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CHAPTER 01

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

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

001. TITLE AND SCOPE (RULE 001).

These rules shall be cited as IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.01, “Income Tax Administrative Rules”. They shall be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence. (3-20-97)

002. WRITTEN INTERPRETATIONS (RULE 002).

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 Tax Commission. See Rule 005 of these rules for the main office address. (3-15-02)

003. ADMINISTRATIVE APPEALS (RULE 003).

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

004. PUBLIC RECORDS (RULE 004).

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to 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. INCORPORATION BY REFERENCE (RULE 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. This document is found in “Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States,” July 27, 2001 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (5-3-03)

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," July 27, 2001 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. (5-3-03)

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 010).
Section 63-3003, Idaho Code. (3-20-97)

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

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

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

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

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

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

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

08. Terms. Terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms. (3-20-97)

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

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

011. -- 014. (RESERVED).

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

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

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

016. -- 024. (RESERVED).

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

01. In General. A taxpayer shall file his Idaho return for the same taxable year as filed for federal income tax purposes. If a federal return is not filed, the taxable year shall be the taxable year required by the Internal Revenue Code, any other period that may be required by law, or the calendar year. Taxable year generally corresponds to the taxpayer's annual accounting period unless a short-period return is required. (7-1-98)

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

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

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

026. -- 029. (RESERVED).

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

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

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

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

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

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. (3-20-97)

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

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code. (7-1-98)

c. An individual meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. (7-1-98)

03. Place of Abode. See Rule 040 of these rules for information as to what constitutes a place of abode. (7-1-98)

031. ALIENS (RULE 031).
Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (3-20-97)

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

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

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

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

c. In the case of a nonresident alien who does not elect to be treated as a resident for federal income tax purposes, the standard deduction is zero (0). However, a nonresident alien who qualifies as a student or business apprentice eligible for the benefits of Article 21(2) of the United States - India Income Tax Treaty is entitled to the standard deduction amount as if he were a resident for federal income tax purposes provided he does not claim itemized deductions. (7-1-99)

03. Filing Status. An alien shall use the same filing status for the Idaho return as used on the federal return. If for federal income tax purposes a married alien files as a nonresident alien and does not elect to be treated as a resident, the married alien shall use the filing status married filing separate on the Idaho return. (3-30-01)

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

01. Idaho Residency Status. Section 511 of the Servicemembers Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. (4-6-05)

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

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

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

d. A member of the armed forces meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho, even though Idaho is the person's military home of record. Any individual meeting the safe harbor exception to residency status is considered either a nonresident or part-year resident. (4-5-00)

e. The Servicemembers Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. (4-6-05)

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

a. Section 511 of the Servicemembers Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. (4-6-05)

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. (3-30-01)

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 of this rule does not apply. (4-6-05)

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

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

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

05. Nonmilitary Spouse. Subsection 032.02 of this rule does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. (4-6-05)

033. NATIVE AMERICANS (RULE 033).

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

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

a. Income derived outside a federally recognized Indian reservation is not exempt. (3-20-97)

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

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

01. Resident Estates. An estate is treated as a resident estate if the decedent was domiciled in Idaho on the date of his or her death. If the estate is other than an estate of a decedent, it is treated as a resident estate if the person for whom the estate was created is a resident of Idaho. (3-20-97)

02. Nonresident Estates. If the estate does not qualify as a resident estate, it is treated as a nonresident estate. The tax liability of a nonresident estate is computed in the same manner as a nonresident individual. (3-20-97)

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

01. Resident Trusts. A trust other than a qualified funeral trust is treated as a resident trust if three (3) or more of the following conditions exist: (5-3-03)

a. The domicile or residency of the grantor is in Idaho; (3-20-97)

b. The trust is governed by Idaho law; (3-20-97)

c. The trust has real or tangible personal property located in Idaho; (3-30-01)

d. The domicile or residency of a trustee is in Idaho; (3-20-97)

e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record keeping and preparation and filing of tax returns. (3-20-97)

02. Qualified Funeral Trusts. A qualified funeral trust is treated as a resident trust under Section 63-3015, Idaho Code, if: (5-3-03)

a. At the time of the initial funding of the trust, the trust was required to be established under the laws of Idaho; or (5-3-03)

b. The requirement in Subsection 035.02.a. did not exist, but a funeral home or cemetery located in Idaho was identified to provide services or merchandise under the terms of a preneed contract requiring the establishment of the trust. (5-3-03)

03. Nonresident Trusts. If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. (3-20-97)

04. Residency Status of a Trust. For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. (3-20-97)

036. -- 039. (RESERVED).

040. PART-YEAR RESIDENT (RULE 040).
Section 63-3013A, Idaho Code. (3-20-97)

01. In General. A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)

a. An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)

b. For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. (7-1-98)

02. Temporary or Transitory Purpose. For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

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

(3-20-97)

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

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

03. Place of Abode. An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. (7-1-98)

a. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. (7-1-98)

b. Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. (7-1-98)

041. -- 044. (RESERVED).

045. NONRESIDENT (RULE 045).
Section 63-3014, Idaho Code. (3-20-97)

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

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

b. If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. (3-30-01)

02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code. Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: (7-1-99)

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

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

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

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

03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code. Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: (3-20-04)

a. Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or (3-20-04)

b. Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. (3-20-04)

04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code. Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: (7-1-99)

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

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

05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code. Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. (7-1-99)

046. -- 074. (RESERVED).

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
Section 63-3024, Idaho Code. (3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-6-05)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars ($30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars ($15,000). The tax amount would then be multiplied by two (2). (5-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

a. For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,000.00	$0.00	2% of taxable income

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
$1,000.00	$2,000.00	$20.00	4% of the amount over $1,000.00
$2,000.00	$3,000.00	$60.00	4.5% of the amount over $2,000.00
$3,000.00	$4,000.00	$105.00	5.5% of the amount over $3,000.00
$4,000.00	$5,000.00	$160.00	6.5% of the amount over $4,000.00
$5,000.00	$7,500.00	$225.00	7.5% of the amount over $5,000.00
$7,500.00	$20,000.00	$412.50	7.8% of the amount over $7,500.00
$20,000.00 or more		$1,387.50	8.2% of the amount over $20,000.00

(3-20-04)

b. For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,022.00	$0.00	1.9% of taxable income
$1,022.00	$2,044.00	$19.42	3.9% of the amount over $1,022.00
$2,044.00	$3,066.00	$59.28	4.4% of the amount over $2,044.00
$3,066.00	$4,088.00	$104.25	5.4% of the amount over $3,066.00
$4,088.00	$5,110.00	$159.44	6.4% of the amount over $4,088.00
$5,110.00	$7,666.00	$224.85	7.4% of the amount over $5,110.00
$7,666.00	$20,442.00	$413.99	7.7% of the amount over $7,666.00
$20,442.00 or more		$1,397.74	8.1% of the amount over $20,442.00

(3-20-04)

c. For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,056.00	$0.00	1.6% of taxable income
$1,056.00	$2,113.00	$16.90	3.6% of the amount over $1,056.00
$2,113.00	$3,169.00	$54.93	4.1% of the amount over $2,113.00
$3,169.00	$4,226.00	$98.25	5.1% of the amount over $3,169.00
$4,226.00	$5,282.00	$152.13	6.1% of the amount over $4,226.00
$5,282.00	$7,923.00	$216.57	7.1% of the amount over $5,282.00
$7,923.00	$21,129.00	$404.09	7.4% of the amount over $7,923.00
$21,129.00 or more		$1,381.30	7.8% of the amount over $21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,087.00	$0.00	1.6% of taxable income
$1,087.00	$2,173.00	$17.38	3.6% of the amount over $1,087.00
$2,173.00	$3,260.00	$56.50	4.1% of the amount over $2,173.00
$3,260.00	$4,346.00	$101.04	5.1% of the amount over $3,260.00
$4,346.00	$5,433.00	$156.46	6.1% of the amount over $4,346.00
$5,433.00	$8,149.00	$222.73	7.1% of the amount over $5,433.00
$8,149.00	$21,730.00	$415.59	7.4% of the amount over $8,149.00
$21,730.00 or more		$1,420.60	7.8% of the amount over $21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,104.00	$0	1.6% of taxable income
$1,104.00	$2,207.00	$17.66	3.6% of the amount over $1,104.00
$2,207.00	$3,311.00	$57.39	4.1% of the amount over $2,207.00
$3,311.00	$4,415.00	$102.64	5.1% of the amount over $3,311.00
$4,415.00	$5,518.00	$158.93	6.1% of the amount over $4,415.00
$5,518.00	$8,278.00	$226.25	7.1% of the amount over $5,518.00
$8,278.00	$22,074.00	$422.16	7.4% of the amount over $8,278.00
$22,074.00 or more		$1,443.06	7.8% of the amount over $22,074.00

(3-20-04)

f. For taxable years beginning in 2004:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,129.00	$0	1.6% of taxable income
$1,129.00	$2,258.00	$18.06	3.6% of the amount over $1,129.00
$2,258.00	$3,387.00	$58.70	4.1% of the amount over $2,258.00
$3,387.00	$4,515.00	$104.98	5.1% of the amount over $3,387.00
$4,515.00	$5,644.00	$162.55	6.1% of the amount over $4,515.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
$5,644.00	$8,466.00	$231.41	7.1% of the amount over $5,644.00
$8,466.00	$22,577.00	$431.78	7.4% of the amount over $8,466.00
$22,577.00 or more		$1,475.95	7.8% of the amount over $22,577.00

(4-6-05)

076. -- 077. (RESERVED).

078. TAX ON TRUSTS -- ELECTING SMALL BUSINESS TRUSTS (RULE 078).
Section 63-3024, Idaho Code. (3-20-04)

01. In General. The special rules for taxation of electing small business trusts as provided in Section 641, Internal Revenue Code, shall apply for purposes of computing the Idaho income tax. These rules include the following: (3-20-04)

a. The portion of an electing small business trust that consists of stock in one (1) or more S corporations shall be treated as a separate trust. (3-20-04)

b. The tax on the separate trust shall be determined with the following modifications from the usual rules for taxing trusts: (3-20-04)

i. The only items of income, loss, deduction, or credit to be taken into account are the items required to be taken into account as an S corporation shareholder under Section 1366, Internal Revenue Code, and any gain or loss from the disposition of stock in an S corporation. (3-20-04)

ii. As provided in federal Treasury Regulations, administrative expenses shall be taken into account to the extent allocable to the items described in Subparagraph 078.01.b.i. (3-20-04)

iii. A deduction or credit shall be allowed only for an amount described in this paragraph. No item described in this paragraph shall be apportioned to any beneficiary. (3-20-04)

c. A capital loss deduction provided by Section 1211(b), Internal Revenue Code, shall be allowed only to the extent of capital gains. (3-20-04)

02. Tax Rate Applied. The tax rates applied to the Idaho taxable income of a trust are identified in Rule 075 of these rules. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. (3-20-04)

079. -- 099. (RESERVED).

100. ADJUSTMENTS TO TAXABLE INCOME -- IN GENERAL (RULE 100).
Section 63-3022, Idaho Code. Rules 101 through 249 of these rules discuss the additions to and subtractions from taxable income required when computing the Idaho taxable income of corporations, partnerships, and resident individuals, estates and trusts. For the rules relating to the adjustments to taxable income required of nonresident and part-year resident individuals and nonresident trusts and estates, see Rules 250 through 259 of these rules. (3-20-97)

101. -- 104. (RESERVED).

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).
Section 63-3022, Idaho Code. (3-20-97)

01. State and Local Income Taxes. As provided in Section 63-3022(a), Idaho Code, add state and local income taxes deducted in computing taxable income. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. (3-15-02)

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, add any net operating loss deduction included in taxable income. (7-1-99)

03. Capital Loss Carryover Deduction. As provided in Section 63-3022(i), Idaho Code: (3-30-01)

a. A corporation shall add a capital loss deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho, unless the corporation was part of a unitary group with at least one (1) member of the group taxable by Idaho for that taxable year. (7-1-99)

b. An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in an activity not taxable by Idaho at the time it was incurred. (5-3-03)

04. Interest and Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, Idaho Code, add certain interest and dividend income that is exempt from federal income tax. For example, add interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code. (7-1-99)

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

b. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, shall be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income shall be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets shall be attached to the return. (4-5-00)

i. Expenses prorated to Idaho state and municipal interest income shall be based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)

ii. Expenses prorated to non-Idaho state and municipal interest income shall be based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)

05. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer shall add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (7-1-99)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. Add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. (3-20-04)

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

Section 63-3022, Idaho Code. As provided in Section 63-3022(d), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. (5-3-03)

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

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. (5-3-03)

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).
Section 63-3022, Idaho Code. (3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(k), Idaho Code, add the taxable amount of a lump sum distribution excluded from taxable income. (3-30-01)

02. Withdrawals From an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (7-1-98)

03. Withdrawals From an Idaho College Savings Program. As provided in Section 63-3022(o), Idaho Code, an account owner shall add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

04. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, an eligible educator as defined in Section 62, Internal Revenue Code, shall add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

109. ADJUSTMENTS TO DISTRIBUTABLE NET INCOME OF ESTATES AND TRUSTS (RULE 109).
Section 63-3022, Idaho Code. As provided in Section 63-3022(g), Idaho Code, an estate or trust shall make the adjustments that are required of individuals as provided in Section 63-3022, Idaho Code, in determining the Idaho taxable income of the beneficiary of an estate or trust. (3-30-01)

110. -- 114. (RESERVED).

115. INTEREST EXPENSE OFFSET RELATED TO TAX-EXEMPT INTEREST INCOME (RULE 115).
Section 63-3022M, Idaho Code. (7-1-99)

01. In General. The interest expense offset provided by Section 63-3022M, Idaho Code, is a separate and distinct adjustment from provisions in the Internal Revenue Code that disallow interest expense related to federal tax-exempt interest. (7-1-99)

02. Tax-Exempt Interest Income. For purposes of computing the interest expense offset attributable to tax-exempt interest income, tax-exempt interest income shall mean interest on qualifying obligations of the United States and interest on qualifying obligations of the state of Idaho, its cities, and political subdivisions. (4-5-00)

a. If a taxpayer owns an interest in a pass-through entity, that entity's tax-exempt income shall also be included to the extent of the taxpayer's interest. (7-1-98)

b. Interest income that is only partially exempt for federal purposes is not included. Also, expenses related to tax-exempt interest income such as adjustments provided by Sections 265 and 291, Internal Revenue Code, are not included. (7-1-98)

03. Total Income. For purposes of computing the interest expense offset, total income shall be computed as follows: (7-1-98)

a. Corporations. (7-1-98)

i. Total income shall equal the amount reported as total income on Form 1120, U.S. Corporation Income Tax Return, for domestic corporations, plus the amount reported as total income on Form 1120F, U.S. Income

Tax Return of a Foreign Corporation, for foreign corporations engaged in a U.S. trade or business, plus the amount of tax-exempt interest income not included in total income on Form 1120 and Form 1120F, plus the amount reported as nonexempt foreign trade income on Schedule B of Form 1120-FSC, Income Tax Return of a Foreign Sales Corporation, less the amount of foreign dividend gross-up included in federal income pursuant to Section 78, Internal Revenue Code. (3-30-01)

ii. If a taxpayer files a return using the worldwide combined reporting method, total income shall also include the amount reported as total income on Schedule C of Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, for each foreign corporation included in the combined report. (7-1-98)

iii. If the corporation is a partner in a partnership, total income shall also include the corporation's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1120. (7-1-98)

iv. Intercompany amounts shall be eliminated to the extent included in these amounts. (7-1-98)

b. S Corporations. (7-1-98)

i. Total income shall equal the amount reported as total income on Form 1120S, U.S. Income Tax Return for an S Corporation, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1120S. (3-30-01)

ii. If the S corporation is a partner in a partnership, total income shall also include the appropriate partnership amounts as provided in Subsection 115.03.a.iii. (7-1-98)

c. Partnerships. (7-1-99)

i. Total income shall equal the amount reported as total income on Form 1065, U.S. Partnership Return of Income, plus the amounts reported as net income from rental real estate activities, net income from other rental activities, interest income, dividend income, royalty income, net short-term and long-term capital gains, other portfolio income, net gain under Section 1231, and other income as listed on Schedule K, plus the amount of tax-exempt interest income not included on Form 1065. (3-30-01)

ii. If the partnership is a shareholder in an S corporation, total income shall also include the partnership's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1065. (7-1-99)

d. Individuals. (7-1-99)

i. Total income shall equal the amount reported as total income on Form 1040, U.S. Individual Income Tax Return. (7-1-99)

ii. If the individual is a partner in a partnership, total income shall also include the individual's distributive share of the partnership's total income as reported on page one (1) of Form 1065, U.S. Partnership Return of Income, to the extent this amount is not included in total income on Form 1040. (7-1-99)

iii. If the individual is a shareholder in an S corporation, total income shall also include the individual's distributive share of the S corporation's total income as reported on page one (1) of the Form 1120S, U.S. Income Tax Return for an S Corporation, to the extent this amount is not included in total income on Form 1040. (7-1-99)

iv. Total income shall also include the amount of tax-exempt interest income not included on Form 1040, plus his share of the amount not included on Forms 1065 and 1120S. (3-30-01)

04. Unitary Taxpayers. The interest expense offset shall be computed at the combined group level, not within each corporate entity. Total income, interest expense, and tax-exempt interest amounts from each member of the combined group are used in computing the interest expense offset. (7-1-98)

116. EXPENSES OTHER THAN INTEREST ATTRIBUTABLE TO TAX-EXEMPT INCOME (RULE 116).
Section 63-3022M, Idaho Code. (5-3-03)

01. Directly Allocable Expenses. Expenses, other than interest, that are directly allocable to exempt interest or dividend income, shall be allocated to such income and no deduction shall be allowed for such allocated expenses. (5-3-03)

02. Indirectly Allocable Expenses. If an expense is indirectly allocable to both a class of nonexempt income and exempt interest or dividend income, a reasonable proportion of such expense determined in the light of all the facts and circumstances in each case shall be allocated to each class. No deduction shall be allowed for expenses indirectly allocated to exempt interest or dividend income. (5-3-03)

117. -- 119. (RESERVED).

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).
Section 63-3022, Idaho Code. (3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars ($600). If a prize equals or exceeds six hundred dollars ($600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year. (4-6-05)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. (3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars ($5,000) and an Idaho loss of four thousand dollars ($4,000), the amount subtracted would be nine thousand dollars ($9,000). (3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars ($300) and an Idaho loss of five hundred dollars ($500), the amount subtracted would be two hundred dollars ($200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars ($6,000) and an Idaho capital loss of eight thousand dollars ($8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars ($3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars ($2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars ($1,000) and an Idaho deductible capital loss of three thousand dollars ($3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars ($2,000) in computing Idaho taxable income. (3-20-04)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).
Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

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

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income taxes added back shall be computed by dividing the amount of limited itemized deductions by total itemized deductions before the limitation. This percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). This percent is then applied to state and local income taxes to determine the Idaho state and local income tax addback. See Rule 105 of these rules. (3-15-02)

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars ($150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

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

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

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

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

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

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

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

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

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).
Sections 63-3022 and 41-3821, Idaho Code. (4-6-05)

01. Foreign Dividend Gross-Up. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. (4-6-05)

02. Stock Insurance Subsidiary Dividends or Distributions. (4-6-05)

a. As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company shall subtract the amount received as a dividend or distribution from a stock insurance subsidiary. The deduction shall be allowed for taxable years beginning on or after January 1, 2004. (4-6-05)

b. The deduction allowed by Section 41-3821, Idaho Code, shall not be allowed if the stock insurance subsidiary's Idaho premium tax liability for the preceding taxable year is less than the stock insurance subsidiary would have paid in Idaho income tax had it been subject to Idaho income taxation for that year. The Idaho premium tax liability is the amount of total premium taxes less total premium tax credits allowed. The Idaho income tax it would have paid shall be computed as provided by Section 63-3027, Idaho Code, net of any applicable income tax credits. (4-6-05)

c. The taxpayer claiming the deduction shall include in its Idaho income tax return for the year the deduction is claimed information that it is entitled to the deduction. Such information shall include the amount of the stock insurance subsidiary's Idaho premium tax for the preceding taxable year and the amount of Idaho income tax it would have paid for such year. (4-6-05)

123. -- 127. (RESERVED).

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

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

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

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

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

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

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

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

05. Pass-Through Entities That Pay Tax. Generally, a pass-through entity shall report the same Idaho adjustments as those allowed to the individual partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. However, a pass-through entity is not allowed a deduction for an Idaho net operating loss, a capital loss pursuant to Section 1212, Internal Revenue Code, an Idaho capital gains deduction, or any other adjustment that is not specifically allowed by statute or rule to an entity such as the one paying the tax. (4-5-00)

129. (RESERVED).

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).
Section 63-3022A, Idaho Code. (3-20-97)

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

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

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

c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967, or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (4-6-05)

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

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow. (4-6-05)

a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. (4-6-05)

b. Example. Assume the same facts as stated in Paragraph 130.02.a, of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. (4-6-05)

c. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. (4-6-05)

03. Married Individuals Filing Separate Returns. Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

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

05. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code. This includes: (4-6-05)

a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or (4-6-05)

b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. (4-6-05)

131. -- 139. (RESERVED).

140. DEDUCTION FOR INSULATION OF RESIDENCES (RULE 140).
Section 63-3022B, Idaho Code. (3-20-97)

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

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

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

a. Rockwool; (3-20-97)

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

c. Polyurethane foam; (3-20-97)

d. Styrofoam; and (3-20-97)

e. Calcium silicate. (3-20-97)

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

141. -- 149. (RESERVED).

150. DEDUCTION FOR ALTERNATIVE ENERGY DEVICES (RULE 150).
Section 63-3022C, Idaho Code. (3-20-97)

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

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

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

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

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

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

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

05. Destruction of Wood Burning Stove. The wood burning stove that does not meet the environmental protection agency requirements for certification shall be surrendered to the Department of Environmental Quality no later than thirty (30) days from the date of purchase of the qualifying alternative energy device. Failure to surrender the wood burning stove within the thirty (30) day period shall result in the new device failing to qualify as an alternative energy device. The thirty (30) day period may be extended only if the taxpayer can show good cause for the delay. (7-1-99)

151. -- 159. (RESERVED).

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

Section 63-3022D, Idaho Code. Section 21, Internal Revenue Code, provides for a credit against federal income tax of a percentage of the authorized employment-related expenses incurred for the care of qualifying individuals. The allowable household and dependent care service expense is a deduction in computing Idaho taxable income. The provisions of the Internal Revenue Code determine which dependents qualify, the maximum allowable expenses, and the qualified payees. (3-20-97)

161. -- 164. (RESERVED).

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

Sections 63-3022E and 63-3025D, Idaho Code. (7-1-99)

01. Developmentally Disabled Defined. For purposes of the deduction allowed by Section 63-3022E, Idaho Code, or the credit allowed by Section 63-3025D, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: (7-1-99)

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

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

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

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

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

iii. Learning; (3-20-97)

iv. Mobility; (3-20-97)

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

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

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

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

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

a. Immediate Family Member. An immediate family member is an individual who meets the relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member does not have to be claimed as a dependent on the taxpayer's income tax return to qualify. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. (7-1-99)

b. Additional Household Deduction or Credit for Elderly. For purposes of the additional household deduction or credit for the elderly, a qualifying individual must be an immediate family member. (7-1-99)

c. Additional Household Deduction or Credit for Developmentally Disabled Dependents. For purposes of the additional household deduction or credit for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. (7-1-99)

03. Fractions of Years. (7-1-99)

a. The deduction shall be prorated at eighty-three dollars ($83) per month if the qualified individual lives in the household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days shall be treated as a full month. (7-1-99)

b. The credit is not available to part-year or nonresident individuals. If the qualified individual lives in the household for less than a full year, the credit shall be prorated at eight dollars and thirty-three cents ($8.33) per month. (7-1-99)

166. -- 169. (RESERVED).

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).
Section 63-3022H, Idaho Code. (3-20-97)

01. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. However, the Idaho capital gains deduction may not exceed the capital gain net income included in Idaho taxable income. See Subsection 170.04 for an explanation of the capital gain net income limitation. (3-15-02)

02. Losses From Qualified Property. (7-1-99)

a. Losses from property qualifying for the Idaho capital gains deduction shall be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (7-1-99)

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction shall be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover shall be the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (7-1-99)

03. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars ($7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars ($5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars ($2,500). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or two thousand dollars ($2,000). After 2001, the capital gains deduction returns to sixty percent (60%) or one thousand five hundred dollars ($1,500). (5-3-03)

b. A taxpayer recognizes a capital gain of twenty thousand dollars ($20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars ($2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars ($20,000) is eligible for the Idaho capital gains deduction. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars ($16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars ($12,000). (5-3-03)

04. Capital Gain Net Income Limitation. (3-15-02)

a. The Idaho capital gains deduction is allowed only if the taxpayer reports capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (3-15-02)

b. Example. A taxpayer recognizes a capital gain of five thousand dollars ($5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars ($2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars ($2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property. This deduction is also limited to the capital gain net income included in Idaho taxable income. (5-3-03)

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

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).
Section 63-3022H, Idaho Code. (3-20-97)

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

a. Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)

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

02. Holding Periods. (3-20-97)

a. In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow the definitions provided by Section 1223, Internal Revenue Code. (7-1-98)

b. Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: (7-1-98)

i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)

ii. Tangible personal property not used by a revenue-producing enterprise. (7-1-98)

c. Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

d. Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for fourteen (14) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for eighteen (18) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-15-02)

ii. Assume the same facts as in the example in Subsection 171.02.c.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least eighteen (18) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (3-15-02)

03. Holding Periods of S Corporation and Partnership Property. (7-1-98)

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

b. Property Contributed by a Shareholder to an S Corporation or a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period, limited to the length of time the shareholder or partner has held his interest in the S corporation or partnership. (7-1-98)

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

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

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

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).

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

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

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

b. Partnerships and S corporations electing to pay the tax for an individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (4-5-00)

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

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

b. Example. A shareholder in an S corporation had a twenty-five percent (25%) interest in income in year one (1). At the beginning of year two (2), the shareholder's ownership interest increased to fifty percent (50%). Fifteen (15) months later the S corporation recognizes a capital gain on the sale of Idaho real property held since year one (1). The shareholder reports fifty percent (50%) of the gain on his tax return for the year of sale, but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full eighteen (18) months preceding the date of the sale of the property. (3-15-02)

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

04. Examples. (3-20-97)

a. XYZ Farms, a multistate partnership, sold a parcel of Idaho farmland purchased seven (7) years ago. The sixty thousand dollar ($60,000) gain is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of nine thousand dollars ($9,000), computed as follows: ($60,000 X 75% = $45,000 gain apportioned to Idaho X 1/3 = $15,000 attributable to each partner X 60% = $9,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or twelve thousand dollars ($12,000). After 2001, the capital gains deduction returns to sixty percent (60%) or nine thousand dollars ($9,000). (5-3-03)

b. XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar ($60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars ($12,000), computed as follows: ($60,000 gain allocated to Idaho X 1/3 = $20,000 partner's share X 60% = $12,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars ($16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars ($12,000). (5-3-03)

c. A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars ($12,000), or sixteen thousand dollars ($16,000) for taxable year 2001 only. (5-3-03)

174. -- 179. (RESERVED).

180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).
Section 63-3022J, Idaho Code. (3-20-97)

01. Limitations. The deduction for donations of technological equipment is limited to the Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. (5-3-03)

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

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

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

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

181. -- 184. (RESERVED).

185. ADOPTION EXPENSES (RULE 185).
Section 63-3022I, Idaho Code. (3-20-97)

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

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

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

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

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

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

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

186. -- 189. (RESERVED).

190. IDAHO MEDICAL SAVINGS ACCOUNTS (RULE 190).
Section 63-3022K, Idaho Code. (7-1-98)

01. Designation as a Medical Savings Account. An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following: (5-3-03)

a. The name of the account; (5-3-03)

b. The title of the account; (5-3-03)

c. The description of the account; or (5-3-03)

d. The designation of the account. (5-3-03)

02. Withdrawal to Reimburse the Account Holder. (4-5-00)

a. A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (4-5-00)

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars ($300) on March 1. On that day, he paid a medical expense costing four hundred dollars ($400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars ($200) into his medical savings account. On March 11 he withdrew four hundred dollars ($400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars ($300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars ($200) for the contribution to the account. However, he must include one hundred dollars ($100) in Idaho taxable income in addition to paying a penalty of ten dollars ($10). (7-1-98)

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

04. Contributions That Exceed the Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. The maximum amount deductible is two thousand dollars ($2,000), four thousand dollars ($4,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, shall be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. (4-5-00)

05. Death of a Spouse. If an Idaho medical savings account is established for married individuals as a joint account, no contributions shall be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death shall be attributed to each account holder. If the amounts are less than the maximum contribution of two thousand dollars ($2,000), the surviving account holder may make contributions so that his total contributions for the year total two thousand dollars ($2,000). For example, a married couple contributes three thousand dollars ($3,000) to their medical savings account in January. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars ($1,500). Because the wife has not met the maximum deduction of two thousand dollars ($2,000), she can contribute another five hundred dollars ($500) in that year. (5-3-03)

191. -- 192. (RESERVED).

193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193).
Sections 63-3022P and 63-3022Q, Idaho Code. (3-20-04)

01. In General. The amounts paid by an individual taxpayer for health insurance and long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year. (4-6-05)

02. Costs Deducted or Accounted For. Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. Health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for include amounts: (4-6-05)

a. Paid out of an Idaho medical savings account; (5-3-03)

b. Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or (4-6-05)

c. Deducted as business expenses. (5-3-03)

03. Social Security Medicare Part A. (5-3-03)

a. The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. (5-3-03)

b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. (5-3-03)

04. Social Security Medicare Part B. Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. (5-3-03)

05. Medical Payments Coverage and Personal Injury Protection of Automobile Insurance. The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. (5-3-03)

06. Examples of Limitations When Costs Are Otherwise Deducted or Accounted For. If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, the amount that is deducted as an itemized deduction shall first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations shall not be less than zero (0). (4-6-05)

a. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to zero (0): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	$4,000

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
3.	Other medical expenses claimed on federal Schedule A	$2,000
4.	Total medical expenses claimed on federal Schedule A	$16,000
5.	7.5% of federal adjusted gross income	$0
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	$16,000
	HEALTH INSURANCE	
7.	Total amount paid for health insurance	$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	$0
	LONG-TERM CARE INSURANCE	
11.	Total amount paid for long-term care insurance	$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	$6,000
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	$4,000
14.	Long-term care insurance deducted elsewhere on the federal return	$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	$0

(4-6-05)

b. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to three thousand dollars ($3,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	$4,000
3.	Other medical expenses claimed on federal Schedule A	$2,000
4.	Total medical expenses claimed on federal Schedule A	$16,000
5.	7.5% of federal adjusted gross income	$3,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	$13,000
	HEALTH INSURANCE	
7.	Total amount paid for health insurance	$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	$0
	LONG-TERM CARE INSURANCE	
11.	Total amount paid for long-term care insurance	$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	$3,000

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	$3,000
14.	Long-term care insurance deducted elsewhere on the federal return	$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	$1,000

(4-6-05)

c. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to six thousand dollars ($6,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	$4,000
3.	Other medical expenses claimed on federal Schedule A	$2,000
4.	Total medical expenses claimed on federal Schedule A	$16,000
5.	7.5% of federal adjusted gross income	$6,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	$10,000
	HEALTH INSURANCE	
7.	Total amount paid for health insurance	$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	$0
	LONG-TERM CARE INSURANCE	
11.	Total amount paid for long-term care insurance	$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	$0
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	$0
14.	Long-term care insurance deducted elsewhere on the federal return	$50
15.	Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	$4,000

(4-6-05)

d. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to fourteen thousand dollars ($14,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	$4,000
3.	Other medical expenses claimed on federal Schedule A	$2,000

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
4. Total medical expenses claimed on federal Schedule A	$16,000
5. 7.5% of federal adjusted gross income	$14,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	$2,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	$2,000
9. Health insurance expenses deducted elsewhere on the federal return	$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	$8,000
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	$0
14. Long-term care insurance deducted elsewhere on the federal return	$50
15. Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	$4,000

(4-6-05)

194. -- 199. (RESERVED).

200. NET OPERATING LOSS -- CORPORATIONS (RULE 200).
Section 63-3021, Idaho Code. (3-20-97)

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

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

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

b. If the pre-merger corporation conducted multistate operations, the Section 382, Internal Revenue Code, loss limitation is limited further by the pre-merger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger. (3-20-97)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).
Section 63-3022(c), Idaho Code. (7-1-99)

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

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

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

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

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

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

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

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

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

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

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars ($100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars ($100,000). (4-5-00)

b. Except as provided in Subsection 201.04.c., the net operating loss carryback shall be applied as follows: (4-5-00)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss carryback is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (4-5-00)

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.b. shall not apply and the net operating loss carryover shall be applied as follows: (5-3-03)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

05. Timing and Method of Electing to Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning prior to January 1, 2001. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-30-01)

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

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

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

b. Net operating losses incurred in taxable years beginning on or after January 1, 2001. The election must be made by the due date of the Idaho loss year return, including extensions. Once the completed Idaho return is filed, the extension period expires. The election shall be made by either attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss or following the requirements of Subsection 201.05.a. (3-30-01)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Subsections 201.05.a. and 201.05.b., it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.b. (3-30-01)

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

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

08. Conversion of C Corporation to S Corporation. A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. However, an S corporation subject to the tax on built-in gains is allowed to deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain. (7-1-99)

202. -- 209. (RESERVED).

210. REDUCTION OF IDAHO TAX ATTRIBUTES AND BASIS WHEN INCOME FROM INDEBTEDNESS DISCHARGE IN BANKRUPTCY IS EXCLUDED FROM GROSS INCOME (RULE 210).
Section 63-3022(c), Idaho Code. (7-1-99)

01. In General. Any taxpayer excluding from taxable income an amount resulting from the discharge of indebtedness in bankruptcy under Section 108(b) of the Internal Revenue Code, shall reduce Idaho net operating loss and basis in accordance with Section 346 of the Bankruptcy Code of the United States. If the discharge occurs outside of bankruptcy, the provisions of these rules shall not apply. (7-1-99)

02. Order of Reduction. The reduction referred to in Subsection 210.01 shall be made to the following tax attributes in the following order: (7-1-99)

a. Any net operating loss deduction, as defined in Rule 201 of these rules, shall be reduced by the amount of the indebtedness forgiven or discharged in bankruptcy except as follows: (7-1-99)

i. A deduction with respect to the liability which is disallowed for any taxable period during or after the liability is forgiven or discharged. A deduction with respect to the liability includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset. (7-1-99)

ii. To the extent that the indebtedness forgiven or discharged consisted of items of a deductible nature that were not deducted by the taxpayer, or resulted in an expired net operating loss deduction or carryover that did not offset income for any taxable period and did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after the indebtedness was discharged. (7-1-99)

b. The basis in the taxpayer's property or of property transferred to an entity required to use the taxpayer's basis in whole or in part shall be reduced by the lesser of: (7-1-99)

i. The amount of the forgiven or discharged indebtedness, minus the total amount of adjustments made under Subsection 210.02.a.; and (7-1-99)

ii. The amount of the debtor's total basis of assets before the discharge that exceeds the total preexisting liabilities still remaining after discharge of indebtedness. Basis may not be reduced below a level equal to the remaining undischarged liabilities. (7-1-99)

03. Exception to Basis Reduction. The basis reduction under Subsection 210.02.b. is not required if the taxpayer elects to treat the amount that would otherwise be applied in reduction of basis as taxable income of the taxable period in which the debt is forgiven or discharged. (7-1-99)

04. Discharge Not Treated as Discharged Indebtedness. The following provisions exclude from this rule indebtedness that is discharged and treat the debtor as if it had originally issued stock instead of debt. No reduction to the Idaho net operating loss or basis is required if one (1) or more of these provisions are satisfied. (7-1-99)

a. The indebtedness did not consist of items of a deductible nature and is exchanged for an equity security, other than a limited partnership interest, issued by the debtor or is forgiven as a contribution to capital; or (7-1-99)

b. The indebtedness consisted of items of a deductible nature, and the exchange of stock for debt has the same effect as a cash payment equal to the fair market value of the equity security that is issued by the debtor or, if the value of the security is less than the value of the debt, only part of the debt will be excluded. (7-1-99)

211. -- 249. (RESERVED).

250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).
Sections 63-3026A(1) and (2), Idaho Code. (3-20-97)

01. Tax on Income From Idaho Sources. All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho shall be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 275 of these rules. (3-30-01)

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

03. Receipt of Income -- Part-Year Residents. For purposes of determining if income is reportable to Idaho by a part-year resident, a cash basis taxpayer is considered to have earned or received income when it is actually or constructively received, except as provided in Subsections 250.04 and 250.05. (3-30-01)

04. Receipt of Intangible Income -- Part-Year Residents. (3-30-01)

a. If a transaction or activity gives rise to income that must be reported in a subsequent year when the taxpayer is a part-year resident, the income shall be treated as received ratably during that subsequent year. This Subsection shall apply to income that is not received during the year by the taxpayer, but which must be reported in taxable income. See Subsection 250.05 for the receipt of income from a pass-through entity. (3-30-01)

b. A part-year resident shall report such income to Idaho in the proportion that the number of days during the year that the individual qualified as an Idaho part-year resident bears to total days. (3-30-01)

c. Example. An individual converts an amount from a traditional IRA to a Roth IRA in year one (1). He elects to have the income taxed over four (4) years. The individual moves to Idaho on August 1, of year two (2). Since the individual was an Idaho resident for one hundred fifty-three (153) days of year two (2), he must report as Idaho income forty-two percent (42%) of his income from the conversion to a Roth IRA for that year. (3-30-01)

05. Receipt of Pass-Through Items of Income and Losses -- Part-Year Residents. (3-30-01)

a. For a part-year resident who is a shareholder in an S corporation, or a partner in a partnership, the income, gains, losses and other pass-through items from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a shareholder or partner for the entire taxable year, the pass-through items are treated as received ratably during the period the taxpayer was a shareholder of the S corporation or partner of the partnership. (3-30-01)

b. For a part-year resident who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the period the taxpayer was a beneficiary of the estate or trust. (3-30-01)

c. A part-year resident shall report such income to Idaho in the proportion that the number of days during the year that the individual qualified as an Idaho part-year resident bears to total days. (3-30-01)

251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 251).
Section 63-3026A, Idaho Code. (3-20-97)

01. Idaho Total Income. To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho total income. (3-15-02)

a. Idaho total income is that portion of total income subject to Idaho taxation. It is the amount reported as total income on Form 43. (3-15-02)

b. For purposes of this rule, total income means gross income less certain deductions allowed under the Internal Revenue Code. It is the amount reported on the federal individual income tax return that is identified as total income. (3-15-02)

02. Idaho Adjusted Gross Income. From Idaho total income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. (3-15-02)

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

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

252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).
Section 63-3026A(6), Idaho Code. (3-20-97)

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

1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. (3-30-01)

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

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

04. Alimony Payments. The deduction for alimony payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income. (3-15-02)

05. Moving Expenses. The deduction for moving expenses allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income. (3-15-02)

06. Payment to a Federal Medical Savings Account. To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. (3-30-01)

07. Student Loan Interest Payments. The deduction for student loan interest payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income. (3-15-02)

253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.
Section 63-3026A(6), Idaho Code. (3-20-97)

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. (3-20-97)

a. Part-Year Residents. Add interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho. However, do not include interest received from obligations of the state of Idaho or any political subdivision of Idaho. This interest is exempt from Idaho income tax. (7-1-98)

b. Nonresidents. Add interest and dividend income reportable from a pass-through entity that was transacting business in Idaho to the extent the income was apportioned or allocated as Idaho income. See Rule 263 of these rules for multistate apportionment rules. (7-1-98)

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

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

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

05. Idaho Medical Savings Account. Add the amount withdrawn from an Idaho medical savings account to the extent the withdrawal is treated as income by Idaho law. (7-1-98)

06. Idaho College Savings Program. Add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

07. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. Add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. (3-20-04)

08. Certain Expenses of Eligible Educators. Add the amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).
Section 63-3026A(6), Idaho Code. (3-20-97)

01. Net Operating Loss Carryover. Subtract the net operating loss carryover allowed by Section 63-3022(c), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (5-3-03)

02. State and Local Income Tax Refunds. Subtract state and local income tax refunds included in Idaho total income. (3-15-02)

03. Income Not Taxable by Idaho. Subtract income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, if that income is included in Idaho total income and has not been previously subtracted. Income not taxable by Idaho includes: (3-15-02)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars ($600). If a prize equals or exceeds six hundred dollars ($600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

c. Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived within the reservation. See Rule 033 of these rules. (5-3-03)

d. Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

04. Military Pay. Subtract qualified military pay included in Idaho total income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (3-15-02)

05. Social Security and Railroad Retirement Benefits. Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (3-15-02)

06. Household and Dependent Care Expenses. Subtract the allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, calculate a percentage by dividing Idaho earned income by total earned income. Multiply the qualified expenses by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (3-20-97)

07. Insulation and Alternative Energy Device Expenses. Subtract expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code. (3-20-97)

08. Deduction for Dependents Sixty-Five or Older or With Developmental Disabilities. Subtract one thousand dollars ($1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars ($83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (3-20-97)

09. Adoption Expenses. Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage. (3-15-02)

10. Capital Gains Deduction. Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code. (3-20-97)

11. Idaho Medical Savings Account. (7-1-98)

a. Subtract contributions to an Idaho medical savings account that meet the requirements of Section 63-3022K, Idaho Code. (7-1-98)

b. Subtract interest earned on an Idaho medical savings account to the extent included in Idaho total income. (3-15-02)

12. Technological Equipment Donation. Subtract donations of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules. (3-20-97)

13. Worker's Compensation Insurance. As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

14. Idaho College Savings Program. Subtract the contributions to a college savings program that meet the requirements of Section 63-3022(n), Idaho Code. (3-15-02)

15. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, calculate a percentage by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. Multiply the deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, by the percentage. (3-30-01)

16. Health Insurance Costs. Subtract the allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion of the amounts paid for medical care insurance, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022P, Idaho Code, by the percentage. See Rule 193 of these rules. (5-3-03)

17. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022Q, Idaho Code, by the percentage. (5-3-03)

18. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. (3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars ($5,000) and an Idaho loss of four thousand dollars ($4,000), the amount subtracted would be nine thousand dollars ($9,000). (3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars ($300) and an Idaho loss of five hundred dollars ($500), the amount subtracted would be two hundred dollars ($200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars ($6,000) and an Idaho capital loss of eight thousand dollars ($8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars ($3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars ($2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars ($1,000) and an Idaho deductible capital loss of three thousand dollars ($3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars ($2,000) in computing Idaho taxable income. (3-20-04)

255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).
Section 63-3026A(4). (3-20-97)

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

02. Proration Percentage. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, multiply the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, by the proration percentage. The proration percentage is calculated by dividing Idaho adjusted income by total adjusted income. The percentage shall be rounded to the nearest whole percent. The percentage may not exceed one hundred percent (100%), nor be less than zero (0). (3-30-01)

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-30-01)

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

03. Standard Deduction for Married Filing Joint Returns. The proration percentage shall be applied after making the following calculations: (3-30-01)

a. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars ($150). (3-30-01)

b. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

256. -- 259. (RESERVED).

260. INCOME FROM IDAHO SOURCES (RULE 260).

Section 63-3026A(3), Idaho Code. Income from Idaho sources is the gross income, or portion thereof, that is derived from a business, trade, profession, or occupation carried on within Idaho or from any property, trust, estate, or any other source with a situs in Idaho. Income of a nonresident that is derived from property located both within and without Idaho during the taxable year, or from business transactions that occur both within and without Idaho during the taxable year, is attributed to Idaho based on the principles set forth in Rules 261 through 275 of these rules. (4-5-00)

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

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

262. (RESERVED).

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

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

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

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

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

a. Ordinary income or loss from trade or business activities; (3-20-97)

b. Net income or loss from rental real estate activities; (3-20-97)

c. Net income or loss from other rental activities; (3-20-97)

d. Interest income; (3-20-97)

e. Dividends; (3-20-97)

f. Royalties; (3-20-97)

g. Capital gain or loss; (3-20-97)

h. Other portfolio income or loss; (3-20-97)

i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

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

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

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

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

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

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

03. Alternative Method. If either fraction in Subsection 264.02 does not fairly represent the income derived from the property's use in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, acres may be a more appropriate measure than average value in some cases. (3-30-01)

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

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

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

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

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

03. Alternative Method. If the method described in Subsection 265.01 does not fairly represent the extent of the business activity in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. (3-30-01)

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. (7-1-99)

b. The method proposed by the taxpayer may be used in lieu of the method in Subsection 265.01 unless the Tax Commission expressly denies its use. (7-1-99)

266. INCOME FROM INTANGIBLE PROPERTY (RULE 266).
Section 63-3026A(3), Idaho Code. (7-1-99)

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. There are three (3) exceptions to this rule. (7-1-99)

a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

02. Interest Income Earned on a Bank Account. (7-1-99)

a. Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

b. Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

03. Covenant Not to Compete. Income from a covenant not to compete is sourced to the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Subsection 266.01.a. (7-1-99)

267. -- 269. (RESERVED).

270. IDAHO COMPENSATION -- IN GENERAL (RULE 270).
Section 63-3026A(3). (4-5-00)

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

02. Definitions. (3-20-97)

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

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

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

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

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

04. Multiple Employers. If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he shall determine an Idaho compensation percentage separately for each employer or principal. (3-20-97)

05. Alternative Method. If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-30-01)

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

b. The alternative method may be used in lieu of the method in Subsection 270.01 unless the Tax Commission expressly denies its use. (4-5-00)

271. IDAHO COMPENSATION -- STOCK OPTIONS (RULE 271).
Section 63-3026A(3), Idaho Code. (4-5-00)

01. In General. The granting of stock options is considered to be compensation for services. Although considered as compensation, in some circumstances the taxpayer may report the compensation on his federal income tax return as capital gain income. The character of the income from the granting of stock options and the timing of reporting it for federal income tax purposes shall apply in computing Idaho taxable income. (4-5-00)

02. Definitions. For purposes of this rule: (4-5-00)

a. Work days, Idaho work days, and total work days are defined in Rule 270 of these rules. (4-5-00)

b. Compensable period shall mean the period that begins at the date the stock option is granted and ends at the earlier of the date the stock option becomes vested or the date the employee's services terminate. (4-5-00)

c. Statutory stock options are options governed by specific Internal Revenue Code sections that impose restrictions on both the employer and the employee. Statutory stock options include incentive stock options as provided in Section 422, Internal Revenue Code, and options issued pursuant to employee stock purchase plans as provided in Section 423, Internal Revenue Code. (3-30-01)

d. Nonstatutory stock options are options that do not meet the Internal Revenue Code requirements to qualify as statutory stock options or are granted pursuant to a plan or offering that does not qualify. (4-5-00)

03. Compensation for Future Services. The granting of stock options shall be presumed to be intended as compensation for future services. The party alleging otherwise shall bear the burden of proving that the stock options were intended for services rendered before the date of grant. (4-5-00)

04. Statutory Stock Options. (4-5-00)

a. Compensation. Compensation is realized at the date the option is exercised, but not taxable until the income or gain is recognized for federal income tax purposes. If a taxpayer reports a capital gain for federal income tax purposes from statutory stock options, the amount of Idaho source compensation shall also be reported as capital gain income for Idaho income tax purposes. Idaho source compensation shall be determined as follows: (4-5-00)

i. Compensation is equal to the portion of the gain that equals the difference between the option price and the fair market value of the stock at the date the option was exercised. Compensation shall be limited to the gain actually recognized if the stock is sold for less than its fair market value at the time the option was exercised. No compensation shall be reported if the stock is sold at a loss. (4-5-00)

ii. Compensation for services performed in Idaho shall equal the compensation determined in Subsection 271.04.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. (4-5-00)

b. Investment Income. Appreciation in the value of the stock after the date the option was exercised shall be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold.(4-5-00)

05. Nonstatutory Stock Options. (4-5-00)

a. Compensation. Compensation is recognized at the date the stock option is exercised. The amount of Idaho source compensation related to the stock option is determined as follows: (4-5-00)

i. Compensation for federal income tax purposes is equal to the difference between the option price and the fair market value of the stock at the date the option was exercised. (4-5-00)

ii. Compensation for services performed in Idaho shall equal the compensation determined in Subsection 271.05.a.i., multiplied by the ratio of Idaho work days to total work days during the compensable period. (4-5-00)

b. Investment Income. Appreciation or depreciation in the value of the stock after the date the option was exercised shall be reported as investment income and sourced to the taxpayer's domicile at the date the stock was sold. (4-5-00)

272. IDAHO COMPENSATION -- SEVERANCE PAY (RULE 272).
Section 63-3026A(3), Idaho Code. (3-15-02)

01. In General. In accordance with federal Treasury Regulation Section 1.61-2, termination or severance pay is treated as compensation for services. The amount of termination or severance pay received by a nonresident that is subject to Idaho income tax is determined pursuant to this rule. (3-15-02)

02. Definitions. For purposes of this rule work days, Idaho work days and total work days are defined in Rule 270 of these rules. (3-15-02)

03. Calculation of Idaho Source Severance Pay. The amount of severance pay that is Idaho source income shall be equal to the severance pay received during the taxable year multiplied by the ratio of Idaho work days to total work days during either of the following: (3-15-02)

a. The employee's entire period of employment with such employer; or (3-15-02)

b. The employee's last twelve (12) months of employment with such employer. (3-15-02)

04. Alternative Method. If the Idaho compensation percentage computed in Subsection 272.03 does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-15-02)

a. The taxpayer shall fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-15-02)

b. The alternative method may be used in lieu of the method in Subsection 272.03 unless the Tax Commission expressly denies its use. (3-15-02)

273. -- 279. (RESERVED).

280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).
Sections 63-3027 and 63-3030(9), Idaho Code. (3-15-02)

01. In General. A partnership that operates within and without Idaho shall apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-5-00)

02. Exceptions to Apportionment Formula. If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use: (4-5-00)

a. Separate accounting as provided in Rule 585 of these rules; or (4-5-00)

b. An additional factor or substitute factor pursuant to Rule 595 of these rules. (4-5-00)

03. Information Provided to Partners. The partnership shall provide to each partner information necessary for the partner to compute his Idaho income tax. Such information shall include: (4-5-00)

a. The apportioned share of each pass-through item of income and deduction; (4-5-00)

b. The apportioned share of each Idaho addition and subtraction; (4-5-00)

c. Idaho tax credits and tax credit recapture; (4-5-00)

d. Income allocated to Idaho; (3-15-02)

e. The partnership’s property, payroll and sales factor numerators and denominators if the partner is not an individual; and (3-15-02)

f. The distributive share of partnership gross income multiplied by the Idaho apportionment factor, if the partner is an individual, trust or estate. (3-15-02)

281. -- 289. (RESERVED).

290. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES (RULE 290).
Section 63-3022L, Idaho Code. (3-30-01)

01. Election Provided in Section 63-3022L, Idaho Code. (3-30-01)

a. The election to have the entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, shareholder, partner, member, or beneficiary. If the individual has Idaho taxable income in addition to income described in Section 63-3022L, Idaho Code, the election is not available. (3-30-01)

b. The election is not available to corporations, partnerships or electing small business trusts, or to any other person who is not an individual. (3-30-01)

c. Permission from the Tax Commission to make the election is not required. (3-30-01)

d. The election is made by the individual. No statement or form is required. If the election is made, the entity shall report and pay the tax on the Idaho taxable income of the individual, as described in Subsection 290.02, on the entity's Idaho return. (3-30-01)

e. If the individual fails to make the election to have the entity pay the tax, and does not report and pay the tax on the income, described in Subsection 290.02, on an Idaho individual income tax return when such return is required, the entity shall be required to pay the tax on such income. (3-30-01)

02. Income Reportable to Idaho. (3-30-01)

a. Compensation reportable to Idaho. (3-30-01)

i. C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. (3-30-01)

ii. S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. (3-30-01)

iii. Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. (3-30-01)

iv. Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. (3-30-01)

v. Compensation reportable to Idaho for an Idaho part-year resident or nonresident is determined pursuant to Rule 270 of these rules. (3-30-01)

b. Pass-through items reportable to Idaho. (3-30-01)

i. S Corporations. An S corporation may be required to pay the tax on the pass-through items reportable to Idaho by an individual shareholder. (3-30-01)

ii. Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to Idaho by an individual who is a partner or member. (3-30-01)

iii. Pass-through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. (3-30-01)

c. Distributable net income reportable to Idaho. (3-30-01)

i. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-01)

ii. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-01)

03. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-01)

04. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-01)

291. -- 299. (RESERVED).

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

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

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

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

301. -- 309. (RESERVED).

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

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

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

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

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

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

311. -- 319. (RESERVED).

320. APPLICATION OF MULTISTATE RULES (RULE 320).
Section 63-3027, Idaho Code. (3-20-97)

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

02. Taxpayers Conducting Business Within and Without Idaho. Section 63-3027, Idaho Code, and related rules apply to corporations conducting business within and without Idaho, and to other taxpayers if required by other provisions of the Idaho Code or of these rules. However, only C corporations may use the combined report to determine Idaho taxable income. See Rule 360 of these rules. (3-30-01)

321. -- 324. (RESERVED).

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (RULE 325).
Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-20-97)

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly controlled group of which the taxpayer is also a member. The commonly controlled group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common control, see Rule 344 of these rules. (4-6-05)

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

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

04. Business Activity. Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations. (4-6-05)

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

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

07. Gross Receipts. (3-15-02)

a. Gross receipts are the gross amounts realized, (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if business income, do not include such items as, for example: (3-15-02)

i. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument; (3-15-02)

ii. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan; (3-15-02)

iii. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock; (3-15-02)

iv. Damages and other amounts received as the result of litigation; (3-15-02)

v. Property acquired by an agent on behalf of another; (3-15-02)

vi. Tax refunds and other tax benefit recoveries; (3-15-02)

vii. Pension reversions; (3-15-02)

viii. Contributions to capital; (3-15-02)

ix. Income from forgiveness of indebtedness; or (3-15-02)

x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. (3-15-02)

b. Exclusion of an item from the definition of gross receipts is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Rules 560 through 595 of these rules. (3-15-02)

08. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-20-97)

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

10. Multistate Corporation. A multistate corporation is a corporation that operates in more than one (1) state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. (3-20-97)

11. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. (7-1-98)

326. -- 329. (RESERVED).

330. BUSINESS AND NONBUSINESS INCOME DEFINED -- APPORTIONMENT AND ALLOCATION (RULE 330).

Section 63-3027(a), Idaho Code. Sections 63-3027(a)(1) and 63-3027(a)(4), Idaho Code, require that every item of income be classified either as business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income.

An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income. (4-6-05)

331. BUSINESS AND NONBUSINESS INCOME DEFINED -- BUSINESS INCOME (RULE 331).
Section 63-3027(a)(1), Idaho Code. (4-6-05)

01. In General. Business income means income of any type or class and from any activity that meets the "transactional test" described in Rule 332 of these rules, or the "functional test" described in Rule 333 of these rules. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. (4-6-05)

02. Terms Used in Definition of Business Income and in Application of Definition. As used in the definition of business income and in the application of the definition, (4-6-05)

a. "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Idaho. (4-6-05)

b. "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business. (4-6-05)

332. BUSINESS AND NONBUSINESS INCOME DEFINED -- TRANSACTIONAL TEST (RULE 332).
Section 63-3027(a)(1), Idaho Code. (4-6-05)

01. In General. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business. (4-6-05)

02. Business Income for Idaho. If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Idaho, the resulting income of the transaction or activity is business income for Idaho. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Idaho. (4-6-05)

03. Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services that are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold or replaced with some regularity, even if replaced less frequently than once a year. (4-6-05)

333. BUSINESS AND NONBUSINESS INCOME DEFINED -- FUNCTIONAL TEST (RULE 333).
Section 63-3027(a)(1), Idaho Code. (4-6-05)

01. In General. Business income also includes income from tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. (4-6-05)

02. Terms. (4-6-05)

a. “Property” includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. (4-6-05)

b. “Acquisition” refers to the act of obtaining an interest in property. (4-6-05)

c. “Management” refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. (4-6-05)

d. “Disposition” refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. (4-6-05)

e. “Integral part” refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner that materially contributed to the production of business income. (4-6-05)

03. Integral, Functional, or Operative Component of Trade or Business. Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer’s own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer’s trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within Idaho. Depending on the facts and circumstances of each case, property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time or that has been removed as an operational asset and is instead held by the taxpayer’s trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale. (4-6-05)

04. Examples of Business Income Under the Functional Test. Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired. (4-6-05)

05. Operational Function Versus Investment Function. Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer’s trade or business, that is, on the objective characteristics of the intangible property’s use or acquisition and its relation to the taxpayer and the taxpayer’s activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general. (4-6-05)

06. Property Held in Furtherance of Trade or Business. If the property is or was held in furtherance of the taxpayer’s trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Idaho. (4-6-05)

07. Presumptions. If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to Idaho or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer’s trade or business operations. No presumption arises from the absence of any of these actions. (4-6-05)

08. Application of the Functional Test. Application of the functional test is generally unaffected by the form of the property (for example, tangible or intangible property, real or personal property). Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment. (4-6-05)

334. BUSINESS AND NONBUSINESS INCOME DEFINED -- RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).

Section 63-3027(a)(1), Idaho Code. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extraterritorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Idaho. The unitary business that is conducted in Idaho includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) to be tied to the same trade or business that is being conducted within Idaho. Determination of the scope of the unitary business being conducted in Idaho is without regard to the extent to which Idaho requires or permits combined reporting. (4-6-05)

335. NONBUSINESS INCOME (RULE 335).

Section 63-3027(a)(4), Idaho Code. (3-20-97)

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

02. Offset of Interest Expense Against Nonbusiness Income. Interest on indebtedness incurred or continued to purchase or to carry investment that generates nonbusiness income is offset against the income produced. If the facts do not support such a matching of the interest expense to the nonbusiness income, the portion of the taxpayer's interest expense that is offset against income from nonbusiness investments shall be an amount that bears the same ratio to the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year as the taxpayer's nonbusiness income mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year. Aggregate amount allowable means the taxpayer's total interest expense deducted in determining taxable income as defined in Section 63-3011B, Idaho Code, plus interest expense disallowed under sections 265 and 291 of the Internal Revenue Code, plus interest expense from a pass-through entity, plus the interest expense of a corporation that, pursuant to Sections 63-3027 and 63-3027B through 63-3027E, Idaho Code, is included in a combined report with the taxpayer for the taxable year. See Rule 115 of these rules for the calculation of total income. (3-15-02)

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

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

336. BUSINESS AND NONBUSINESS INCOME -- APPLICATION OF DEFINITIONS (RULE 336).

01. In General. The following applies the foregoing principles for purposes of determining whether particular income is business or nonbusiness income. (4-6-05)

02. Rent From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property for which the rental income was received is or was used in the taxpayer's trade or business and, therefore, is includable in the property factor under Rule 465 of these rules. (4-6-05)

03. Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property is business income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. (4-6-05)

04. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. (4-6-05)

05. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. (4-6-05)

06. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is an integral, functional, operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. (4-6-05)

337. -- 339. (RESERVED).

340. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- UNITARY BUSINESS PRINCIPLE (RULE 340).
Section 63-3027, Idaho Code. (4-6-05)

01. The Concept of a Unitary Business. (4-6-05)

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion business income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. (4-6-05)

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. (4-6-05)

02. Constitutional Requirement for a Unitary Business. (4-6-05)

a. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. (4-6-05)

b. In Idaho, the unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution. (4-6-05)

03. Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. (4-6-05)

04. Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. (4-6-05)

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DETERMINATION OF A UNITARY BUSINESS (RULE 341).

Section 63-3027, Idaho Code. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. (4-6-05)

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).

Section 63-3027, Idaho Code. (4-6-05)

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. (4-6-05)

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) (4-6-05)

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. (4-6-05)

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. (4-6-05)

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. (4-6-05)

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) (4-6-05)

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. (4-6-05)

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management many exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. (4-6-05)

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management, Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. (4-6-05)

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. (4-6-05)

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. (4-6-05)

343. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- INDICATORS OF A UNITARY BUSINESS (RULE 343).
Section 63-3027, Idaho Code. (4-6-05)

01. Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, for example, a multistate grocery chain. (4-6-05)

02. Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices. (4-6-05)

03. Strong Centralized Management. Business activities that might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong centralized management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1) unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing. (4-6-05)

344. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES (RULE 344).
Section 63-3027, Idaho Code. (4-6-05)

01. In General. Separate corporations can be a part of a unitary business only if they are members of a commonly controlled group. (4-6-05)

02. Commonly Controlled Group. A "commonly controlled group" means any of the following: (4-6-05)

a. A parent corporation and any one (1) or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if: (4-6-05)

i. The parent owns stock possessing more than fifty percent (50%) of the voting power of a least one (1) corporation, and, if applicable, (4-6-05)

ii. Stock cumulatively possessing more than fifty percent (50%) of the voting power of each of the corporations, except the parent, is owned by the parent, one (1) or more corporations described in Subparagraph 344.02.a.i., of this rule, or one (1) or more other corporations that satisfy the conditions of this subparagraph. (4-6-05)

b. Any two (2) or more corporations, if stock, possessing more than fifty percent (50%) of the voting power of the corporations is owned, or constructively owned, by the same person. (4-6-05)

c. Any two (2) or more corporations that constitute stapled entities. (4-6-05)

i. For purposes of this paragraph, "stapled entities" means any group of two (2) or more corporations if more than fifty percent (50%) of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. (4-6-05)

ii. Two (2) or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one (1) of the interests the other interest or interests are also transferred or required to be transferred. (4-6-05)

d. Any two (2) or more corporations, if stock possessing more than fifty percent (50%) of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of Paragraph 344.05.a., of this rule) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers, sisters, grandparents, children and grandchildren, and their respective spouses. (4-6-05)

03. Elections and Terminations. (4-6-05)

a. If, in the application of Subsection 344.02 of this rule, a corporation is a member of more than one (1) commonly controlled group of corporations, the corporation shall elect to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one (1) of those groups, it shall elect to be treated as a member of only one (1) of the commonly controlled groups with respect to which it has a unitary business relationship. This election shall remain in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the State Tax Commission. (4-6-05)

b. Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of Subsection 344.02 of this rule are not met, except as follows: (4-6-05)

i. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of Subsection 344.02 of this rule are again met immediately after the sale, exchange, or disposition. (4-6-05)

ii. The State Tax Commission may treat the commonly controlled group as remaining in place if the conditions of Subsection 344.02 of this rule are again met within a period not to exceed two (2) years. (4-6-05)

04. Controlled. A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of Paragraph 344.02.d., of this rule by showing that those members of the group are not controlled directly or indirectly by the same interest, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. (4-6-05)

05. Stock Ownership. Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned. (4-6-05)

a. An individual constructively owns stock that is owned by any of the following: (4-6-05)

i. The individual's spouse. (4-6-05)

ii. Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of twenty-one (21) years. (4-6-05)

iii. An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children. (4-6-05)

b. Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. (4-6-05)

c. In the application of Paragraph 344.02.d., of this rule, (dealing with stock possessing voting power held by members of the same family), if more than fifty percent (50%) of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation shall be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation. (4-6-05)

d. Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner. (4-6-05)

e. In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. (4-6-05)

f. In the application of Paragraph 344.02.d., of this rule (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership. (4-6-05)

06. Terms. For purposes of the definition of a commonly controlled group, each of the following shall apply: (4-6-05)

a. "Corporation" means a corporation as defined in Section 63-3006, Idaho Code. (4-6-05)

b. "Person" means a person as defined in Section 63-3005, Idaho Code. (4-6-05)

c. "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation. (4-6-05)

d. "More than fifty percent (50%) of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation. (4-6-05)

e. "Stock possessing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners: (4-6-05)

i. For one (1) year or less. (4-6-05)

ii. By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferrer. (4-6-05)

f. In the case of an entity treated as a corporation under Paragraph 344.06.a., of this rule, "stock possessing voting power" refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity. (4-6-05)

345. -- 349. (RESERVED).

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

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

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

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

351. -- 354. (RESERVED).

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

356. -- 359. (RESERVED).

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

361. -- 364. (RESERVED).

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

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. (3-20-97)

02. Separate Computations. Each included corporation shall: (3-20-97)

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

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

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

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

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

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

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

07. Dividends and Other Intangible Income. Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. (4-6-05)

366. -- 369. (RESERVED).

370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (RULE 370).
Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho shall allocate all of its nonbusiness income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. (3-20-97)

371. -- 374. (RESERVED).

375. CONSISTENCY AND UNIFORMITY IN REPORTING (RULE 375).
Section 63-3027, Idaho Code. (3-20-97)

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

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

376. -- 384. (RESERVED).

385. TAXABLE IN ANOTHER STATE -- IN GENERAL (RULE 385).
Section 63-3027(c), Idaho Code. (3-20-97)

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

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

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

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

386. -- 389. (RESERVED).

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

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

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

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

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

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

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

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

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

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

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

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

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

391. -- 394. (RESERVED).

395. TAXABLE IN ANOTHER STATE -- WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (RULE 395).
Section 63-3027(c)(2), Idaho Code. (3-20-97)

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

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

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

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

396. -- 449. (RESERVED).

450. APPORTIONMENT FORMULA (RULE 450).
Section 63-3027(i), Idaho Code. (3-20-97)

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

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

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

04. Verification of Factors. The taxpayer shall make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code. (7-1-98)

451. -- 459. (RESERVED).

460. PROPERTY FACTOR -- IN GENERAL (RULE 460).
Section 63-3027(k), Idaho Code. (3-20-97)

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

02. Nonbusiness Income. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. (3-20-97)

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

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

461. -- 464. (RESERVED).

465. PROPERTY FACTOR -- PROPERTY USED FOR THE PRODUCTION OF BUSINESS INCOME (RULE 465).
Section 63-3027(k), Idaho Code. (3-20-97)

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

a. Property shall be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. (3-20-97)

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

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

d. Property used in the regular course of the taxpayer's trade or business shall remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or business. (3-20-97)

02. Examples. (3-20-97)

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

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

466. -- 469. (RESERVED).

470. PROPERTY FACTOR -- CONSISTENCY IN REPORTING (RULE 470).
Section 63-3027(k), Idaho Code. (3-20-97)

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

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

471. -- 474. (RESERVED).

475. PROPERTY FACTOR -- NUMERATOR (RULE 475).
Section 63-3027(k), Idaho Code. (3-20-97)

01. In General. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. (3-20-97)

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

03. Mobile or Movable Property. (3-20-97)

a. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year shall be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. (3-20-97)

b. An automobile assigned to a traveling employee shall be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. (3-20-97)

c. The value of aircraft used within and without Idaho during the taxable year shall be determined by multiplying the value of the aircraft by the ratio of departures from locations in Idaho to total departures. (7-1-98)

476. -- 479. (RESERVED).

480. PROPERTY FACTOR -- VALUATION OF OWNED PROPERTY (RULE 480).
Section 63-3027(l), Idaho Code. (3-20-97)

01. In General. Property owned by a taxpayer shall be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments at the time of acquisition and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. (3-20-97)

02. Examples. (3-20-97)

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

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

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

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

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

481. -- 484. (RESERVED).

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

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. (4-6-05)

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

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

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business. The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer. (4-6-05)

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year shall be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. (4-6-05)

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

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

b. Assume the same facts as in Paragraph 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars ($20,000) or ($2,500 x 8). (4-6-05)

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

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

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

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

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

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

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

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

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

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

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

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

486. -- 489. (RESERVED).

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

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

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

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

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

491. -- 499. (RESERVED).

500. PAYROLL FACTOR -- IN GENERAL (RULE 500).
Section 63-3027(n), Idaho Code. (3-20-97)

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

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

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

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

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

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

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

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

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

b. Payments to an independent contractor or a person not properly classifiable as an employee. (3-20-97)

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

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

501. -- 504. (RESERVED).

505. PAYROLL FACTOR -- DENOMINATOR (RULE 505).
Section 63-3027(n), Idaho Code. (3-20-97)

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

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

506. -- 509. (RESERVED).

510. PAYROLL FACTOR -- NUMERATOR (RULE 510).
Section 63-3027(n), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(o), Idaho Code, apply in determining whether compensation is paid in Idaho. It shall be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. (3-20-97)

511. -- 514. (RESERVED).

515. PAYROLL FACTOR -- COMPENSATION PAID IN IDAHO (RULE 515).
Section 63-3027(o), Idaho Code. (3-20-97)

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

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

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

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

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

516. -- 524. (RESERVED).

525. SALES FACTOR -- IN GENERAL (RULE 525).
Section 63-3027(p), Idaho Code. (3-20-97)

01. In General. Sales means all gross receipts of a taxpayer not allocated as nonbusiness income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business. (3-20-97)

02. Examples. (3-20-97)

a. If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if these taxes are passed on to the buyer or included in the product's selling price. (3-20-97)

b. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost plus the fee. (3-20-97)

c. If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items. (3-20-97)

d. If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property. (3-20-97)

e. If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions. (3-20-97)

f. If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. (3-20-97)

g. If a taxpayer derives receipts from foreign source dividends that are apportionable business income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales. (3-20-97)

03. Disregarding Gross Receipts. In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules. (3-20-97)

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

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

526. -- 529. (RESERVED).

530. SALES FACTOR -- DENOMINATOR (RULE 530).
Section 63-3027(p), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded by

Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators. (3-20-97)

531. -- 534. (RESERVED).

535. SALES FACTOR -- NUMERATOR (RULE 535).
Section 63-3027(p), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (3-20-97)

536. -- 539. (RESERVED).

540. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 540).
Section 63-3027(q), Idaho Code. (3-20-97)

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

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

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

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

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

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

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

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

05. Throwback Sales. If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example: A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. (3-20-97)

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

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

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

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

541. -- 544. (RESERVED).

545. SALES FACTOR -- SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (RULE 545).
Section 63-3027(q), Idaho Code. (3-20-97)

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

02. Examples. (3-20-97)

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

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

546. -- 549. (RESERVED).

550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 550).
Section 63-3027(r), Idaho Code. (3-20-97)

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

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. The activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Income producing activity includes the following: (3-20-97)

a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service; (3-20-97)

b. The sale, rental, leasing, licensing or other use of real property; (3-20-97)

c. The rental, leasing, licensing or other use of tangible personal property; (3-20-97)

d. The sale, licensing or other use of intangible personal property; and (3-20-97)

e. The mere holding of intangible personal property is not, by itself, an income producing activity. (3-20-97)

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

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

a. The income producing activity is performed wholly in Idaho; or (3-20-97)

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

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

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

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

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

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

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-20-97)

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

551. -- 559. (RESERVED).

560. SPECIAL RULES (RULE 560).
Section 63-3027(s), Idaho Code. (3-20-97)

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

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

a. Separate accounting; (3-20-97)

b. The exclusion of one (1) or more of the factors; (3-20-97)

c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or (3-20-97)

d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. (3-20-97)

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

561. -- 564. (RESERVED).

565. SPECIAL RULES -- PROPERTY FACTOR (RULE 565).
Section 63-3027(s), Idaho Code. (3-20-97)

01. Subrents. (3-20-97)

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

b. Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars ($1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars ($1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand dollars ($200,000). (3-20-97)

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

566. -- 569. (RESERVED).

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

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts From Intangibles. (3-20-97)

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

b. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest shall be excluded from the denominator of the sales factor. (3-30-01)

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03, each treasury function shall be considered separately. (4-5-00)

a. For purposes of Subsection 570.03, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. (4-5-00)

b. For purposes of Subsection 570.03, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-5-00)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 does not operate to classify those sales as attributable to a treasury function. (4-5-00)

571. -- 579. (RESERVED).

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

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 006.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries shall apportion income in accordance with the applicable MTC regulation: (5-3-03)

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

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

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

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others shall be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. (7-1-98)

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

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

g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. (7-1-98)

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. (3-15-02)

581. SPECIAL RULES -- REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (RULE 581).
Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations shall mean the following: (3-20-97)

01. Article IV. Of The Multistate Tax Compact. (3-20-97)

a. Article IV. shall mean Section 63-3027, Idaho Code. (3-20-97)

b. Article IV.1 shall mean Section 63-3027(a), Idaho Code. (3-20-97)

c. Article IV.2 shall mean Section 63-3027(b), Idaho Code. (3-20-97)

d. Article IV.3 shall mean Section 63-3027(c), Idaho Code. (3-20-97)

e. Article IV.4 shall mean Section 63-3027(d), Idaho Code. (3-20-97)

f. Article IV.5 shall mean Section 63-3027(e), Idaho Code. (3-20-97)

g. Article IV.6 shall mean Section 63-3027(f), Idaho Code. (3-20-97)

h. Article IV.7 shall mean Section 63-3027(g), Idaho Code. (3-20-97)

i. Article IV.8 shall mean Section 63-3027(h), Idaho Code. (3-20-97)

j. Article IV.9 shall mean Section 63-3027(i), Idaho Code. (3-20-97)

k. Article IV.10 shall mean Section 63-3027(k), Idaho Code. (3-20-97)

l. Article IV.11 shall mean Section 63-3027(l), Idaho Code. (3-20-97)

m. Article IV.12 shall mean Section 63-3027(m), Idaho Code. (3-20-97)

n. Article IV.13 shall mean Section 63-3027(n), Idaho Code. (3-20-97)

o. Article IV.14 shall mean Section 63-3027(o), Idaho Code. (3-20-97)

p. Article IV.15 shall mean Section 63-3027(p), Idaho Code. (3-20-97)

q. Article IV.16 shall mean Section 63-3027(q), Idaho Code. (3-20-97)

r. Article IV.17 shall mean Section 63-3027(r), Idaho Code. (3-20-97)

s. Article IV.18 shall mean Section 63-3027(s), Idaho Code. (3-20-97)

02. **MTC Regulations**. (3-20-97)

a. Regulation IV.1 shall mean Rules 330 through 354 of these rules. (3-20-97)

b. Regulation IV.2 shall mean Rule 325 and Rules 355 through 384 of these rules. (3-20-97)

c. Regulation IV.3 shall mean Rules 385 through 399 of these rules. (3-20-97)

d. Regulation IV.9 shall mean Rules 450 through 459 of these rules. (3-20-97)

e. Regulation IV.10 shall mean Rules 460 through 479 of these rules. (3-20-97)

f. Regulation IV.11 shall mean Rules 480 through 489 of these rules. (3-20-97)

g. Regulation IV.12 shall mean Rules 490 through 499 of these rules. (3-20-97)

h. Regulation IV.13 shall mean Rules 500 through 514 of these rules. (3-20-97)

i. Regulation IV.14 shall mean Rules 515 through 524 of these rules. (3-20-97)

j. Regulation IV.15 shall mean Rules 525 through 539 of these rules. (3-20-97)

k. Regulation IV.16 shall mean Rules 540 through 549 of these rules. (3-20-97)

l. Regulation IV.17 shall mean Rules 550 through 559 of these rules. (3-20-97)

m. Regulation IV.18.(a) shall mean Rules 560 through 564 of these rules. (3-20-97)

n. Regulation IV.18.(b) shall mean Rules 565 through 569 of these rules. (3-20-97)

o. Regulation IV.18.(c) shall mean Rules 570 through 574 of these rules. (3-20-97)

03. Tax Administrator. Tax Administrator shall mean Tax Commission. (3-20-97)

04. This State. This state shall mean Idaho. (3-20-97)

05. The Apportionment Percentage. (3-20-97)

a. References in MTC Regulation IV.18.(d) to the computation of the apportionment percentage being the total of the property, payroll and sales percentages divided by three (3), shall be replaced with the total of property, payroll, and two (2) times the sales percentages divided by four (4) as required by Section 63-3027(i), Idaho Code. (3-20-97)

b. Examples. Since the Idaho sales factor is double-weighted, examples using a single-weighted sales factor shall be adjusted accordingly. (3-20-97)

582. SPECIAL RULES -- FINANCIAL INSTITUTIONS (RULE 582).
Section 63-3027(s), Idaho Code. (7-1-98)

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted in Subsection 006.02 of these rules. A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. (5-3-03)

02. Definition of Financial Institution. For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" the term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply: (7-1-99)

a. Predominantly means over fifty percent (50%) of a taxpayer's gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However, the classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the predominant character of the gross income for two (2) consecutive years and the average of the corporation's gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income shall be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building shall be excluded. (7-1-98)

b. Deals in means conducting transactions in the course of a trade or business on its own account as opposed to brokering the capital of others. (7-1-98)

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. (7-1-98)

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. (7-1-98)

03. Entities Presumed to be Financial Institutions. The following entities are presumed to be financial institutions as defined in Subsection 582.02: (7-1-98)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (7-1-98)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (7-1-98)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (7-1-98)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (7-1-98)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (7-1-98)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (7-1-98)

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (7-1-98)

04. Exclusion From Rule. The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections 582.03.a. through 582.03.f. and 582.03.h. (7-1-98)

05. Financial Institutions Described in Section 63-3023(b), Idaho Code. (7-1-99)

a. Transacting business. If an entity described in Section 63-3023(b), Idaho Code, does not maintain an office within Idaho and carries on only the activities listed in Section 63-3023(b)(1) through (4), Idaho Code, it is not deemed to be transacting business within Idaho. The fact that the entity is also a financial institution as defined in this rule will not change the result of Section 63-3023(b), Idaho Code. (7-1-99)

b. Calculation of apportionment factor attributes. A financial institution described in Section 63-

3023(b), Idaho Code, that is a member of a unitary group of corporations with at least one member subject to Idaho income tax, shall include its property, payroll, and sales amounts in the denominators of the unitary group's factors. The calculation of the amount included in the denominators shall be computed as provided in the MTC Recommended Formula for Financial Institutions. Because such a financial institution is not deemed to be transacting business within Idaho, the financial institution will have zero (0) for its Idaho numerators of the apportionment factors and will not have an Idaho corporate income tax liability. A financial institution that is transacting business within Idaho shall compute its Idaho numerator and denominator amounts as provided in the MTC Recommended Formula for Financial Institutions. (7-1-99)

06. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. (7-1-99)

07. The Apportionment Percentage. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) shall be replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. (7-1-99)

583. -- 584. (RESERVED).

585. EXCEPTIONS TO APPORTIONMENT FORMULA -- SEPARATE ACCOUNTING (RULE 585).
Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. This determination shall be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. (3-20-97)

586. -- 589. (RESERVED).

590. EXCEPTIONS TO APPORTIONMENT FORMULA -- EXCLUSION OF A FACTOR (RULE 590).
Section 63-3027(s), Idaho Code. The apportionment of income provided in Section 63-3027, Idaho Code, requires the use of the three (3) factor apportionment formula described in Section 63-3027(i), Idaho Code. However, if one (1) of the prescribed three (3) factors is inapplicable, the remaining two (2) factors shall be included as numerators of the fraction and the denominator of the fraction shall be two (2) or three (3) if necessary to maintain double weighting of the sales factor. (3-20-97)

591. -- 594. (RESERVED).

595. EXCEPTIONS TO APPORTIONMENT FORMULA -- ADDITIONAL OR SUBSTITUTE FACTORS (RULE 595).
Section 63-3027(s), Idaho Code. A factor other than the property, payroll, or sales factor may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. (3-20-97)

596. -- 599. (RESERVED).

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).
Section 63-3027(t), Idaho Code. (3-20-97)

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (4-6-05)

02. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (7-1-98)

03. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-98)

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

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

601. -- 604. (RESERVED).

605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (RULE 605).
Section 63-3027(t), Idaho Code. (3-20-97)

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

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

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

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

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

04. Consistent Application of Book to Tax Adjustments. If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations shall be made for each unitary foreign corporation included in the combined report and shall be consistently applied in each year for which the worldwide method applies. These adjustments are subject to the record-keeping requirements of the Internal Revenue Code and Treasury Regulations for domestic corporations. (3-20-97)

05. Apportionment Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used. (3-20-97)

606. -- 619. (RESERVED).

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).
Section 63-3027, Idaho Code. (3-20-97)

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. (3-20-97)

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. (3-20-97)

03. Multistate Partnerships. If a partnership operates in more than one state, its income shall be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. (3-20-97)

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

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

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, shall be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(q), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. (3-30-01)

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

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

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

621. -- 639. (RESERVED).

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

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

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

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

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

c. Idaho taxpayers having a valid water's edge election shall compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-20-97)

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. (3-20-97)

641. WATER'S EDGE -- ELEMENTS OF A COMBINED REPORT (RULE 641).
Section 63-3027B, Idaho Code. (3-20-97)

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

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

642. WATER'S EDGE -- LEGAL AND PROCEDURAL REQUIREMENTS (RULE 642).
Section 63-3027B, Idaho Code. (3-20-97)

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

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

a. A complete list of all affiliated corporations, foreign and domestic, of which more than twenty percent (20%) of the voting stock is, directly or indirectly, owned or controlled by a common owner; (3-20-97)

b. Identifying information for each member of the water's edge combined group, including: federal identification number, primary business activities, percent of ownership by members of the combined group, and dates of acquisition or disposition of interest; (3-20-97)

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

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

643. WATER'S EDGE -- CHANGE OF ELECTION (RULE 643).
Section 63-3027C, Idaho Code. (3-20-97)

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

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

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

02. Written Petition. A written petition must include the following: (3-20-97)

a. An explanation of the legal or factual basis for requesting the change of reporting method; and (3-20-97)

b. A computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. (3-20-97)

03. Due Date for Filing the Written Petition. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. (3-20-97)

04. Failure to Provide Required Information. Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. (3-20-97)

05. Approval Attached to Original Return. A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. (3-20-97)

06. Appeal Rights. A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer shall continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. (3-20-97)

644. WATER'S EDGE -- DISREGARDING THE ELECTION (RULE 644).
Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. (3-20-97)

645. WATER'S EDGE -- TREATMENT OF DIVIDENDS (RULE 645).
Section 63-3027C, Idaho Code. (3-20-97)

01. Dividends Received From Payors Incorporated Outside the United States. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as business income. These dividends are treated as business income of the water's edge combined group even if paid from earnings included in the taxpayer's combined report in prior years. (3-20-97)

02. Dividends Received From Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be business income of the water's edge combined group. (3-20-97)

03. Deemed Dividends From Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(c), Idaho Code, shall be included in business income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. (4-5-00)

04. Dividends From Foreign Sales Corporations. (4-5-00)

a. As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which the dividend was paid bears to the total FSC income before taxes for that year. For purposes of computing the dividend elimination, total FSC income before taxes means book income before the deduction of federal income taxes. (4-5-00)

b. For example, a FSC paid one million dollars ($1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars ($10,000,000) and total FSC income before taxes of twenty million dollars ($20,000,000). The dividends eliminated would be five hundred thousand dollars ($500,000) computed as follows: (($10,000,000 federal taxable income / $20,000,000 total FSC income before taxes) X $1,000,000 FSC dividend paid = $500,000 dividend elimination). (4-5-00)

05. Interest Expense Offset. The interest expense offset provided in Section 63-3022M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. (4-5-00)

646. WATER'S EDGE -- DOMESTIC DISCLOSURE SPREADSHEET (RULE 646).
Section 63-3027E, Idaho Code. (3-20-97)

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed no later than six (6) months after filing the original return unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. (7-1-98)

02. Spreadsheet Information. The spreadsheet information must be submitted using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet" or on identically formatted forms that disclose the same information. (7-1-98)

647. -- 699. (RESERVED).

700. CREDIT FOR TAXES PAID ANOTHER STATE OR TERRITORY (RULE 700).
Section 63-3029, Idaho Code. (7-1-98)

01. Taxes Not Eligible for the Credit. Any tax or portion thereof imposed on capital stock, retained earnings, stock values, or a basis other than income is not eligible for the credit. (7-1-98)

02. Credit Calculated on a State-by-State Basis. The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

03. Income Tax Payable to Another State. The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. (7-1-98)

04. Rounding to the Nearest Whole Percent. The percentage calculated under Section 63-3029, Idaho Code, shall be rounded to the nearest whole percent. This percentage may not exceed one hundred percent (100%) nor be less than zero (0). For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). (3-30-01)

701. -- 704. (RESERVED).

705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS (RULE 705).
Section 63-3029A, Idaho Code. (3-20-97)

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

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

a. Twenty percent (20%) of his total income tax liability; or (3-20-97)

b. One hundred dollars ($100) if filing other than a joint return or two hundred dollars ($200) if filing a joint return. (3-15-02)

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

a. Ten percent (10%) of the total income tax liability; or (3-20-97)

b. One thousand dollars ($1,000). (3-15-02)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. (3-15-02)

05. Other Limitations. (3-15-02)

a. This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)

b. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)

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

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

706. -- 709. (RESERVED).

710. IDAHO INVESTMENT TAX CREDIT -- IN GENERAL (RULE 710).
Section 63-3029B, Idaho Code. (3-20-97)

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

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

a. Tax liability. (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

iii. For taxable years beginning prior to January 1, 1995, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

b. Credit for qualifying new employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

c. Unitary taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

d. Nonrefundable credits. The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

03. Carryovers. (3-20-97)

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

b. Investment tax credit earned on investments made before January 1, 1990, but not claimed against tax in the year earned is eligible for a five (5) year carryover. (3-30-01)

c. Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-01)

d. For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

e. Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

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

05. Expensed Property. The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

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

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

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

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

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

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

a. The distribution to members is made as provided in Rule 785 of these rules. (3-15-02)

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

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

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

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

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

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

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

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

713. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (RULE 713).

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

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

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

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. (7-1-98)

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

03. Unitary Taxpayers. The property factor of a corporation that is a member of a combined group is computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator. (3-20-97)

04. Examples. (3-20-97)

a. Idaho Percentage-of-Use Method. In January, 1992, a calendar year corporation purchased a road grader for fifty thousand dollars ($50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar ($15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars ($50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars ($15,000) for a credit of four hundred fifty dollars ($450). (3-20-97)

b. Idaho Property Factor Method. Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars ($50,000), the dump truck cost seventy-five thousand dollars ($75,000), and the asphalt layer cost two hundred thousand dollars ($200,000). The taxpayer has qualified investments totaling twenty-five thousand dollars ($25,000), computed at twenty percent (20%) of the one hundred twenty-five thousand dollars ($125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty-five thousand dollars ($25,000) for a total credit of seven hundred fifty dollars ($750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992. (3-20-97)

714. IDAHO INVESTMENT TAX CREDIT -- CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).

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

01. In General. Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. (3-20-97)

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

a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. See Subsection 713.04.a. of these rules for an example of the percentage-of-use method. (7-1-98)

b. If the property factor numerator option is elected, the qualified investment is the basis of the asset included in the numerator of the Idaho property factor for the year the credit is earned. For example, if a taxpayer is in the freight transportation business and thirty percent (30%) of his trucks' fleet miles were logged in Idaho during the year, thirty percent (30%) of the cost of a truck acquired that year would be included in the Idaho property factor numerator. If one of the trucks acquired that year traveled in Idaho, and cost one hundred thousand dollars ($100,000), the amount included in the Idaho property factor numerator would be thirty thousand dollars ($30,000). The qualified investment in this truck would also be thirty thousand dollars ($30,000) resulting in a credit of nine hundred dollars ($900). (7-1-98)

715. IDAHO INVESTMENT TAX CREDIT -- RECAPTURE (RULE 715).
Section 63-3029B, Idaho Code. (3-20-97)

01. In General. If a taxpayer is claiming or has claimed the investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. (3-20-97)

02. Recomputation of the Investment Tax Credit. (3-20-97)

a. The recomputation of the credit and any recapture of prior credits is made pursuant to the Internal Revenue Code and Treasury Regulations for the taxable year in which the property is disposed of or ceases to qualify. (3-20-97)

b. The recapture is computed by multiplying the credit by the applicable recapture percentage in Subsection 715.04. (3-20-97)

c. The recapture of credit previously claimed against tax in prior taxable years is an addition to tax in the taxable year in which the property is disposed of or ceases to qualify. The addition to tax does not affect the computation of limitations used to determine the amount of investment tax credit or any other Idaho credit that may be claimed in the year of the recapture. (3-20-97)

03. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-20-97)

04. Applicable Recapture Percentages. For qualified business property placed in service after December 31, 1990, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. The length of time the asset qualifies determines the recapture percentage as follows: (3-20-97)

a. If less than one (1) year, use one hundred percent (100%); (3-20-97)

b. If more than one (1) year but less than two (2) years, use eighty percent (80%); (3-20-97)

c. If more than two (2) years but less than three (3) years, use sixty percent (60%); (3-20-97)

d. If more than three (3) years but less than four (4) years, use forty percent (40%); (3-20-97)

e. If more than four (4) years but less than five (5) years, use twenty percent (20%). (3-20-97)

716. IDAHO INVESTMENT TAX CREDIT -- RECORD-KEEPING REQUIREMENTS (RULE 716).
Section 63-3029B, Idaho Code. (3-20-97)

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the investment tax credit claimed on an income tax return subject to examination. The records must include all of the following: (3-20-97)

a. A description of the property; (3-20-97)

b. The asset number assigned to the item of property, if applicable; (3-20-97)

c. The acquisition date and date placed in service; (3-20-97)

d. The basis of the property; (3-20-97)

e. The class of the property for recovery property or the estimated useful life for nonrecovery property; (3-20-97)

f. The designation as new or used property; (3-20-97)

g. The location and utilization (the usage both in and outside Idaho) of the property; (3-20-97)

h. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable; and (3-20-97)

i. The reason for acquisition if acquired prior to January 1, 1995. (3-20-97)

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: (3-20-97)

a. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information. (3-20-97)

b. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents. (3-20-97)

c. Records verifying ownership including purchase contracts and cancelled checks. (3-20-97)

d. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho. (3-20-97)

e. Purchase orders, authorizations for expenditures or other records that identify the reason for acquisition for property acquired prior to January 1, 1995. (3-20-97)

f. Log books measuring the use of property used both in and outside Idaho. These logs must be maintained for each item of property on which investment tax credit is claimed. These logs should measure use of property in accordance with the most accurate method for measuring the extent of use in Idaho. For example, use in Idaho of trucks, trailers, locomotives, and railcars shall be calculated according to actual mileage in and outside Idaho. (3-20-97)

g. A system that verifies that property on which the investment tax credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-20-97)

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-20-97)

04. Unitary Taxpayers. Corporations claiming investment tax credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-20-97)

717. -- 718. (RESERVED).

719. IDAHO INVESTMENT TAX CREDIT -- PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).
Section 63-3029B, Idaho Code. (3-20-04)

01. In General. Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. (3-20-04)

02. Terms. As used in this rule: (3-20-04)

a. Qualifying Taxpayer. A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. (4-6-05)

i. The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation shall not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group shall determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. (4-6-05)

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. (4-6-05)

b. Second Preceding Taxable Year. The term second preceding taxable year shall mean the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

c. Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar ($150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (3-20-04)

03. Negative Idaho Taxable Income in Second Preceding Taxable Year. (4-6-05)

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year shall be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)

c. Examples of Determining Second Preceding Taxable Year. (3-20-04)

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (4-6-05)

iii. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. (4-6-05)

iv. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. (4-6-05)

v. Table of examples of determining second preceding taxable year.

TAXABLE YEAR PROPERTY PLACED IN SERVICE	FIRST PRECEDING TAXABLE YEAR	SECOND PRECEDING TAXABLE YEAR
Calendar year 2003	Calendar year 2002	Calendar year 2001
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

(3-20-04)

d. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. (4-6-05)

e. Pass-Through Entities. A taxpayer who is a partnership or an S corporation shall not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

f. Return Not Filed. If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer shall not be entitled to the exemption. (3-20-04)

04. Used Property Limitation. (3-20-04)

a. In General. The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment shall not exceed one hundred fifty thousand dollars ($150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars ($150,000) for purposes of determining the property tax exemption. (3-20-04)

b. Selection of Items of Used Property. If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar ($150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars ($60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars ($30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars ($30,000) of the third item shall not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer shall be made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)

c. Electing Property Tax Exemption on Selected Used Property Items. Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer shall determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. (4-6-05)

720. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- IN GENERAL (RULE 720).

Section 63-3029G, Idaho Code. (3-15-02)

01. Credit Allowed. (3-15-02)

a. The credit for Idaho research activities allowed by Section 63-3029G, Idaho Code, applies to taxable years beginning on and after January 1, 2001. (4-6-05)

b. The Idaho credit shall be computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (3-15-02)

02. Limitations. The credit for Idaho research activities allowable in any taxable year shall be limited as follows: (3-15-02)

a. Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

03. Carryovers. The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

05. Short Taxable Year Calculations. Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations shall be used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. If the taxpayer makes the election in Section 63-3029G(1)(a)(i), Idaho Code, and the taxpayer's taxable year is not a calendar year for 2001, the taxpayer must use the federal short taxable year calculations to compute the credit applicable for the period beginning January 1, 2001, and ending the last day of the taxpayer's fiscal year ending in 2001. (4-6-05)

721. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- ELECTIONS (RULE 721).
Section 63-3029G, Idaho Code. (3-15-02)

01. Five Year Election. A taxpayer may elect to claim the credit for Idaho research activities for one (1) of the following five (5) year periods: (3-15-02)

a. The five (5) year period beginning with the first day of the taxpayer's taxable year beginning in 2001; or (3-15-02)

b. The five (5) year period beginning with January 1, 2001. (3-15-02)

c. If a fiscal year taxpayer elects to claim the credit for the five (5) year period beginning with January 1, 2001, the credit for Idaho research activities allowed on the taxpayer's return for the fiscal year beginning in 2005 shall be computed using only the amounts for research activities occurring prior to January 1, 2006. (3-15-02)

d. The five (5) year period election shall be made by checking the appropriate box on Form 67. The election may not be changed unless the statute of limitations is open for assessment for all years to which the credit was claimed and all such returns are amended consistently with the change in election. (3-15-02)

02. Election to be Treated as a Start-Up Company. Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities. (3-15-02)

a. The election once made is irrevocable. (3-15-02)

b. The election shall be made by checking the appropriate box on Form 67. (3-15-02)

c. A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company shall use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. For example, if the taxpayer's fiscal year beginning in 2001 is the 8th such taxable year beginning after December 31, 1993, the fixed-base percentage is one-half (1/2) of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years. (3-15-02)

03. Unitary Sharing. A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code, or Rule 720.02.b of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

722. (RESERVED).

723. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- RECORD-KEEPING REQUIREMENTS (RULE 723).
Section 63-3029G, Idaho Code. (3-15-02)

01. Information Required. Each taxpayer must retain and make available, on request, records for each item included in the computation of the credit for Idaho research activities claimed on an Idaho income tax return. The records must include all of the following: (3-15-02)

a. Verification that the research was conducted in Idaho; (3-15-02)

b. Verification that wages included in the computation were for qualified service performed by an employee in Idaho; (3-15-02)

c. Verification that supplies included in the computation were used for research conducted in Idaho; (3-15-02)

d. Verification that contract research expenses were for research conducted in Idaho; (3-15-02)

e. Verification that the research activities meet the definition of qualified research; and (3-15-02)

f. Verification that the amounts included in the Idaho computation are includable in the computation of the federal credit allowed by Section 41, Internal Revenue Code. (3-15-02)

02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-15-02)

03. Unitary Taxpayers. Corporations claiming the credit for Idaho research activities must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-15-02)

724. -- 729. (RESERVED).

730. CREDIT FOR CONTRIBUTIONS TO IDAHO YOUTH FACILITIES, REHABILITATION FACILITIES AND NONPROFIT SUBSTANCE ABUSE CENTERS (RULE 730).
Section 63-3029C, Idaho Code. (3-30-01)

01. Qualified Contributions. Contributions must be made in cash or in kind during the taxable year the credit is claimed. Unpaid pledges do not qualify as contributions. Fees for services provided, room and board, and similar charges are not contributions. (3-30-01)

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

a. Twenty percent (20%) of his total income tax liability; or (3-20-97)

b. One hundred dollars ($100) if filing other than a joint return or two hundred dollars ($200) if filing a joint return. (3-20-97)

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

a. Ten percent (10%) of its total income tax liability; or (3-20-97)

b. Five hundred dollars ($500). (3-20-97)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate or trust and passed through to the partner, shareholder, or beneficiary. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. (3-15-02)

05. Other Limitations. (3-30-01)

a. This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)

b. This credit plus any other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)

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

731. -- 744. (RESERVED).

745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (RULE745).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (5-3-03)

01. In General. A revenue-producing enterprise means an Idaho business that begins with a natural resource and produces, assembles, fabricates, manufactures, or processes a value-added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following: (3-30-01)

a. Farming activities identified in Section 464, Internal Revenue Code, that result in a value-added product; (3-30-01)

b. Mining; (3-30-01)

c. Logging; (3-30-01)

d. Extracting a natural resource. (3-30-01)

02. Nonqualifying Activities. Examples of businesses that do not qualify as a revenue-producing enterprise include a business performing the following activities: (3-30-01)

a. Retail sales; (3-30-01)

b. Professional or managerial services; (3-30-01)

c. Repair services or other service related activities; (3-30-01)

d. The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing; (3-30-01)

e. The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing; (3-30-01)

f. Transportation activities, unless they are an integral part of a qualifying activity; (3-30-01)

g. Activities that consume a natural resource in a process, but do not add value to the natural resource. (3-30-01)

03. Examples. (3-30-01)

a. A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue-producing enterprise. (3-30-01)

b. A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

c. A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue-producing enterprise. The selling activity does not qualify. (3-30-01)

d. A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

e. A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value-added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue-producing enterprise. (3-30-01)

f. A taxpayer's Idaho business includes using water in a process to produce electricity. Because the Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)

g. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)

04. Multiple Activities. (3-30-01)

a. If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and at least fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer may treat the entire Idaho business as a revenue-producing enterprise. (3-30-01)

b. If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and less than fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer must calculate qualifying new employees and the net income limitation based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-01)

05. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

06. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise shall be determined separately for each corporation that is a member of the unitary group. (3-30-01)

746. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 746).
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning on and after January 1, 2004.

(4-6-05)

01. In General. For taxable years beginning on and after January 1, 2004, an employer may be able to earn either a one thousand dollar ($1,000) credit or a five hundred dollar ($500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee. (4-6-05)

02. Qualifying for the One Thousand Dollar ($1,000) Credit. (4-6-05)

a. The new employee must meet both of the following criteria to qualify for the one thousand dollar ($1,000) credit: (4-6-05)

i. He must have received annual earnings at an average rate of fifteen dollars and fifty cents ($15.50) or more per hour worked; and (4-6-05)

ii. He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (4-6-05)

b. The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar ($1,000) credit. (4-6-05)

03. Qualifying for the Five Hundred Dollar ($500) Credit. If a new employee does not meet the criteria for the one thousand dollar ($1,000) credit, the employer may be eligible to claim the five hundred dollar ($500) credit. To qualify for the five hundred dollar ($500) credit, the new employee must have been employed in a revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (4-6-05)

04. Calculating Number of Employees. (3-30-01)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-20-04)

i. The employee must have been subject to Idaho income tax withholding. (3-20-04)

ii. The employee must have been employed by the employer on a regular full-time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (4-6-05)

iii. The employee must have been performing such duties for the employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (4-6-05)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

b. Idaho Department of Commerce and Labor Reports. The employer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-6-05)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

05. Calculating the Number of New Employees. (3-30-01)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 746.02.a., of this rule shall apply in computing the number of employees in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. If the employer treats the entire business as a revenue-producing enterprise under Paragraph 745.04.a., of these rules, the calculations in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule shall be made on a consistent basis. The number of employees for the prior taxable year and the average for the three (3) prior taxable years shall be made presuming the entire business was a revenue-producing enterprise for those years. (4-6-05)

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-6-05)

d. The employer shall determine the number of new employees who qualify for the one thousand dollar ($1,000) credit and the number who qualify for the five hundred dollar ($500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer shall not earn the credit. For example, if a new employee has an average wage rate of ten dollars ($10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar ($1,000) credit or the five hundred dollar ($500) credit. (4-6-05)

06. Computing the Credit Earned. The credit earned is the lesser of the amounts determined in Paragraphs 746.06.a., and 746.06.b., of this rule. (4-6-05)

a. The number of new employees who qualify for the five hundred dollars ($500) credit multiplied by five hundred dollars ($500), plus the number of new employees who qualify for the one thousand dollar ($1,000) credit multiplied by one thousand dollars ($1,000); or (4-6-05)

b. The net income of the trade or business, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (4-6-05)

07. Limitations. In the year the credit for qualifying new employees is earned or claimed: (3-20-04)

a. This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (4-6-05)

b. See Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

08. Carryover. To claim the carryover, the employer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the employer is not required to recapture the credit claimed in previous taxable years. However, the employer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (4-6-05)

09. Pass-Through Entities. See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

10. Unitary Taxpayers. (3-30-01)

a. A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)

b. Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

747. CREDIT FOR QUALIFYING NEW EMPLOYEES -- NET INCOME OF A REVENUE-PRODUCING ENTERPRISE (RULE 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (5-3-03)

01. Entire Idaho Business Qualifies as a Revenue-Producing Enterprise. If the entire Idaho business qualifies as a revenue-producing enterprise or the taxpayer treats the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated as follows: (3-30-01)

a. Proprietorships**.** The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

b. C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

c. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns. (3-30-01)

d. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to individual partners who do not report this income on Idaho income tax returns. (3-30-01)

02. Idaho Business With Multiple Activities. (3-30-01)

a. If the Idaho business has multiple activities resulting in only a portion of the business qualifying as a revenue-producing enterprise, and the taxpayer does not treat the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated for the portion of the Idaho business that qualifies as a revenue-producing enterprise based on the number of employees in the revenue-producing enterprise compared to the number of employees in the entire business. The number of employees in the revenue-producing enterprise shall be calculated in accordance with Subsection 746.02 of these rules. (3-30-01)

b. If the calculation of net income in Subsection 747.02.a. does not fairly represent the net income of the revenue-producing enterprise, the taxpayer may propose or the Tax Commission may require an alternative method. (3-30-01)

03. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

748. CREDIT FOR QUALIFYING NEW EMPLOYEES -- RECORD-KEEPING REQUIREMENTS (RULE 748).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (5-3-03)

01. Information Required. Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following: (5-3-03)

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Commerce and Labor; (5-3-03)

b. Payroll records and reports documenting length of employment and hours worked; (5-3-03)

c. The computation of the number of qualifying new employees; (3-30-01)

d. The qualification as a revenue-producing enterprise; (3-30-01)

e. The computation of the credit; (3-30-01)

f. The computation of net income; (3-30-01)

g. The continued maintenance of adequate employment levels into carryover years; and (3-30-01)

h. The computation of any carryovers. (3-30-01)

02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

749. (RESERVED).

750. BROADBAND EQUIPMENT INVESTMENT CREDIT -- IN GENERAL (RULE 750).
Section 63-3029I, Idaho Code. (3-15-02)

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (4-6-05)

02. Limitations. The broadband equipment investment credit allowable in any taxable year shall be limited as follows: (3-15-02)

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars ($750,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

03. Carryovers. (3-15-02)

a. The carryover period for the broadband equipment investment credit is fourteen (14) years. (3-15-02)

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. (3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules shall apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules shall be those limitations as provided in Section 63-3029I, Idaho Code. (4-6-05)

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

751. (RESERVED).

752. BROADBAND EQUIPMENT INVESTMENT CREDIT -- RECAPTURE (RULE 752).
Section 63-3029I, Idaho Code. (3-15-02)

01. In General. If a taxpayer is claiming or has claimed the broadband equipment investment credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. See Rule 715 of these rules. (3-15-02)

02. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

03. Transferred Credit. The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

753. BROADBAND EQUIPMENT INVESTMENT CREDIT -- RECORD-KEEPING REQUIREMENTS (RULE 753).
Section 63-3029I, Idaho Code. (3-15-02)

01. Information Required. Each taxpayer must retain and make available, on request, records for each item of property included in the computation of the broadband equipment investment credit claimed on an income tax return subject to examination. The records must include all of the following: (3-15-02)

a. The order from the Idaho Public Utilities Commission confirming that the installed equipment is qualified broadband equipment. (3-15-02)

b. A description of the property; (3-15-02)

c. The asset number assigned to the item of property, if applicable; (3-15-02)

d. The acquisition date and date placed in service; (3-15-02)

e. The basis of the property; and (3-15-02)

f. The retirement, disposition, or date transferred out of Idaho, or date no longer used in Idaho, if applicable. (3-15-02)

02. Accounting Records Subject to Examination. Accounting records that may need to be examined to document acquisition, disposition, location, and utilization of assets include the following: (3-15-02)

a. Source documents supporting the application to the Idaho Public Utilities Commission; (3-15-02)

b. Accounting documents that contain asset and account designations and descriptions. These documents include a chart of accounts, the accounting manual, controller's manual, or other documents containing this information; (3-15-02)

c. Asset location records including asset directories, asset registers, insurance records, property tax records, or similar asset inventory documents; (3-15-02)

d. Records verifying ownership including purchase contracts and cancelled checks; (3-15-02)

e. Invoices, shipping documents, and similar documents reflecting the transfer of assets in and out of Idaho; and (3-15-02)

f. A system that verifies that property on which the broadband equipment investment credit was claimed continues to maintain its status as Idaho qualifying property throughout the recapture period. (3-15-02)

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit claimed. (3-15-02)

04. Unitary Taxpayers. Corporations claiming broadband equipment investment credit must provide a calculation of the credit earned and used by each member of the combined group. The schedule must clearly identify shared credit and the computation of any credit carryovers. (3-15-02)

05. Credit Transferred. A taxpayer that transfers the broadband equipment investment credit shall continue to be subject to the record-keeping requirements of this rule for as long as the credit may be carried over by the transferee or until further assessment or deficiency determinations are barred by a period of limitation, whichever is longer. (3-15-02)

754. (RESERVED).

755. CREDIT FOR QUALIFYING NEW EMPLOYEES -- IN GENERAL (RULE 755).
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)

01. Limitations. If the credit for qualifying new employees is earned or claimed in a taxable year beginning in 2001, this credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax liability after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)

02. Carryover. To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-15-02)

03. Pass-Through Entities. See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

04. Unitary Taxpayers. (3-15-02)

a. A corporation may not claim the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-15-02)

b. Each corporation in a unitary combined group that claims the credit for qualifying new employees is subject to Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)

756. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 756).
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)

01. In General. A taxpayer is allowed a credit of five hundred dollars ($500) per new employee in the taxable year. To compute the credit for qualifying new employees, the taxpayer shall first calculate the number of employees in the Idaho business. (3-15-02)

02. Calculating Number of Employees. (3-15-02)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-15-02)

i. The employee must have had Idaho income tax withheld from his wages. (3-15-02)

ii. The employee must have been employed by the taxpayer on a regular full-time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (3-15-02)

iii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-15-02)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-15-02)

b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-15-02)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-15-02)

03. Calculating the Number of New Employees. (3-15-02)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-15-02)

i. The number of employees for the prior taxable year; or (3-15-02)

ii. The average of the number of employees for the three (3) prior taxable years. (3-15-02)

b. The requirements as to who qualifies for the calculation of number of employees in Subsection 756.02.a. shall apply in computing the number of employees in Subsections 756.03.a.i. and 756.03.a.ii. Calculations used in computing the credit earned in prior years when the credit was limited to employees in a revenue-producing enterprise may not be used in computing the credit earned in taxable years beginning in 2001. (3-15-02)

04. Computing the Credit Earned. The number of new employees shall be rounded to the nearest tenth (.10) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: (3-15-02)

a. The number of new employees multiplied by five hundred dollars ($500); or (3-15-02)

b. The net income of the Idaho business, as determined pursuant to Rule 757 of these rules, multiplied by three and one-quarter percent (3.25%). (3-15-02)

757. CREDIT FOR QUALIFYING NEW EMPLOYEES -- NET INCOME OF IDAHO BUSINESS (RULE 757).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. The net income of the Idaho business is calculated as follows: (3-15-02)

01. Proprietorships. The amount reported as net profit or net loss on Schedule C or Schedule F of the federal income tax return that is from Idaho activities. (3-15-02)

02. C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocated to Idaho. (3-15-02)

03. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns. (3-15-02)

04. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to individual partners who do not report this income on Idaho income tax returns. (3-15-02)

05. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-15-02)

758. CREDIT FOR QUALIFYING NEW EMPLOYEES -- RECORD-KEEPING REQUIREMENTS (RULE 758).
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)

01. Information Required. Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following: (5-3-03)

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Commerce and Labor; (5-3-03)

b. Payroll records and reports documenting length of employment and hours worked: (5-3-03)

c. The computation of the number of qualifying new employees; (3-15-02)

d. The computation of the credit; (3-15-02)

e. The computation of net income; (3-15-02)

f. The continued maintenance of adequate employment levels into carryover years; and (3-15-02)

g. The computation of any carryovers. (3-15-02)

02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

759. (RESERVED).

760. IDAHO INCENTIVE INVESTMENT TAX CREDIT -- IN GENERAL (RULE 760).
Section 63-3029J, Idaho Code. (3-15-02)

01. Credit Allowed. The incentive investment tax credit allowed by Section 63-3029J, Idaho Code, applies to investments made during the taxable year that begins in 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (3-15-02)

02. Limitations. The incentive investment tax credit allowable in any taxable year shall be limited as follows: (3-15-02)

a. The incentive investment tax credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Five hundred thousand dollars ($500,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the incentive investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the incentive investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

03. Carryovers. (3-15-02)

a. The carryover period for the incentive investment tax credit is fourteen (14) years. (3-15-02)

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. (3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules shall apply to the incentive investment tax credit except that limitations referenced in Subsection 711.01 shall be those limitations as provided in Section 63-3029J, Idaho Code. (3-15-02)

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

761. IDAHO INCENTIVE INVESTMENT TAX CREDIT -- MOBILE PROPERTY (RULE 761).
Section 63-3029J, Idaho Code. (3-15-02)

01. In General. The Idaho incentive investment tax credit is computed using the percentage rate for the Idaho county in which the property is primarily based. (3-15-02)

a. Mobile property is considered primarily based in the Idaho county in which it has more than fifty percent (50%) of its use for that taxable year. If the property is not used in any Idaho county more than fifty percent (50%), it shall be deemed to be primarily based in the Idaho county in which it has most of its use for that taxable year. (3-15-02)

b. Use shall be determined based on time, miles, or other measure that accurately reflects the use of the property. The use of aircraft in a county shall be determined by the ratio of departures from locations within a county to total departures everywhere. (3-15-02)

c. If property is used one hundred percent (100%) in Idaho but in more than one (1) county, one hundred percent (100%) of the cost of the property will qualify if the property is primarily based in a qualifying county. If the property is primarily based in a county that does not qualify, the property will not qualify. (3-15-02)

d. If property is used in and outside Idaho, only the percent of the property used inside Idaho is eligible for the credit. (3-15-02)

02. Examples. (3-15-02)

a. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty-five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)

b. A loader is used in Idaho county A twenty-five percent (25%), in Idaho county B thirty percent (30%), and in Idaho county C forty-five percent (45%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)

c. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty-five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C has a credit percentage rate of zero (0), the credit is zero (0). (3-15-02)

d. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Oregon fifty-five percent (55%). The loader is deemed to be primarily based in Idaho county B, the Idaho county with the most usage. Only forty-five percent (45%) of the property will qualify for the credit at the credit percentage rate for Idaho county B, since the percent of the loader used outside Idaho is not eligible for the credit. (3-15-02)

762. IDAHO INCENTIVE INVESTMENT TAX CREDIT -- RECAPTURE (RULE 762).
Section 63-3029J, Idaho Code. (3-15-02)

01. In General. If a taxpayer is claiming or has claimed the incentive investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. See Rule 715 of these rules. (3-15-02)

02. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

03. Transferred Credit. The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

763. IDAHO INCENTIVE INVESTMENT TAX CREDIT -- RECORD-KEEPING REQUIREMENTS (RULE 763).
Section 63-3029J, Idaho Code. (3-15-02)

01. Information Required. Each taxpayer who earns the incentive investment tax credit shall be subject to the record-keeping requirements set forth in Rule 716 of these rules. In addition, the taxpayer shall maintain records to identify the location and utilization by Idaho county for each item of property. (3-15-02)

02. Credit Transferred. A taxpayer that transfers the incentive investment tax credit shall continue to be subject to the record-keeping requirements of this rule and Rule 716 of these rules, for as long as the credit may be carried over by the transferee or until further assessment or deficiency determinations are barred by a period of limitation, whichever is longer. (3-15-02)

764. - 769. (RESERVED).

770. GROCERY CREDIT (RULE 770).
Section 63-3024A, Idaho Code. (3-20-97)

01. Residents Required to File. (3-20-97)

a. A resident may claim a credit of twenty dollars ($20) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. (3-15-02)

b. A resident age sixty-five (65) or older may claim a credit of thirty-five dollars ($35) for each personal exemption described in Paragraph 770.01.a., of this rule that represents an individual age sixty-five (65) or over. (4-6-05)

c. A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (3-20-97)

02. Residents Not Required to File. A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions. The following resident individuals are eligible for the credit: (3-20-97)

a. Individuals age sixty-two (62) or older; (3-20-97)

b. Disabled veterans; and (3-20-97)

c. Blind individuals. (3-20-97)

03. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (3-20-97)

04. Members of the Armed Forces. A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: (3-20-97)

a. Domiciled in Idaho is entitled to this credit; (3-20-97)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (4-6-05)

05. Spouse or Dependents of Armed Forces Members. A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (3-20-97)

06. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (3-20-97)

771. -- 784. (RESERVED).

785. CREDITS -- PASS-THROUGH ENTITIES (RULE 785).

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

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

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

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

02. Limitations. (3-20-97)

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

b. Example. Partnership XYZ has three (3) individual partners who each are entitled to a one-third (1/

3) share of the partnership profits. The partnership contributed three thousand dollars ($3,000) to an educational institution. The contribution qualifies for the credit provided by Section 63-3029A, Idaho Code. One-third (1/3) of the contribution, one thousand dollars ($1,000), passes through to Partner X who files a joint return. He is allowed a credit of fifty percent (50%) of the amount contributed, but is limited to the lesser of two hundred dollars ($200) or twenty percent (20%) of his total income tax liability. (3-15-02)

c. Example. Assume the same facts as in Subsection 785.02.b., except Partner X also contributed two hundred dollars ($200) to a qualifying educational institution. Partner X is treated as contributing one thousand two hundred dollars ($1,200), to a qualifying educational institution. Since fifty percent (50%) of his contributions, six hundred dollars ($600) exceeds the limitation, the credit is limited to the lesser of two hundred dollars ($200) or twenty percent (20%) of his total income tax liability. The credit is not increased because part of the contribution was from Partner X as an individual and part from the partnership. (3-15-02)

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

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

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

06. Pass-Through Entities That Pay Tax. (3-30-01)

a. A pass-through entity may apply and may recapture credits that generally pass through to the partner, shareholder, or beneficiary for whom the pass-through entity is paying the tax. For example, Idaho investment tax credit earned that would have passed through to the owner or beneficiary could be claimed by the pass-through entity subject to the applicable limitations. Limitations based on the tax liability apply to each owner's or beneficiary's tax liability being paid by the pass-through entity. (3-30-01)

b. The partner, shareholder or beneficiary is responsible for the recapture or recomputation of credits passed through to the partner, shareholder, or beneficiary. (3-30-01)

c. Carryovers that exist after a pass-through entity offsets the tax with credit available to that partner, shareholder or beneficiary, remain a carryover of the partner, shareholder or beneficiary. (3-30-01)

786. -- 789. (RESERVED).

790. TRANSFER OF CREDIT -- IN GENERAL (RULE 790).
Sections 63-3029I and 63-3029J, Idaho Code. (3-15-02)

01. In General. A credit may be transferred only as specifically allowed in the statute authorizing the credit. The following credits are the only credits that may be transferred: (3-15-02)

a. The broadband equipment investment credit, as allowed by Section 63-3029I, Idaho Code; and (3-15-02)

b. The incentive investment tax credit, as allowed by Section 63-3029J, Idaho Code. (3-15-02)

02. Terms. For purposes of Rules 790 through 795 of these rules, the following terms have the stated meanings: (3-15-02)

a. Transferor. The taxpayer who earns the credit and sells, conveys, or transfers the credit to another taxpayer shall be referred to as the transferor. (3-15-02)

b. Transferee. The taxpayer who receives the credit from the transferor or intermediary shall be referred to as the transferee. (3-20-04)

03. Transfer Limited. (3-20-04)

a. Only the taxpayer who originally earned the incentive investment tax credit may transfer the credit. A taxpayer who receives the incentive investment tax credit through a transfer may not transfer the credit to another taxpayer. (3-20-04)

b. The broadband equipment investment credit may be transferred to another taxpayer required to file an Idaho income tax return or to an intermediary. The intermediary may use all or a portion of the broadband equipment investment credit or resell the credit to a taxpayer required to file an Idaho income tax return. The broadband equipment investment credit may not be transferred more than two (2) times. (3-20-04)

c. A taxpayer who receives credit through unitary sharing may not transfer the credit to another taxpayer. (3-20-04)

791. TRANSFER OF CREDIT -- NOTIFICATION OF INTENDED TRANSFER (RULE 791).
Sections 63-3029I and 63-3029J, Idaho Code. (3-15-02)

01. Timing of Notification. A taxpayer who intends to transfer qualified credit shall notify the Tax Commission in writing of its intent to transfer the credit at least sixty (60) days prior to the date of the transfer. A transfer may not take place prior to the Tax Commission providing its response as to the amount of credit available and the years the credit may be carried forward. (3-15-02)

02. Information Required. A transferor or intermediary shall notify the Tax Commission by submitting the following information on a form prescribed by the Tax Commission: (3-20-04)

a. Name, address, and federal employer identification number of the transferor or intermediary; (3-20-04)

b. Name, address, and federal employer identification number of the transferee; (3-15-02)

c. Type of credit to be transferred; (3-15-02)

d. Amount of credit to be transferred; (3-15-02)

e. Date of intended transfer; (3-20-04)

f. Signature of authorized individual for transferor or intermediary; and (3-20-04)

g. A copy of the Idaho Form 68, Idaho Broadband Equipment Investment Credit, or Idaho Form 69, Idaho Incentive Investment Tax Credit, and required schedules for each tax year the credit being transferred was earned. (3-20-04)

792. TRANSFER OF CREDIT -- POSTING BOND (Rule 792).
Section 63-3029J, Idaho Code. (3-15-02)

01. Posting Bond or Security. Section 63-3029J, Idaho Code, provides that prior to obtaining the written statement from the Tax Commission that the transferor may transfer the credit, the transferor may be required to secure any liability by posting a bond or security as the Tax Commission may require. The Tax Commission will require the transferor to post a bond or security only if after receiving the request to transfer credit, the Tax Commission deems the requirement necessary. (5-3-03)

02. Waiver of Bond or Security. If the Tax Commission requires the transferor to secure the liability by posting a bond or security, the transferor may request that the Tax Commission waive the bond requirement if the transferor shows that he is financially responsible. A notice of denial of the bond waiver shall be treated in accordance with Section 63-3045, Idaho Code. A notice of denial of the bond waiver shall be subject to review in accordance with Section 63-3045B, Idaho Code. (5-3-03)

793. TRANSFER OF CREDIT -- TRANSFEREE (RULE 793).
Sections 63-3029I and 63-3029J, Idaho Code. (3-15-02)

01. Tax Year Credit Available. A transferee may first claim the transferred credit on an income tax return originally filed during the calendar year in which the transfer takes place. However, if the transferee did not claim the transferred credit on his original return filed during the calendar year in which the transfer takes place, he may not amend such return to claim the credit for that tax year. The credit may not be claimed on a tax return that begins prior to January 1, 2001. (3-20-04)

02. Copy of Transfer Form Required. The form verifying the transferred credit shall be attached to the income tax return for each taxable year that the credit is claimed or carried over. (3-15-02)

03. Carryover Period. If a credit is transferred, the transferee is entitled to any remaining carryover period that would have been allowed to the transferor or intermediary had the credit not been transferred. The Tax Commission shall verify the carryover period. The carryover period approved shall apply to the taxable year of the transferee that begins in the calendar year in which the transferor's taxable year begins. (3-20-04)

a. Taxpayer A earned the incentive investment tax credit in his taxable year beginning in 2001. He claimed part of the credit on his return for that year. In March of 2002, Taxpayer A sold the remaining credit to Taxpayer B. Taxpayer B claimed the credit on his original return for taxable year beginning in 2001 since he filed it in October of 2002. Taxpayer B has a fourteen (14) year carryover remaining, the same as Taxpayer A would have been entitled to. (3-20-04)

b. Taxpayer A earned the incentive investment tax credit in his taxable year beginning in 2001. He claimed part of the credit on his return for that year. In December of 2002, Taxpayer A sold the remaining credit to Taxpayer B. Taxpayer B claimed the credit on his original return for taxable year beginning in 2002, which he filed in April of 2003. Taxpayer B has a thirteen (13) year carryover remaining. (3-20-04)

c. Taxpayer A earned the incentive investment tax credit in his taxable year beginning in 2001. He claimed part of the credit on his return for that year. On his return for taxable year beginning in 2002, Taxpayer A claimed additional credit earned during his taxable year beginning in 2001. In September of 2003, Taxpayer A sold the remaining credit to Taxpayer B at which time he had a thirteen (13) year carryover remaining. Taxpayer B is entitled to claim the credit on his original return filed in October of 2003. Taxpayer B is entitled to a thirteen (13) year carryover. (3-20-04)

d. Taxpayer A earned the broadband equipment investment credit in his taxable year beginning in 2002. He claimed part of the credit on his return for that year. In October of 2003, Taxpayer A sold the remaining credit to Taxpayer B, an intermediary. Taxpayer B resold the credit in May of 2004 to Taxpayer C. Taxpayer C claimed the credit on his original return for taxable year beginning in 2003, which he filed in November of 2004. Taxpayer C has a thirteen (13) year carryover remaining, the same as Taxpayer B would have been entitled to. (3-20-04)

794. -- 798. (RESERVED).

799. PRIORITY ORDER OF CREDITS (RULE 799).
Section 63-3029P, Idaho Code. (5-3-03)

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

b. For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)

c. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

d. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

e. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)

f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)

g. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)

h. Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)

i. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)

j. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)

k. Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)

800. VALID INCOME TAX RETURNS (RULE 800).
Section 63-3030, Idaho Code. (3-20-97)

01. Requirements of a Valid Income Tax Return. In addition to the requirements set forth in IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules”, Rule 150, an income tax return shall meet the requirements set forth in this rule. Those that fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be completed according to these requirements and resubmitted to the Tax Commission. A taxpayer who does not file a valid income tax return is considered to have filed no return. (3-15-02)

02. Copy of Federal Return Required. A taxpayer shall include with the Idaho return a complete copy of the federal income tax return including all forms, schedules and attachments. If an individual files an Idaho Form 40EZ, a copy of the federal income tax return is not required. (3-15-02)

801. -- 802. (RESERVED).

803. ROUNDING (RULE 803).
Section 63-113, Idaho Code. Amounts shown or required to be shown on any return, form, statement or other document required to be submitted to the Tax Commission under Title 63, Chapter 30, Idaho Code, shall be rounded to the nearest whole dollar. Amounts less than fifty cents ($.50) are reduced to the whole dollar. Amounts of fifty cents ($.50) or more are increased to the next whole dollar. (4-5-00)

804. (RESERVED).

805. JOINT RETURNS (RULE 805).
Section 63-3031, Idaho Code. (3-20-97)

01. Effect of Filing Status Used on Federal Returns. A taxpayer shall use the same filing status with

Idaho as used when filing returns with the Internal Revenue Service. (3-20-97)

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

a. A married couple may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. (3-20-97)

b. If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. (3-20-97)

03. Resident Aliens or United States Citizens Married to Nonresident Aliens. A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election shall be attached to the return for the first taxable year for which the election is to apply. In addition, the statement shall include the name, address, and taxpayer identification number of each spouse, and shall be signed by both individuals making the election. (3-20-97)

806. -- 809. (RESERVED).

810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).
Section 63-3032, Idaho Code. (3-20-97)

01. Due Date of Returns. (7-1-98)

a. All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year as defined by the Internal Revenue Code. However, if the time for filing a short taxable year for federal income tax purposes is later than the fifteenth day of the fourth month following the close of the taxable year, the later date shall be the date the return is required to be filed with the Tax Commission. (3-15-02)

b. Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year. (7-1-98)

02. Timely Filing Defined. If the last day for filing a return falls on a Saturday, Sunday or legal holiday, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. (3-20-97)

03. Mail. Section 63-217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010. (3-15-02)

04. Fifty-Two/Fifty-Three Week Years. A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. (3-20-97)

811. -- 814. (RESERVED).

815. EXTENSIONS OF TIME (RULE 815).
Section 63-3033, Idaho Code. (3-20-97)

01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. (7-1-99)

02. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. (3-20-97)

03. Interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. See Rule 817 of these rules for the exception when extensions are allowed under Section 63-114, Idaho Code. A taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (5-3-03)

816. (RESERVED).

817. EXTENSIONS OF TIME AS DISASTER RELIEF (RULE 817).
Section 63-114, Idaho Code. (5-3-03)

01. In General. Section 63-114, Idaho Code, allows the Tax Commission to grant an extension of time for up to one (1) year from the due date to file returns or make payments in the following situations: (5-3-03)

a. When a taxpayer is adversely affected by a disaster declared by the President of the United States or by a governor of a state or territory of the United States; (5-3-03)

b. When a taxpayer is entitled to an extension under Section 7508A, Internal Revenue Code, due to a Presidentially declared disaster or a terroristic or military action. (5-3-03)

02. Penalties and Interest. If an extension of time to file a return or pay tax is allowed under Section 63-114, Idaho Code, penalties and interest will not apply during the extension period. If the taxpayer fails to file by the extended due date, penalties as provided under Section 63-3046, Idaho Code, and interest shall apply after the extended due date to the date of payment. (5-3-03)

818. -- 819. (RESERVED).

820. CORPORATE ESTIMATED PAYMENTS -- IN GENERAL (RULE 820).
Section 63-3036A, Idaho Code. (3-20-97)

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho income tax credits, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. (5-3-03)

02. Computation of Estimated Payments. (3-20-97)

a. Estimated tax is paid in four (4) payments. Each estimated payment shall be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. (3-20-97)

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars ($20), plus the permanent building fund tax, plus the recapture of income tax credits, less income tax credits excluding estimated payments. (5-3-03)

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. (3-20-97)

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it shall recompute its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. (3-20-97)

04. Net Operating Loss or Capital Loss Carryover. The allowable net operating loss carryover or capital loss carryover shall be deducted from income for the period before the estimated tax is computed. (5-3-03)

821. CORPORATE ESTIMATED PAYMENTS -- PAYMENTS (RULE 821).
Section 63-3036A, Idaho Code. (3-20-97)

01. Underpayments. A payment of estimated tax shall be applied to previous estimated payments of estimated tax in the order in which the estimated payments were required to be paid. To the extent the payment exceeds previous underpayments, it shall be applied to the estimated payment then due. (3-20-97)

02. Overpayments. (3-20-97)

a. If the estimated payments exceed the actual tax due, the overpayment may be claimed as a credit against the next payment only to the extent it exceeds all underpayments of prior estimated payments. (3-20-97)

b. The overpayment shall be applied to deficiencies of tax, penalties, and interest prior to refund or application to a subsequent year's estimated payment or tax liability. (3-20-97)

c. A refund or credit may not be made to a corporation that fails to file its Idaho income tax return within three (3) years from the due date of the return for which it made the estimated payments. (3-20-97)

03. Obligation to File Returns. The payment of estimated tax does not relieve a corporation of the obligation to file a return when due pursuant to the Idaho Income Tax Act. An extension of time is not allowed for payment of estimated taxes. Making estimated payments as required in Section 63-3036A, Idaho Code, does not relieve the taxpayer of the requirement to pay the appropriate amount of tax with an application for extension of time to file or with the original return. (3-20-97)

822. CORPORATE ESTIMATED PAYMENTS -- ANNUALIZED INCOME INSTALLMENT METHOD (RULE 822).
Section 63-3036A, Idaho Code. (3-20-97)

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

a. If a corporation uses the annualized income installment method for federal purposes and is required to make estimated payments for Idaho purposes, the corporation may use that method to compute its Idaho estimated tax. If a corporation does not use the annualized income installment method for federal purposes, the corporation may not use that method for Idaho purposes. (3-20-97)

b. See Section 6655, Internal Revenue Code, for the determination of annualized income. (3-20-97)

02. Required Installment. The required annualized income installment is the applicable percentage of the tax computed on the annualized income less the aggregate amount of any prior required installments for the reporting period. The applicable percentages for Idaho are: (3-20-97)

a. Twenty-two and one-half percent (22.5%) for the first period; (3-20-97)

b. Forty-five percent (45%) for the second period; (3-20-97)

c. Sixty-seven and one-half percent (67.5%) for the third period; and (3-20-97)

d. Ninety percent (90%) for the fourth period. (3-20-97)

03. Computation of Tax. The tax computed on the annualized income includes the annualized income multiplied by the corporate income tax rate, plus the permanent building fund tax, plus recapture of investment tax credit, less any credits excluding estimated payments. (3-20-97)

823. CORPORATE ESTIMATED PAYMENTS -- SHORT TAXABLE YEAR (RULE 823).
Section 63-3036A, Idaho Code. (3-20-97)

01. In General. If a short taxable year ends before an estimated payment due date, remaining estimated payments shall be made on the fifteenth day of the last month of the short taxable year. No estimated payment is required if the short taxable year is less than four (4) months or if the corporation does not meet the requirements to make an estimated payment before the first day of the last month in the short taxable year. (3-20-97)

02. Examples. (3-20-97)

a. X, a corporation filing on a calendar year basis, changes to a fiscal year beginning September 1, 1993 and ending August 31, 1994. For the short taxable year, January 1, 1993, to August 31, 1993, X must make estimated payments of twenty-five percent (25%) of its minimum payment on April 15, 1993, and June 15, 1993. The remaining payment of fifty percent (50%) of the minimum payment, twenty-five percent (25%) for the third payment plus twenty-five percent (25%) for the fourth payment, is due on August 15, 1993, the fifteenth day of the last month of the short taxable year. (3-20-97)

b. If, in the example in Subsection 823.02.a., X does not meet the requirement to make estimated payments until June 15, 1993, X is required to pay fifty percent (50%) of the estimated tax, twenty-five percent (25%) for the third payment and twenty-five percent (25%) for the fourth payment. No payment for the first and second reporting period is required on August 15, 1993, the fifteenth day of the last month of the short taxable year. (3-20-97)

824. CORPORATE ESTIMATED PAYMENTS -- MISCELLANEOUS PROVISIONS (RULE 824).
Section 63-3036A, Idaho Code. (3-20-97)

01. Unitary Groups Filing Group Returns. (3-20-97)

a. Each corporation included in a group return that is required to make estimated payments shall separately compute its estimated tax. (3-20-97)

b. Estimated payments shall be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. (3-20-97)

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its taxes on built-in gains, capital gains, excessive passive investment income, and recapture of investment tax credit. (3-20-97)

03. Tax-Exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. (3-20-97)

825. CORPORATE ESTIMATED PAYMENTS -- INTEREST ON UNDERPAYMENT (RULE 825).
Section 63-3046A, Idaho Code. (5-3-03)

01. In General. If a taxpayer is required to pay estimated taxes as provided in Section 63-3036A, Idaho Code, and fails to pay the amount of estimated taxes due, interest shall be due on the underpaid estimated taxes. (5-3-03)

02. Net Operating Loss and Capital Loss Carrybacks. If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the interest on underpayment of estimated tax shall not be recomputed. (5-3-03)

826. -- 829. (RESERVED).

830. INFORMATION RETURNS (RULE 830).
Section 63-3037, Idaho Code. (3-20-97)

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)

e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)

f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)

g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)

h. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on federal Form 1099 or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)

03. Due Date of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (3-20-97)

831. -- 839. (RESERVED).

840. ELECTION CAMPAIGN FUND (RULE 840).
Section 63-3088, Idaho Code. (3-20-97)

01. In General. The individual income tax return has a block where each taxpayer may designate a portion of his income tax to be paid into the election campaign fund of a specific party qualified with the Secretary of State as of July 1 of each calendar year or he may designate no specific party. (3-20-97)

02. Changing Election. An election to designate a portion of the income tax to the election campaign fund may not subsequently be changed or withdrawn once the return is filed. (3-20-97)

841. -- 854. (RESERVED).

855. PERMANENT BUILDING FUND TAX (RULE 855).
Sections 63-3082 through 63-3087, Idaho Code. (3-20-97)

01. In General. The permanent building fund tax is an excise tax of ten dollars ($10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

02. Pass-Through Entities. The permanent building fund tax does not apply to partnerships, estates, trusts or S corporations if all the income of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. If an election is made under Section 63-3022L, Idaho Code, the entity shall pay the tax for each individual partner, member, shareholder, or beneficiary making the election. (3-30-01)

03. Corporations Included in a Group Return. The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income attributable to Idaho and included in a group return. (3-20-97)

04. Inactive or Nameholder Corporations. An inactive or nameholder corporation that files Form 41 to pay the twenty dollar ($20) minimum tax shall pay the permanent building fund tax. (3-20-97)

856. -- 859. (RESERVED).

860. DONATIONS TO TRUST ACCOUNTS (RULE 860).
Sections 63-3067A and 63-3067B, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. (3-20-97)

861. -- 869. (RESERVED).

870. REQUIREMENTS OF AN IDAHO WITHHOLDING ACCOUNT NUMBER (RULE 870).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Idaho Withholding Account Number Required. An Idaho withholding account number is required of: (3-20-97)

a. Each employer who pays salaries, wages, or other compensation to an employee for services performed in Idaho, including agricultural, household, and domestic employers; and (3-20-97)

b. Each person who withholds Idaho income tax, whether required or voluntary. (3-20-97)

02. Idaho Withholding Account Numbers are Not Transferable. If a business is sold, the new employer shall apply for a new withholding account number and file separate returns and W-2s. If a change in the form of doing business requires a new federal employer identification number, the new entity shall apply for a new withholding account number. Neither entity should report wages paid by the other entity, nor use the other entity's withholding account number. (3-20-97)

871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Employers Other Than Farmers. An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (7-1-99)

a. The employer is required to withhold for federal purposes; and (7-1-99)

b. The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars ($1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho. (7-1-99)

02. Farmer-Employers. An employer who is a farmer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (3-30-01)

a. The farmer-employer is required to withhold for federal purposes; and (3-30-01)

b. Compensation of one thousand dollars ($1,000) or more will be paid during a calendar year to the agricultural employee. (3-30-01)

03. Services Performed Within and Without Idaho. An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. (7-1-99)

04. Exceptions to Withholding Requirements. Withholding is not required if: (3-20-97)

a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. (3-20-97)

b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; (3-20-97)

c. The compensation is paid to an interstate transportation employee of a rail carrier covered by Title 49, Section 11502, United States Code, who is a nonresident of Idaho; or (7-1-99)

d. The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or (7-1-99)

e. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or (7-1-99)

f. The compensation is paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 46, Section 11108, United States Code; or (4-6-05)

g. The compensation is exempt from federal withholding. (7-1-99)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars ($600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. (4-6-05)

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. (4-6-05)

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	$5,000.00	$60,000.00
On or After January 1, 2004, but Before July 1, 2005	$6,000.00	$72,000.00

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
On or After July 1, 2005	$20,000.00	$240,000.00

(4-6-05)

iii. Filing status changes will occur only in January. (4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (4-6-05)

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: (4-6-05)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. (4-6-05)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. (4-6-05)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)

b. The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

873. EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATES (RULE 873).

Section 63-3035, Idaho Code. (3-20-97)

01. Verification. The Tax Commission may request verification of the marital status or withholding allowances claimed by an employee on federal Form W-4. If the employee fails to verify the claimed marital status or withholding allowances, a Notice of Deficiency as provided by Section 63-3045, Idaho Code, may be issued. If a Notice of Deficiency is issued but is not protested or is upheld on appeal, the Tax Commission shall issue an order specifying the marital status and maximum number of withholding allowances the employee is allowed for Idaho withholding purposes. (4-5-00)

02. Notification. The Tax Commission shall notify the employer of the order. The order is effective immediately on receipt by the employer and shall remain in effect the rest of the calendar year, unless the employee files federal Form W-4 claiming fewer allowances than ordered. The employer is liable to the Tax Commission for any deficiencies that result from withholding in excess of the maximum number of withholding allowances specified in the most recent Tax Commission order. (4-5-00)

03. Petition for Changes. An employee subject to a Tax Commission order may petition the Tax Commission for a change to the order. If the employee establishes that a material change of circumstances has occurred, the Tax Commission shall issue a new order and notify the employer. The determination of the Tax Commission on any change to the order is final. (4-5-00)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).
Sections 63-3035 and 63-3036, Idaho Code. (4-6-05)

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (4-6-05)

02. Furnishing Forms W-2 to Employees. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-05)

03. Filing Forms W-2 With the Tax Commission. On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. (4-6-05)

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (4-6-05)

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (4-6-05)

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on workdays, hours, mileage or commissions. (4-6-05)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

a. The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

b. The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars ($2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

875. -- 879. (RESERVED).

880. CREDITS AND REFUNDS (RULE 880).
Section 63-3072, Idaho Code. (3-20-97)

01. Overpayment. The term overpayment includes: (3-20-97)

a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)

b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

c. All amounts erroneously or illegally assessed or collected. (3-20-97)

d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

02. Timely Claim Required for Refund. (3-20-97)

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)

b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (3-20-97)

03. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (4-6-05)

04. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)

05. Limitations on Refunds of Withholding and Estimated Payments. The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3072(c), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. (3-15-02)

06. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)

07. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)

08. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

09. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. (4-6-05)

881. -- 884. (RESERVED).

885. INTEREST ON REFUNDS (RULE 885).
Sections 63-3073 and 63-3045, Idaho Code. (7-1-99)

01. In General. Taxpayers shall receive interest on refunds of all amounts illegally or erroneously assessed or collected. No interest is payable on refunds of amounts that are voluntary or unrequested payments exceeding the tax due. (3-20-97)

02. Computation. Except as provided in Subsection 885.03, the Tax Commission shall compute interest on a net refund as follows: (7-1-99)

a. Taxes erroneously or illegally assessed or collected. Interest shall be computed from the date the excess amount was received or the due date for filing the return to which the amount relates, whichever is later. (3-20-97)

b. Refunds of income tax withheld. The Tax Commission will pay interest on refunds of withholding if the refund is paid more than sixty (60) days after the due date of the income tax return or the date it was filed, whichever is later. For purposes of this rule, the refund is considered paid on the date it is postmarked. If a taxpayer unduly delays the processing of his refund by failing to respond promptly to requests for information or in any other way, the Tax Commission may deduct time attributable to the delay from the total processing time to determine whether interest shall be paid and from what date. Unless reasonable cause is established, undue delay occurs if the taxpayer's delay is more than sixty (60) days. Pursuant to this subsection, interest is computed from the due date, or extended due date, of the return. (3-20-97)

c. Tentative payments. The Tax Commission may not pay interest on a refund resulting from an estimated or tentative payment. (3-20-97)

03. Refunds From Net Operating Loss and Capital Loss Carrybacks. Refunds from net operating loss and capital loss carrybacks include refunds from credits carried to years other than the year to which the net operating loss or capital loss deduction applies. Interest on these refunds is computed from the last day of the loss year. (7-1-99)

886. -- 889. (RESERVED).

890. NOTICE OF ADJUSTMENT OF FEDERAL TAX LIABILITY (RULE 890).
Section 63-3069, Idaho Code. (3-20-97)

01. Final Determination. The term final determination as used in Section 63-3069, Idaho Code means final federal determination as defined in Section 63-3068(f), Idaho Code. (3-20-97)

02. Written Notice. (3-20-97)

a. Written notice shall include copies of all Revenue Agents' reports, and any other documents and schedules required to clarify the adjustments to taxable income. If the final determination results in a refund of state taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. (3-20-97)

b. Written notice included with an income tax return for a year or years other than the year subject to the federal adjustment shall not constitute the required notification. (3-20-97)

03. **Immediate Notification**. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within sixty (60) days of the final determination. (3-20-97)

891. NOTICE OF ADJUSTMENT OF STATE OR TERRITORY TAX LIABILITY (RULE 891).
Sections 63-3069 and 63-3069A, Idaho Code. (3-30-01)

01. **Final Determination**. The term final determination of any deficiency or refund of income tax due to another state or territory as used in Section 63-3069, Idaho Code, shall mean the final resolution of all issues that were adjusted by the other state or territory. (3-30-01)

02. **Written Notice**. (3-30-01)

a. Written notice shall include copies of all reports issued by the other state or territory, and any other documents and schedules required to clarify the adjustments to taxable income of the state or territory. If the final determination results in a refund of Idaho taxes, an amended Idaho income tax return must accompany the written notice to be a valid claim for refund. (3-30-01)

b. Written notice included with an income tax return for a year or years other than the year subject to the adjustment by the state or territory shall not constitute the required notification. (3-30-01)

03. **Immediate Notification**. The Tax Commission may impose negligence penalties on any additional tax due if the taxpayer has not provided the written notice within sixty (60) days of the final determination. (3-30-01)

892. -- 894. (RESERVED).

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (RULE 895).
Sections 63-3068 and 63-3069A, Idaho Code. (3-30-01)

01. **Federal Determination**. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

02. **State or Territory Determination**. The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. (3-30-01)

03. **Protest of a Notice of Deficiency**. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

04. **Waiver of the Period of Limitation**. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. (3-20-97)

05. **Duplicate Returns**. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3068, Idaho Code. (4-6-05)

896. REQUEST FOR PROMPT ACTION BY THE TAX COMMISSION (RULE 896).

Section 63-3068(e), Idaho Code. (7-1-98)

01. In General. A request for prompt action may be made pursuant to Section 63-3068(e), Idaho Code, for an income tax return that is required to be filed for a decedent or an estate of a decedent. The request does not apply to the estate tax imposed by Chapter 4, Title 14, Idaho Code. (7-1-98)

02. Requirements of a Valid Request for Prompt Action. The personal representative, executor, administrator, or other fiduciary representing the estate of a decedent shall file the request for prompt action in writing with the Tax Commission. The request must meet the following qualifications: (7-1-98)

a. It must be filed after the applicable return has been filed; (7-1-98)

b. It must be filed separately from any other document; (7-1-98)

c. It must identify the taxpayer by name and identification number and the taxable periods for which the prompt action is requested; and (7-1-98)

d. It must clearly state that it is a request for prompt action pursuant to Section 63-3068(e), Idaho Code. (7-1-98)

03. Applicable Returns. A request for prompt action does not apply to any return filed after the request has been filed. The request applies only to returns reflecting income earned or other activities and transactions occurring during the lifetime of the decedent or by his estate during the period of administration. (7-1-98)

897. -- 899. (RESERVED).

900. RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES (RULE 900).
Section 63-3078, Idaho Code. The Tax Commission or its delegate may issue a jeopardy assessment or take any other action necessary to assess and collect the amounts due from liable individuals. The action may include the filing of a lien on the property of the individual found liable, or seizure and sale of his property or any other means of collection. The liable individuals shall have the remedies provided in Sections 63-3045, 63-3049, 63-3065, and 63-3074, Idaho Code. (3-20-97)

901. -- 999. (RESERVED).

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