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**IDAPA 35
TITLE 01
CHAPTER 10**

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-105, 63-2501, and 63-2553, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Cigarette and Tobacco Tax Products Act. (7-1-98)

001. TITLE AND SCOPE (RULE 001).

These rules shall be cited as IDAPA 35.10.01, "Idaho Cigarette and Tobacco Products Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on all cigarettes and tobacco products sold, used, consumed, handled or distributed within this state. (7-1-93)

002. WRITTEN INTERPRETATIONS (RULE 002).

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

003. ADMINISTRATIVE APPEALS (RULE 003).

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

004. PUBLIC RECORDS (RULE 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 1, Title 74, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 74-101 through 74-126, 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 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Website is www.tax.idaho.gov. 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 State Tax Commission's e-mail is taxrep@tax.idaho.gov. Main Office hours are from 8 a.m. to 5 p.m. Monday through Friday except for 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 Rules," Rule 005. (3-15-02)

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

006. -- 009. (RESERVED)

010. DEFINITIONS (RULE 010).

01. Distributor. The term distributor, as defined by Section 63-2551, Idaho Code, includes persons who receive tobacco within this state for purposes of blending and/or repackaging. (7-1-93)

02. Manufacturer. The term manufacturer means a person who manufactures and sells cigarettes. The term manufacturer, as defined by Section 63-2551, Idaho Code, does not include persons who receive tobacco within this state for purposes of blending and/or repackaging. (7-1-93)

03. Person. The term "person" includes any individual, firm, partnership, LLC, venture, association,

social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit. (4-2-08)

011. DISTRIBUTION OF FREE OR BELOW COST TOBACCO PRODUCTS (RULE 011).

01. Distribution of Free or Below Cost Tobacco Products. The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. (4-11-06)

012. PERMITS (RULE 012).

Every wholesaler of cigarettes is required to obtain a cigarette wholesaler's permit from the Commission and post a bond as required by Section 017 before engaging in business. The wholesaler must apply for the permit on the form prescribed by the Commission, accompanied by a fee of fifty dollars (\$50). Application forms may be obtained by contacting the Commission. The permit holder shall at all times conspicuously display the permit at his place of business. (7-1-93)

01. Permit Is Non-Assignable. A cigarette wholesaler's permit is non-assignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the Commission. (7-1-93)

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. The permit holder must return the permit or send a written statement that the permit has been destroyed. (7-1-93)

b. If this information is not furnished to the Commission and the new owner or lessee continues operation of the business on the previous owner's cigarette wholesaler's permit without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (7-1-93)

02. Seller's Permit. Every retailer of cigarettes must obtain an Idaho seller's permit from the Commission before engaging in business as required by Section 63-3620, Idaho Code. When a wholesaler sells stamped cigarettes to a retailer of cigarettes, he must obtain from the retailer a Sales Tax Resale or Exemption Certificate, Form ST-101. (7-1-93)

013. SHIPMENTS IN INTERSTATE COMMERCE (RULE 013).

Sales of cigarettes in the course of interstate commerce for purposes of Section 63-2505, Idaho Code, include only those sales where title is transferred outside the state of Idaho, or on U.S. military reservations, or on Indian reservations. (5-3-03)

01. Types of Conveyances. Shipments of cigarettes to U.S. military reservations or Indian reservations must be made by conveyance used in the normal operation of the wholesaler's business, or by common carrier hired by the wholesaler. (7-1-93)

a. In the case of shipment by common carrier, a copy of the bill of lading must be kept on file at the wholesaler's place of business for three (3) years. (7-1-93)

b. In the case of shipments by the wholesaler's conveyance, an itemized receipt must be obtained by the wholesaler bearing the signature of the receiver's representative and the wholesaler's employee making such delivery. Receipts must be serially numbered. (7-1-93)

02. Records of Unstamped Deliveries. In addition, all deliveries made outside the state and all deliveries made to U.S. military reservations or Indian reservations, and which are delivered without state tax stamps of another state must be listed in a chronological log by delivery date and customer. The log must contain the following information: delivery date, number of cigarettes delivered, and an itemized receipt number, as described in Subsection 013.01.b. of this rule. (4-2-08)

014. SHIPMENTS DELIVERED ON INDIAN RESERVATIONS (RULE 014).

- 01. Shipments Without Idaho Stamps.** Cigarette wholesalers may deliver cigarettes which do not have Idaho stamps affixed to Idaho Indian reservations when: (4-2-08)
- a.** The purchaser is an enrolled member of an Idaho Indian tribe. (7-1-93)
 - b.** The purchaser is a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe. (7-1-93)
 - c.** The purchaser is a business enterprise wholly owned and operated by an Idaho Indian tribe. (7-1-93)
- 02. Reservation Means Lands Which Are:** (7-1-93)
- a.** Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; or established by formal decision of the Executive Branch of the United States. (7-1-93)
 - b.** Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 014.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (7-1-93)
- 03. Sales of Cigarettes to Non-Indians Within Reservation Boundaries.** Sales of cigarettes by wholesalers to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation must have Idaho cigarette stamps affixed. (4-2-08)
- 04. Non-Indian Retailers.** Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell cigarettes upon which Idaho cigarette stamps have not been affixed. (7-1-93)

015. STAMPS-SOURCE, AMOUNT, LIMITATIONS (RULE 015).

- 01. Obtaining Stamps.** Cigarette stamps may only be obtained at the Boise office of the Commission. (7-1-93)
- 02. Unused Stamp Inventory.** Wholesalers may not hold an inventory of unused Idaho Cigarette Stamps, the face value of which exceeds the amount of their bonding or three months estimated average tax liability whichever is greater. See ISTC 017 regarding bonding. (7-1-93)
- 03. Filing and Paying Timely.** Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Commission to a wholesaler until clear and convincing evidence is received by the Commission that the return has been filed or that the tax has been paid. (7-1-93)
- 04. Security.** Wholesalers are responsible for the face value of all stamps received from the Commission. Wholesalers must provide proper security for the stamps in their possession. (7-1-93)

016. WHOLESALER'S CREDIT CLAIMS FOR UNMARKETABLE STAMPS (RULE 016).

- 01. Destroyed Stamps.** On and after July 1, 1989, stamps destroyed by the manufacturer as a result of the return of stale or otherwise unmarketable cigarettes may be redeemed by the wholesaler for credit against future tax due if: (4-6-05)
- a.** The manufacturer provides an affidavit to the Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received. (7-1-93)
 - b.** The wholesaler provides to the Commission a returned goods receipt obtained from the manufacturer's representative verifying the number of packages, the package type, and the date the cigarettes were

returned and a bill of lading traceable to the returned goods receipt. The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached. (7-1-93)

02. Stale and Unmarketable Cigarettes. When stamps are to be destroyed by a wholesaler as a result of stale or otherwise unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if: (4-6-05)

a. The wholesaler notifies the Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed. (7-1-93)

b. The Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (7-1-93)

03. Unused, Unfit or Damaged Stamps. Stamps that are unused, unfit, or damaged may be returned to the Commission by the wholesaler for credit. (7-1-93)

04. Manufacturers Removed From Directory. It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. (4-6-05)

05. Credits and Refund. All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. (4-6-05)

017. SECURITY FOR TAX REQUIRED (RULE 017).

01. Security for Payment of Taxes. Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler shall be liable, including any penalty and interest. (7-1-98)

a. The amount of the security shall be at least two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base, but in no case shall be less than one thousand dollars (\$1,000). (3-20-04)

b. If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the State Tax Commission accordingly, or pay a deposit to the State Tax Commission for future taxes due which exceed the limitations. (3-20-04)

c. Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the State Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the State Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the State Tax Commission. (7-1-98)

02. Reviewing Security on File. The State Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability. (7-1-98)

03. New Wholesaler Application. When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows: (7-1-93)

a. If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler shall furnish security based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

b. If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler shall furnish security in the amount of an estimated two (2) month tax liability of the new firm, or one thousand dollars (\$1,000), whichever is greater. The estimate shall be prepared by the new wholesaler and shall be subject to review and approval by the State Tax Commission. (7-1-98)

04. Types of Security. A person required to post security may, instead of posting a surety bond, deposit with the State Tax Commission any of the following alternatives equivalent to the amount of the bond required. (4-4-13)

a. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a permit. (4-4-13)

b. Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (4-4-13)

i. The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature. (4-4-13)

c. Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. (4-4-13)

d. Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: (4-4-13)

i. No Automatic Teller Machine (ATM) card may be issued to the account; and (4-4-13)

ii. Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone. (4-4-13)

05. Taxpayer Petition for Release from Security Requirements. A security shall be required in all instances unless the State Tax Commission, upon petition by the taxpayer, determines that a security is not required. (7-1-98)

a. The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a

timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months. (7-1-98)

b. Upon written petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine his books and records within sixty (60) days. The State Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. (7-1-98)

c. If a petition for release of security is denied, notice shall be mailed to the taxpayer by certified mail. The notice shall include the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, he must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (7-1-98)

06. Failure to File Timely After Release from Security. If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the State Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (7-1-98)

a. The demand shall be in writing and shall be personally served on the taxpayer or mailed to him by certified mail. (7-1-93)

b. If the taxpayer wishes to petition for redetermination of the demand, he must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (7-1-93)

c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions shall be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (7-1-93)

018. CIGARETTE TAX RETURN (RULE 018).

01. Cigarette Tax Return. All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (7-1-93)

02. Filing Returns. The return shall be in a form prescribed by the Commission and shall be filed on a monthly basis. (7-1-93)

03. Due Date. The return will be filed by the wholesaler on or before the twentieth day of the month immediately following the month to which the return applies. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (4-11-06)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (7-1-93)

b. All cigarette tax returns or other documents filed by the taxpayer must include his cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return shall be in violation of this regulation and shall be required to appear before the Commission to show cause as to why his permit should not be revoked. See Section 63-2503, Idaho Code. (7-1-93)

06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The State Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. (4-5-00)

07. Wholesale Sales of Stamped Cigarettes. Every distributor who imports unstamped cigarettes into this state must file a return, however; a cigarette distributor who buys only stamped cigarettes for resale is not required to file a return. (4-11-06)

019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

01. Shipments to Retailers/Distributors. In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. (3-30-07)

02. Nontaxed Tobacco Purchases from Outside the State. Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (7-1-93)

03. Determining Wholesale Sales Price. Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (3-20-14)

a. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for shipping, handling, transportation, and delivery may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Idaho State Tax Commission may adjust it. (3-20-14)

b. An out-of-state distributor with nexus in the state of Idaho must use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. If an out-of-state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in

Idaho. (3-20-14)

i. Example 1. An out-of-state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesale sales price shall be the price at which it sells to the Idaho distributor, retailer or end user. (3-20-14)

ii. Example 2: An out-of-state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under this subsection, where the wholesale sales price is unknown, the wholesale sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The "purchase price of the product" is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor. (3-20-14)

iii. Example 3: An out-of-state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC Section 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesale sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then this subsection requires the wholesale sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. (3-20-14)

020. TOBACCO TAX RETURN (RULE 020).

01. Tobacco Tax Return. All tobacco distributors who make wholesale purchases are required to file a tobacco products tax return. (7-1-93)

02. Timing of Filing Return. The return shall be in a form prescribed by the Commission and shall be filed on a monthly basis. (7-1-93)

03. Due Date of Return. The return will be filed by the distributor on or before the twentieth (20th) day of the month immediately following the month to which the return applies. If the twentieth (20th) day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday, or a legal holiday. (7-1-93)

04. Requirements of a Valid Return. A tax return or other document required to be filed in accordance with Section 63-2552, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Section 63-3046 and 63-3075, Idaho Code, and related rules. (7-1-93)

a. The tobacco products tax return form must be completed and copies of all pertinent supporting documentation must be attached. The results of supporting documentation must be carried forward to applicable lines on the tobacco products return form. (7-1-93)

b. All tobacco products tax returns or other documents filed by the taxpayer must include his tobacco products tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A tobacco products tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following

conditions is required it must be on the proper form, as prescribed by the Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

01. Sales for Eventual Resale. When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the duty to pay the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. (3-30-07)

02. First Receiver. The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on his tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. (4-11-06)

03. Subsequent Receiver. Any subsequent receiver will not be required to pay the tax as long as he maintains records showing that the first receiver has paid the tax. (3-30-07)

022. EXEMPTIONS (RULE 022).

01. Credit for Taxes Paid. Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are: (7-1-93)

a. Sold and delivered to retailers or distributors at locations outside the state of Idaho; (5-8-09)

b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; (7-1-93)

c. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. (7-1-93)

02. Documentation. Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe he should keep a copy of the purchaser's tribal identification card in his files. If he is selling to a tribally owned entity, he should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe. (4-2-08)

03. Indian Reservations. Indian reservation means lands which are: (7-1-93)

a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (7-1-93)

b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (7-1-93)

04. Non-Indian Enterprises. Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. (7-1-93)

05. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. (7-1-93)

023. CREDIT FOR RETURNED TOBACCO PRODUCTS (RULE 023).

01. Credit Allowed. When tobacco products have been returned to the manufacturer, credit will be allowed against future tax only if: (7-1-93)

- a.** The distributor has an itemized credit memorandum or credit invoice from the manufacturer; and (7-1-93)
- b.** The distributor has a bill of lading or manufacturer's credit receipt which can be traced to the credit memorandum and which verifies the amount shipped to the manufacturer. (7-1-93)

02. Notice of Returned Tobacco Products. The State Tax Commission reserves the right to require the distributor to notify the State Tax Commission in writing at least five (5) working days prior to shipment of any tobacco products returned to the manufacturer. If required, the notice must include a complete description of the item returned, the quantity to be returned, and the wholesale sales price of the item, and the date items will be shipped. (7-1-93)

03. Verifying Shipments. The State Tax Commission reserves the right to verify the shipment of all tobacco products returned to the manufacturer and further reserves the right to delay the shipment until such time as a mutual appointment can be arranged for verifying such shipment. (7-1-93)

024. CREDIT FOR DESTRUCTION OF TOBACCO PRODUCTS (RULE 024).

01. Destroyed Tobacco. When tobacco products are to be destroyed by a distributor, credit will be allowed against future tax only if: (7-1-93)

- a.** The distributor notifies the State Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the items to be destroyed, the quantity of each item, the wholesale sales price of each item and the time and manner the items will be destroyed; and (7-1-93)
- b.** The distributor has a verifiable credit memorandum from the manufacturer. (7-1-93)

02. Observing Destruction. The State Tax Commission reserves the right to observe the destruction of all tobacco products and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (7-1-93)

025. -- 999. (RESERVED)

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