes are administered by the State Tax Commission. (7-1-98)

001. TITLE AND SCOPE (Rule 001).

These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules". These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds. These rules shall also impose a retail sales tax upon the user or occupant of a hotel or motel room which is located in the Greater Boise Auditorium District. (7-1-93)

002. WRITTEN INTERPRETATIONS (Rule 002).

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address. (3-15-02)

003. ADMINISTRATIVE APPEALS (Rule 003).

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

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. (3-15-02)

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (Rule 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.state.id.us". All offices are open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

006. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

01. Campground Defined. Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor

homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. (7-1-93)

02. Hotel Or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. (7-1-93)

a. Furnishing rooms for a consideration includes rooms provided for personal occupancy and rooms provided for meeting, convention, or other commercial purposes. (7-1-93)

b. The rental of condominiums or townhouses is subject to tax unless exempted under the provisions of ISTC 16. The rental of rooms by a public or private educational institution is subject to tax, unless exempted under the provisions of ISTC 16. The rental of rooms by hospitals, nursing homes, or similar institutions to nonpatients is subject to tax, unless exempted under the provisions of ISTC 16. (7-1-93)

011. HOTEL/MOTEL ROOM SALES TAX (Rule 011).

01. In General. These rules apply to: (7-1-93)

a. The Idaho Travel and Convention Tax imposed by Section 67-4718, Idaho Code; and (7-1-93)

b. The tax levied pursuant to Section 67-4917B, Idaho Code, by the Greater Boise Auditorium District. (7-1-93)

c. However, they will also apply to any future Auditorium or Community Center District organized under Chapter 49, Title 67, Idaho Code, if such district contracts with the State Tax Commission for the collection and administration of hotel/motel room sales tax. (7-1-93)

02. Travel And Convention Tax. The tax authorized by Section 67-4718, Idaho Code, is a gross receipts type sales tax imposed on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds as defined in these rules. (7-1-93)

03. Auditorium District Tax. The tax authorized by Section 67-4917B, Idaho Code, is a retail sales tax levied upon the user or occupant of a hotel/motel room which must be collected by the hotel or motel from the occupant or user and remit ted to the Idaho State Tax Commission. (7-1-93)

04. Room Sales Tax. These two (2) taxes are collectively referred to in these rules as the room sales tax. (7-1-93)

05. Resort Cities. These rules do not apply to sales taxes imposed by resort cities unless such taxes are administered by the State Tax Commission. (7-1-93)

06. Sales Taxes Pertaining To Room Charges. These rules explain the application of the state sales tax to hotel/motel room charges but do not undertake a comprehensive explanation of state sales and use taxes as they may apply to such businesses. See the Tax Commission's rules relating to the Idaho Sales Tax Act for detailed statutory and regulatory provisions. See, specifically, Sales Tax Rules, ISTC 35.01.02.028. (7-1-93)

012. RATE AND APPLICATION OF TAX (Rule 012).

01. Travel And Convention Tax. The statewide Travel and Convention tax applies to all sales of hotel or motel rooms or campground spaces to be used by an individual as a place to sleep in the state of Idaho after July 1, 1981, unless the charge for the room or campground space is exempted by provisions of law or these rules. The tax is measured by the total taxable gross receipts from the charges for all such rooms or campground spaces during any calendar month and is imposed at the rate of two percent (2%) of such receipts. (7-1-93)

02. Auditorium District Tax. The Auditorium District tax applies to all hotel or motel rooms located

within the geographical boundaries of the Greater Boise Auditorium District furnished for a consideration, unless the charge is exempt by the provisions of law or these rules. The tax rate is set by the Auditorium District Board and is currently imposed at four percent (4%). The previous rates and dates of application are as follows: (7-1-93)

- a. January 1, 1979 through June 30, 1980 = two percent (2%) (7-1-93)
- b. July 1, 1980 through November 30, 1981 = five percent (5%) (7-1-93)
- c. December 1, 1981 through April 30, 1987 = two percent (2%) (7-1-93)
- d. May 1, 1987 to Current = four percent (4%) (7-1-93)

03. Auditorium District Board. Action by the Auditorium District Board affecting a change in the rate of tax supersedes provisions of these rules. (7-1-93)

04. Geographical Boundaries. The Commission and the Boise Auditorium District shall maintain in their respective offices an accurate map of the geographical boundaries of the auditorium district which shall be available for inspection by any person. (7-1-93)

013. REGISTRATION (Rule 013).

Prior to engaging in business as a hotel, motel, or campground within the state of Idaho, such hotel or motel shall register with the State Tax Commission in such manner as the Tax Commission may prescribe as a hotel or motel required to collect the room sales tax. Registration will be in the same manner and in the same form as is required for obtaining a seller's permit for state sales tax. (7-1-93)

014. ROOM OR CAMPGROUND CHARGE DEFINED (Rule 014).

As used in these rules, the charge for providing rooms or campground spaces shall mean and refer to the total amount of consideration, whether paid in money or otherwise, received by the hotel, motel or campground from the user or occupant for the use or occupancy of the room or space. It does not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space such as separately stated telephone, food, beverage or laundry charges but does include amounts charged for temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed. In the case of campgrounds any charges for water, electrical or sewer hookups are an integral part of the charge for the use of the space and are included in the amount subject to tax. (7-1-93)

015. SEPARATE STATEMENT OF TAX (Rule 015).

01. Amount Of Tax Charged. The amount of tax charged to the user or occupant of the room or campground may be charged as a rate which is a consolidation of all of the tax rates for state and local taxes which apply to the charge. The amount of tax charged shall be separately stated on the receipt, invoice or other document provided to the customer. The rate of tax shall be as follows: (7-1-93)

a. In the case of all campgrounds within the state and in the case of all hotels and motels located outside the geographical boundaries of the Greater Boise Auditorium District, the tax shall be two percent (2%) of the total gross receipts from the charges and subject to the tax rounded to the nearest penny. (7-1-93)

b. In the case of hotels and motels located within the geographical boundaries of the Greater Boise Auditorium District, the tax shall be six percent (6%) of the total gross receipts from room charges subject to the tax rounded to the nearest penny. If the charge is exempt from the Auditorium District tax but subject to the Travel and Convention tax the tax rate shall be two percent (2%) and if the charge is exempt from the Travel and Convention tax but is subject to the Auditorium District tax the tax rate shall be four percent (4%). (7-1-93)

c. When the room or campground charge is also subject to the state sales tax, the rate of that tax shall be added to the rate stated above. (7-1-93)

02. Fractional Parts Of One Cent. If the amount of tax computed in accordance with this rule is a fractional part of one cent (\$.01), the amount shall be rounded to the nearest full cent. (7-1-93)

016. EXEMPTIONS (Rule 016).

01. Exemptions. Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax. (7-1-93)

02. Exempt Entities. Rooms or campground spaces furnished to governmental entities, educational institutions, or hospitals are exempt from the taxes if and only if the charge for the room or campground space occupancy is billed directly to and paid directly by the governmental entity, educational institution, or hospital. (7-1-93)

a. “Governmental entity” includes the federal government and any of its instrumentalities, the state of Idaho and any of its agencies or any city, county or taxing district of the state of Idaho. Governmental entity does not include states other than Idaho or their political subdivisions. (7-1-96)

b. “Educational institution” means any nonprofit colleges, universities, primary, and secondary schools in which systematic instruction in the usual branches of learning is given. The exemption does not include educational institutions that operate for profit or schools primarily teaching special accomplishments, such as business or cosmetology. (7-1-96)

c. “Hospital” means a nonprofit institution licensed as a hospital by any state. This exemption does not include hospitals that operate for profit, nursing homes, or similar institutions. (7-1-96)

d. “Billed directly to” means a contractual agreement between the facility operator and the governmental entity, educational institution, or hospital whereby the charge for the room or campground space is directed to and is the responsibility of the governmental agency or institution. “Billed directly to” also includes credit card charges billed to an account opened by an exempt agency, educational institution, or hospital. (7-1-96)

e. “Paid directly by” means a remittance tendered directly by the governmental entity, educational institution, or hospital to the facility operator. It does not include a payment by the governmental entity or institution to an employee or agent for reimbursement of expenses incurred during business travel. However, “paid directly by” does include payments made by an exempt entity to a financial institution for credit card charges made on a charge account in the name of the exempt entity with a credit card issued to the entity itself and not to any individual or employee. (7-1-96)

f. Credit cards issued to employees of governmental agencies are NOT considered to be billed directly to and paid directly by the governmental entity when the employee is responsible for making payment to the credit card company. (7-1-93)

03. Continuous Occupancy Exemptions. (7-1-93)

a. Continuous occupancy means maintaining residency for a continuous period of time by the same individual or individuals. The continuous occupancy exemption does not apply when a room or campground space is furnished to a business enterprise that rotates numerous employees as occupants of the room or space with no one (1) employee remaining continuously for the minimum number of days required to meet the continuous stay requirements. (7-1-93)

b. Continuous Occupancy--Hotels and Motels. When continuous residency is maintained in a hotel or motel by the same individual or individuals for a period of thirty-one (31) days or more, the room charges are exempt from the taxes. When residency is maintained continuously for a period of less than thirty-one (31) days, the room charges are subject to the state sales tax, the statewide Travel and Convention tax, and, if the hotel or motel is located with the boundaries of the Greater Boise Auditorium District, the Greater Boise Auditorium District tax. (7-1-96)

c. Continuous Occupancy--Campgrounds: When continuous residency is maintained by the same individual or individuals in a campground space for a period of thirty-one (31) or more days the rental of the space is exempt from the taxes governed by these rules. If continuous residency is maintained for less than thirty-one (31) days, the state sales tax and the Idaho Travel and Convention tax apply. Greater Boise Auditorium District tax does

not apply to campground spaces. See Subsection 016.05 of this rule. (7-1-96)

d. The continuous occupancy exemptions apply if, and only if, a lease or other documentation evidencing the period of the occupancy is maintained by the operator of the hotel, motel or campground. A guest registration card verifiable by a billing document is acceptable documentation. (7-1-93)

04. Rooms Let For Purposes Other Than Sleeping. The statewide Travel and Convention tax applies only to rooms let to an individual as a place to sleep. The tax does not apply to rooms let only for other purposes, such as for meetings. However, both the state sales tax and the Greater Boise Auditorium District tax apply to rooms let by a hotel or motel for purposes other than sleeping. Rooms supplied with beds shall be presumed to be let for the purpose of sleeping unless the contrary is established by the operator. Rooms, other than dormitory rooms, let by an educational institution for purposes other than sleeping, are not taxable as a sale of lodging; however, it is possible that renting such a room may be taxable as a fee for the privilege of using a facility for a recreational purpose. (7-1-99)

05. Campgrounds Exempted. The Greater Boise Auditorium District tax does not apply to campground charges. The state sales tax and the travel and convention tax apply to the charge for campground spaces. Sales of spaces in campgrounds owned or operated by the state of Idaho, its agencies or political subdivisions are subject to the state sales tax but not the travel and convention tax. (7-1-96)

06. Foreign Diplomats. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card bears a photo graph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Vendors must document an exempt charge to a foreign diplomat by: (7-1-93)

a. Retaining a photocopy of the front and back of the federal tax exemption card; or (7-1-93)

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

07. Direct Pay Authority. A taxpayer granted direct pay authority as provided by Idaho Sales and Use Tax Administrative Rule 112 may not use this authority for hotel/motel room or campground space charges. State sales tax, Travel and Convention tax, and, when applicable, Greater Boise Auditorium District tax must be charged by the hotel, motel, or campground and paid to the hotel, motel, or campground by the direct pay authority permittee. (7-1-96)

017. RECORDS REQUIRED (Rule 017).

Each hotel, motel, and campground subject to the room occupancy tax shall maintain the records required in Sales Tax Rule, ISTC 35.01.02.111 and, in addition, shall maintain records necessary to document exemptions from the room sales tax. Such records shall include a copy of any written lease or other agreement pursuant to which a continuous occupancy is claimed and copies of any direct billings to governmental entities exempt from tax. The records shall be maintained by the hotel or motel for a period of four (4) years and shall be subject to audit by the State Tax Commission or, in the case of hotels or motels with the Greater Boise Auditorium District, the Greater Boise Auditorium District. (7-1-93)

018. RETURNS (Rule 018).

01. Filing Returns. Each hotel, motel, or campground subject to the room sales tax shall file with the State Tax Commission on forms prescribed by the State Tax Commission monthly or quarterly returns showing the amount of tax required to be paid by the hotel, motel, or campground to the State Tax Commission and such other information as the Tax Commission shall require. The return, together with the remittance shown to be due thereon, must be received by the State Tax Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All charges subject to tax actually charged to the user or occupant shall be reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. (7-1-93)

02. Allocation Of Revenue. Because revenue from the statewide Travel and Convention tax must be allocated to the area of the state from which it is collected, taxpayers who operate more than one (1) hotel, motel or campground within the state must report the tax relating to each hotel, motel or campground on a separate return. (7-1-93)

019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (Rule 019).

01. Remittance Of Taxes. In the event that taxes required to be collected and remitted by a hotel, motel, or campground are not remitted to the State Tax Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the State Tax Commission, the Tax Commission shall issue a Notice of Deficiency Determination pursuant to the provisions of the Idaho Sales Tax Act and the Tax Commission's rules relating thereto. A hotel, motel, or campground to which such a Notice of Deficiency Determination may be issued may protest the notice and seek a redetermination thereof pursuant to the provisions of Sales Tax Rule, ISTC 35.01.02.121. (7-1-93)

02. Penalties. In the event that any deficiency in reporting or remitting taxes by a hotel, motel, or campground is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, or camp ground required to file a return with the State Tax Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act shall apply to the room sales tax. See Income Tax Rule, ISTC 35.01.01.111. (7-1-93)

020. DISTRIBUTION (Rule 020).

Amounts collected by the State Tax Commission for the state Travel and Convention tax shall be paid over to the State Treasurer. The amounts collected by the State Tax Commission for the Greater Boise Auditorium District shall be distributed by the State Tax Commission to the Greater Boise Auditorium District no later than one month following receipt by the State Tax Commission of the revenues from such district. However, the Tax Commission may deduct from both such amounts prior to distribution such fee as may be agreed upon by the Commission and the agency of the state of Idaho charged with administering the provisions of Sections 67-4710 through 67-4718, Idaho Code, inclusive, or the board of the district for its direct and actual cost in the collection and administration of the tax. The State Tax Commission may also deduct from both such distributions any amounts of room sales taxes erroneously paid to the State Tax Commission or collected by the State Tax Commission which the Commission has refunded to such hotel, motel or camp ground. Such refunds shall be deducted from the gross revenues prior to computing the fee agreed upon. (7-1-93)

021. SALES TAX RULES APPLY UNLESS OTHERWISE PROVIDED (Rule 021).

The rules promulgated by the State Tax Commission relating to the enforcement and collection of the Idaho sales tax shall apply to the room sales tax unless the provisions of Sections 67-4710 through 67-4719, Idaho Code, inclusive or Sections 67-4917A, 67-4917B or 67-4917C, Idaho Code, or these rules are expressly contrary to the Sales Tax Rules. (7-1-93)

022. -- 999. (RESERVED).

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