

Dear Senators HILL, Corder & Langhorst, and  
Representatives LAKE, Collins & Saylor:

The Legislative Services Office, Research and Legislation, has received the enclosed  
rules of the State Tax Commission:

**IDAPA 35.01.01 Income Tax - Docket No. 35-0101-0801**

**IDAPA 35.01.02 Sales and Use Tax - Docket No. 35-0102-0801**

**IDAPA 35.01.10 Cigarette and Tobacco Products Tax - Docket No. 35-0110-  
0801**

**IDAPA 35.01.11 Unclaimed Property - Docket No. 35-0111-0801**

**IDAPA 35.02.01 Tax Commission Administration and Enforcement - Docket  
No. 35-0201-0801.**

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-14-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-11-08.

\_\_\_\_\_The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate Local Government and Taxation Committee and the House of Representatives Revenue and Taxation Committee

FROM: Mike Nugent, Principal Legislative Research Analyst

SUBJECT: State Tax Commission Rules

**IDAPA 35.01.01 Income Tax - Docket No. 35-0101-0801**

**IDAPA 35.01.02 Sales and Use Tax - Docket No. 35-0102-0801**

**IDAPA 35.01.10 Cigarette and Tobacco Products Tax - Docket No. 35-0110-0801**

**IDAPA 35.01.11 Unclaimed Property - Docket No. 35-0111-0801**

**IDAPA 35.02.01 Tax Commission Administration and Enforcement - Docket No. 35-0201-0801**

### **Docket No. 35-0101-0801 Income Tax**

These rules are being promulgated as proposed rules, cover approximately 60 pages of text and implement the provisions of House Bills Nos. 343, 344, 549, 588, 615 and 661 enacted by the Legislature in 2008. The proposed rules also make adjustments in Tax Commission rules as required by federal law, the Multistate Tax Commission regulations, state statutes and further implementation of existing statutes.

House Bill No. 343 updated the \$10 Permanent Building Fund Tax that taxpayers pay with their Idaho income tax returns. It changes an obsolete reference to tax option corporations to the current "S Corporation" and clarified when S Corporations, estates and trusts and other pass-through entities are not required to pay the tax.

House Bill No. 344 simplified the year-end income tax withholding reports employers now must file with the State Tax Commission. Former law required employers to transmit to the Tax Commission copies of the wage and tax statements (Form W-2) provided to employees.

This transmittal had to be filed by January 31st of each year. Employers then had to file an annual reconciliation of the amounts of Idaho withholding reported on the W-2s and the amount remitted on monthly or quarterly withholding returns filed during the year. This second report was due by the last day of February. House Bill 344 combined the two filings into a single return which is due on the last day of February.

House Bill No. 549 provided that the addition to taxable income when transferring moneys from Idaho's college savings plan to a qualified tuition program that is operated in another state is limited to the amount of the total contributions to the Idaho Individual Trust Account or savings account by the account owner in the twelve months preceding the date of the transfer.

House Bill No. 564 provided that a part-year resident is entitled to a credit against state income taxes for income taxes paid to another state in regard to income which was earned while the taxpayer is domiciled or residing in this state.

House Bill No. 588 incrementally increased the "Grocery Tax Credit", starting with an increase to \$50 for the poorest Idahoans, \$30 for all other Idahoans, and an additional \$20 for seniors, for tax year 2008. The credit continues to increase each tax year by \$10 until reaching \$100, eventually offsetting, on average, the state sales tax on qualified foods.

House Bill No. 615 updated references to the Internal Revenue Code (IRC) and conformed the Idaho income tax law to changes made to the IRC after January 1, 2008, including "The Economic Stimulus Act of 2008". Conformity with "The Economic Stimulus Act of 2008" accelerated the deduction for depreciable assets by increasing the election to expense and providing for bonus depreciation. In addition, House Bill 615 exempted the amounts of property deducted as bonus depreciation from the Idaho investment tax credit.

House Bill No. 661 repealed the Idaho Corporate Headquarters Incentive Act of 2005.

#### **Docket No. 35-0102-0801–Idaho Sales and Use Tax**

These rules are being promulgated as proposed rules. These implement the provisions of House Bills Nos. 469, 567 and 602 of 2008 and further implement the provisions of current statutes.

House Bill No. 469 provided that charges for personal property tax added to the rents paid by a lessee of tangible personal property are not subject to sales tax as long as the lease period is at least one year and the property tax is separately stated.

House Bill No. 567 provided that the Idaho Digital Learning Academy is an educational institution for sales and use tax exemption purposes.

House Bill No. 602 revised the definition of "all terrain vehicle" for sales and use tax purposes.

#### **Docket No. 35-0110-0801–Cigarette and Tobacco Products Tax**

These rules are being promulgated as proposed rules and provide that tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are sold and delivered to retailers or distributors at locations outside the state of Idaho.

**Docket No. 35-0111-0801–Idaho Unclaimed Property**

These rules are being promulgated as proposed rules and amend a rule that has an incorrect citation in it. The Commission is also proposing to amend rule 017 to provide that interest is due from the date that the property should have been reported.

**Docket No. 35-0201-0801–Tax Commission Administration and Enforcement**

The Commission is amending a rule to add requirements for taxpayers to provide copies of documents when requested by the Tax Commission for the purpose of verifying the correctness of the tax return and specifies the acceptable formats of the copies and provides a penalty if the taxpayer fails to produce the requested records in support of amounts of information shown on an income tax return.

Section 63-3045, Idaho Code, provides a formula for calculating the yearly interest rate applied to deficiencies and refunds and the Tax Commission is amending the rule to provide a 5% simple interest rate for calendar year 2009.

It appears that all five sets of proposed rules have been promulgated within the scope of the statutory authority granted to the State Tax Commission.

cc: State Tax Commission  
Janice Boyd  
Jim Husted

## **IDAPA 35 - STATE TAX COMMISSION**

### **35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0101-0801**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 075:** Idaho Code section 63-3024 establishes the tax rates for individuals, trusts and estates and requires adjusting the income tax brackets annually for the effects of inflation. The adjusted income tax brackets are published in Income Tax Rule 075. The rule is being amended to add a table for the calendar year 2008 income tax brackets and rates and to remove all but five years of historical data.

**Rule 108:** Income Tax Rule 108 is being amended consistent with House Bill 549, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the addition to taxable income required for out-of-state rollovers from an Idaho college savings account to the amount contributed to the Idaho account by the account owner in the last 12 months.

**Rules 120 and 125:** Income Tax Rules 120 and 125 are being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022O to conform to the bonus depreciation provisions in the Internal Revenue Code (IRC) for property acquired in 2008. Subsection 120.06 is being amended to clarify that the adjustments required in the subsection don't apply to property acquired after 2007. A reference to Rule 193 is being added to Rule 120. Rule 125, which addresses the bonus depreciation adjustments, is being amended to clarify that the rule relates to bonus depreciation adjustments required for property acquired before 2008.

**Rule 128:** Income Tax Rule 128 is being amended to remove information in the rule that is addressed in Rule 291 and to add references to other rules.

**Rule 130:** Income Tax Rule 130 is being amended to clarify who qualifies for the deduction allowed by Idaho Code section 63-3022A for civil service retirement benefits received. The deduction is allowed to individuals who received civil service retirement paid by the U.S. Government under the Civil Service Retirement System. Individuals who receive retirement paid under the Federal Employee's Retirement System do not qualify for this deduction, so the distinction between the two groups needs to be clarified.

**Rules 171 and 173:** Income Tax Rules 171 and 173 are being amended consistent with House Bill 563, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022H to eliminate the requirement that a member of a pass-through entity hold his interest in the income of the entity for the same time as the holding period of the property qualifying for the deduction. Rule 171 is being amended to remove all information relating to the interest in income limitation, including references to Rule 173.02. Additional information is being added to Rule 171 to address tacked-on holding periods with regard to property received in exchange for a shareholder's stock or a partner's partnership interest. Subsection 173.02 addresses the interest in income of a pass-through entity limitation and is being deleted.

**Rule 193 & 194:** Income Tax Rule 193 is being amended to address Medicare Part D and the fact that it qualifies for the Idaho deduction for health insurance costs. The examples of the limitations when costs are otherwise deducted or accounted for are being deleted in Rule 193 and included in a new Rule 194 to reduce the length of Rule 193.

**Rule 200:** Income Tax Rule 200 addresses net operating losses (NOLs) of corporations. Idaho Code section 63-3021 specifically defines an NOL for Idaho income tax purposes. Idaho Code section 63-3022 allows the deduction for an Idaho NOL. Neither Idaho Code section 63-3021 nor section 63-3022 addresses the treatment of an Idaho NOL when a corporation is involved in an acquisition or merger nor does it incorporate the IRC sections (381 and 382) that provide special rules and limitations in these situations. Because Subsection 200.02 imposes limitations on the NOLs of merged corporations not specifically addressed in the statute, the rule is being amended to remove Subsection 02.

**Rule 254:** Income Tax Rule 254 is being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3022O to conform to the bonus depreciation provisions in the IRC for property acquired in 2008. Subsection 254.18 is being amended to clarify that the adjustments required in the subsection don't apply to property acquired after 2007. A reference to Rule 193 is being added to Rule 254.

**Rule 266:** Income Tax Rule 266 is being amended to address two issues with regard to the sourcing of income from intangible property. Subsection 03 is being added to address the sourcing of the payment of penalties. Subsection 05 is being added to address when the sourcing determination is made for income received from the sale of intangible personal property.

**Rule 273:** New Income Tax Rule 273 is being promulgated to provide that unemployment compensation is Idaho source income to the extent the benefits are received for employment in Idaho. The rule provides that for employment in Idaho and one or more other states, the unemployment compensation sourced to Idaho is computed using the proration of Idaho wages to total wages that was used in computing the unemployment compensation benefits.

**Rule 290:** Income Tax Rule 290 is being amended to clarify that an individual who has income from more than one pass-through entity, but no other income, can make an election for each pass-through entity to pay the tax on his income from the pass-through entity. Examples of when the election can or can't be made are being added. Also added is the exclusion from making the election provided in Idaho Code section 63-3022L for individuals who receive income from a corporation that reports less than fifty percent of its taxable income to Idaho.

**Rule 550:** Income Tax Rule 550 is being amended to conform more closely to language included in Multistate Tax Commission (MTC) Regulation IV.17., Sales Factor: Sales Other Than Sales of Tangible Personal Property. The MTC modified Regulation IV.17., in August 2007 to address the income producing activity and costs of performance related to the rendering of personal services by an agent or independent contractor acting on behalf of the taxpayer.

**Rules 700 and 701:** Income Tax Rules 700 and 701 are being amended consistent with House Bill 564, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3029 to clarify that the credit for income taxes paid to another state is allowed to a qualifying part-year resident when he is residing in Idaho even though he may be domiciled in another state. The example in Paragraph 701.02.c is being modified accordingly.

**Rule 710:** Income Tax Rule 710 is being amended consistent with House Bill 615, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3029B to exclude from the definition of qualified investment for purposes of the investment tax credit, the cost of property for which a deduction for bonus first-year depreciation is claimed. This applies to property acquired after 2007. Dated information relating to taxable years beginning prior to January 1, 1995, is being removed from Subsections 710.02 and 710.03.

**Rules 770 and 771:** Income Tax Rule 770 is being amended and Income Tax Rule 771 is being promulgated consistent with House Bill 588, which was passed by the 2008 Idaho Legislature. The bill amended Idaho Code section 63-3024A to change the amounts of and qualifications for claiming the grocery credit. Changes to Rule 770 clarify the rule relates to the grocery credit for taxable years beginning prior to 2008. New Rule 771 addresses the grocery credit for taxable years beginning after 2007.

**Rule 785:** Income Tax Rule 785 provides for the calculation of credits when earned by pass-through entities. The rule specifies that a credit passes through to a partner based on that partner's distributive share of partnership profits. Many Idaho credit statutes provide that the state tax commission may promulgate rules prescribing, in the case of partnerships, a method of attributing the credit to the partners in proportion to their share of the income from the partnership. Some credit statutes are silent with regard to pass-through entities. Because an ownership agreement may include special allocations with regard to credits, which confuses the issue, the rule is being amended to clarify that

the credit passes through to a partner or owner without regard to any special allocations contained in the ownership agreement. Information is being added to address pass-through entities that pay tax including how income tax credits may be applied to that tax and how unused credits are treated.

**Rule 799:** House Bill 661, which was passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Income Tax Rule 799 lists the corporate headquarters credits in the priority order of credits. Since no one has qualified for the incentives, Rule 799 is being amended to remove these credits from this rule.

**Rule 800:** Income Tax Rule 800 is being amended to address requirements to provide W-2 and 1099 information by taxpayers who file electronic returns. Rule 800 was modified last year to require taxpayers to attach appropriate Forms W-2 and 1099 to verify the amount of Idaho income tax withheld. This was confusing as to what electronic filers must do. Information being added instructs electronic filers to include the W-2 and 1099 information in the electronic record transmitted.

**Rule 830:** Income Tax Rule 830 identifies the due date for filing information returns. Idaho Code section 63-3037 provides that information returns will correspond to the requirements of the IRC. Under the IRC, the due date for filing information returns on paper or through magnetic media is the last day of February, but the due date for returns filed electronically is extended one month to March 31. To conform to the federal due dates, Rule 830 is being amended to change the due date for returns filed electronically to the last day of March.

**Rules 855:** Income Tax Rule 855 is being amended consistent with House Bill 343, which was passed by the 2008 Idaho Legislature. The bill modified Idaho Code section 63-3083 to clarify that the permanent building fund tax is required to be paid by an entity required to file a return under Idaho Code section 63-3030 unless all of the income or loss is distributed or otherwise reportable as a part of the taxable income of another taxpayer and the entity does not have any Idaho taxable income. A subsection is being added to address entities that pay the tax for individuals who make the election under Idaho Code section 63-3022L. It provides that no adjustment or proration of the permanent building fund tax is allowed when an individual has more than one pass-through entity paying tax on his income from the pass-through entity.

**Rule 872:** Income Tax Rule 872 is being amended consistent with House Bill 344, which was passed by the 2008 Idaho Legislature. The bill modified Idaho Code section 63-3035 to change the due date for the reconciliation returns from the last day of January to the last day of February. The thresholds for remitting income tax withholding on a quarterly basis are being increased from \$600 to \$750 per calendar quarter. The annual thresholds are being increased from \$50 monthly or \$600 annually to \$750 annually.

**Rule 874:** Income Tax Rule 874 is being amended to remove obsolete references to “magnetic media” or “other machine readable form” and replace them with “electronic filing” with regard to employers with fifty or more Idaho employees who are required to file the W-2s electronically for federal purposes. Information related to services performed within and without Idaho is being modified so that state wages are determined using Income Tax Rule 270.

**Rules 920, 921, 922, 923, 924, 925, and 926:** House Bill 661, passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Since no one qualified for the incentives, Rules 920 through 926 are being repealed.

**Rules 930, 931, 932, 933, 934, 935, 936:** Rules 930 through 936 address the Idaho Small Employer Incentive Act of 2005 as originally enacted in 2005. This Act was modified in 2006 and is addressed in Income Tax Rules 940 through 946. Since no one qualified under the original Act, Rules 930 through 936 are being repealed. Rules 940 through 946 remain as the only rules relating to the Idaho Small Employer Incentive Act of 2005, which should result in less confusion to taxpayers.

**Rule 941:** House Bill 661, passed by the 2008 Idaho Legislature, repealed the Idaho Corporate Headquarters Incentive Act of 2005. Subsection 941.01 addresses the coordination of the Idaho Small Employer Incentive Act of 2005 with the Corporate Headquarters Incentive Act. Since no one qualified under the Corporate Headquarters Incentive Act, Subsection 941.01 is being deleted.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0801**

**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
\$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)

e- 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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$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)

fa. 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
\$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)

**g.b.** For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,159.00	\$0	+ 1.6% of taxable income
\$1,159.00	\$2,318.00	\$18.54	+ 3.6% of the amount over \$1,159.00
\$2,318.00	\$3,477.00	\$60.26	+ 4.1% of the amount over \$2,318.00
\$3,477.00	\$4,636.00	\$107.78	+ 5.1% of the amount over \$3,477.00
\$4,636.00	\$5,794.00	\$166.89	+ 6.1% of the amount over \$4,636.00
\$5,794.00	\$8,692.00	\$237.53	+ 7.1% of the amount over \$5,794.00
\$8,692.00	\$23,178.00	\$443.29	+ 7.4% of the amount over \$8,692.00
\$23,178.00 or more		\$1,515.25	+ 7.8% of the amount over \$23,178.00

(4-11-06)

**h.c.** For taxable years beginning in 2006, as calculated on June 7, 2006:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,198.00	\$0	+ 1.6% of taxable income
\$1,198.00	\$2,396.00	\$19.17	+ 3.6% of the amount over \$1,198.00
\$2,396.00	\$3,594.00	\$62.30	+ 4.1% of the amount over \$2,396.00
\$3,594.00	\$4,793.00	\$111.43	+ 5.1% of the amount over \$3,594.00
\$4,793.00	\$5,991.00	\$172.53	+ 6.1% of the amount over \$4,793.00
\$5,991.00	\$8,986.00	\$245.62	+ 7.1% of the amount over \$5,991.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
\$8,986.00	\$23,963.00	\$458.30	+ 7.4% of the amount over \$8,986.00
\$23,963.00 or more		\$1,566.59	+ 7.8% of the amount over \$23,963.00

(3-30-07)

d. For taxable years beginning in 2007, as calculated on May 17, 2007:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,237.00	\$0	+ 1.6% of taxable income
\$1,237.00	\$2,474.00	\$19.79	+ 3.6% of the amount over \$1,237.00
\$2,474.00	\$3,710.00	\$64.31	+ 4.1% of the amount over \$2,474.00
\$3,710.00	\$4,947.00	\$115.02	+ 5.1% of the amount over \$3,710.00
\$4,947.00	\$6,184.00	\$178.10	+ 6.1% of the amount over \$4,947.00
\$6,184.00	\$9,276.00	\$253.55	+ 7.1% of the amount over \$6,184.00
\$9,276.00	\$24,736.00	\$473.08	+ 7.4% of the amount over \$9,276.00
\$24,736.00 or more		\$1,617.13	+ 7.8% of the amount over \$24,736.00

(4-2-08)

e. For taxable years beginning in 2008, as calculated on March 12, 2008:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1	\$1,272	\$0	1.6% of taxable income
\$1,272	\$2,544	\$20.35	3.6% of the amount over \$1,272
\$2,544	\$3,816	\$66.15	4.1% of the amount over \$2,544
\$3,816	\$5,088	\$118.30	5.1% of the amount over \$3,816
\$5,088	\$6,360	\$183.17	6.1% of the amount over \$5,088
\$6,360	\$9,540	\$260.77	7.1% of the amount over \$6,360
\$9,540	\$25,441	\$486.55	7.4% of the amount over \$9,540
\$25,441 or more		\$1,663.19	7.8% of the amount over \$25,441

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.** (4-2-08)

**a.** 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)

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner shall add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, only the amounts contributed by the account owner to the Idaho college savings program within twelve (12) months from the date of the transfer shall be added to taxable income. ~~(4-2-08)~~(\_\_\_\_)

**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)

**05. State and Local Sales Tax.** As provided in Section 63-3022(j), Idaho Code, add the amount of state and local general sales taxes deducted as an itemized deduction. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. See Rule 193 of these rules.

~~(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. The adjustments required by this subsection do not apply to property acquired after 2007.

~~(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)

**07. Income Restored Under Federal Claim of Right.** As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer shall be allowed a deduction in determining Idaho taxable

income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction shall be allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007 (RULE 125).**

Section 63-3022O, Idaho Code. (4-2-08)

**01. In General.** For taxable years beginning on and after January 1, 2001, Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, shall be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer shall be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed.

(4-2-08)( )

**02. Depreciation.** (4-2-08)

**a.** If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer shall be entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes. (4-2-08)

**b.** If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer shall not be entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. (4-2-08)

**c.** The Idaho adjustments shall be required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer shall claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. (4-2-08)

**d.** Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year

should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ certain deductions that may be allowed to the individual if reporting and paying the tax shall not be allowed to the pass-through entity. (4-5-00)( )

**a.** See Rule 291 of these rules for information on computing the taxable income on which a pass-through entity shall be subject to tax. ( )

**b.** See Subsection 173.01 of these rules for the disallowance of an Idaho capital gains deduction to a pass-through entity paying the tax for an electing owner or beneficiary. ( )

**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~~ to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System by the United States Government. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System do not qualify for the deduction. (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)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**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 Sections 1223 and 735, Internal Revenue Code. See Rule 173 of these rules for the determination of the required holding period for an interest in income of an S corporation or partnership.~~ (3-30-07)(\_\_\_\_)

**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)

**iii.** Intangible property. (\_\_\_\_)

**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 ten (10) 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 twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction.

(3-30-07)

ii. Assume the same facts as in the example in Subsection 171.02.d.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 twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (3-30-07)

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

a. Property Distributed by an S Corporation to a Shareholder or by a Partnership to a Partner. The holding period of property received in a distribution from an S corporation or partnership generally includes the holding period of 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. However, the holding period of property received in exchange for a shareholder's stock or a partner's partnership interest does not include the holding period of the stock or partnership interest given up since the stock and partnership interest are nonqualifying property. (3-20-97)(\_\_\_\_)

b. Property Contributed by a Shareholder to an S Corporation or by 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 and the shareholder or partner held his interest in the S corporation or partnership for the required holding period. (3-30-07)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. Interest in Income of a Pass-Through Entity Limitation.~~** (3-30-07)

~~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.~~ (3-30-07)

~~b. Example. A shareholder in an S corporation had a twenty five percent (25%) interest in income in 2003. On January 10, 2005, the shareholder's interest in income increased to fifty percent (50%). In September 2005, the S corporation recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property held since 2003. Fifty percent (50%) of the gain, or ten thousand dollars (\$10,000) flows to the shareholder for the year of the sale to be reported on his individual income tax return based on his fifty percent (50%) interest in income. The shareholder did not hold his fifty percent (50%) interest in income for twelve (12) months, the required holding~~

*period. Therefore, his capital gains from qualified property is limited to his qualifying interest in income of twenty-five percent (25%) of the total gain, or five thousand dollars (\$5,000). If the shareholder had no other qualifying capital gains or losses, his capital gains deduction is three thousand dollars (\$3,000) computed as follows: (\$20,000 total gain X 25% qualifying interest X 60% = \$3,000 Idaho capital gains deduction.) (3-30-07)*

*e. The required holding period for an individual's interest in income is the time specified in Section 63-3022H(3), Idaho Code, for the property on which an Idaho capital gains deduction is being claimed. Different types of property have different time periods specified. For example, real property must be held twelve (12) months, but timber must be held twenty-four (24) months. As a result, if a partnership has gain from the sale of Idaho land, a partner must have held his interest in income for twelve (12) months. If a partnership has gain from the sale of Idaho timber, a partner must have held his interest in income for twenty-four (24) months. If a partnership has gain from both Idaho land and Idaho timber, a partner must meet both time requirements in order to claim the capital gains deduction on the gains from both types of property. If a partner holds his interest in income for only one (1) of the time periods required, the partner may claim the capital gains deduction only on the gain from that property. For example, if the partner held his interest in income for only eighteen (18) months, he would be entitled to claim a capital gains deduction only on the gain from the sale of the Idaho land, not on the gain from the sale of the Idaho timber. (3-30-07)*

*d. Tacked-on holding periods included in the holding period of an individual's partnership interest or an individual's S corporation stock, shall not apply in determining whether an interest in income has been held for the required time. (3-30-07)*

**032. Gross Income Limitations.** To qualify for the Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one-half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)

**043. 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)

**054. Examples.** (3-20-97)

**a.** XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar (\$40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar (\$30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar (\$20,000) loss, for a net gain of fifty thousand dollars (\$50,000). The income and loss from the sale of the farmland 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 nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars (\$6,000), computed as follows: (\$40,000 Idaho gain X 75% apportionment factor = \$30,000 gain apportioned to Idaho X 1/3 interest = \$10,000 attributable to each partner X 60% = \$6,000 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 eight thousand dollars (\$8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars (\$6,000). (3-30-07)

**b.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (3-30-07)(\_\_\_\_\_)

**c.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar (\$90,000) loss, resulting in capital gain net loss from the partnership. If a partner had

other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.054.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (3-30-07)(\_\_\_\_)

**d.** Assume the same facts as in Paragraph 173.054.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar (\$40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000), computed as follows: (\$40,000 gain allocated to Idaho X 1/3 = \$13,333 partner's share X 60% = \$8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). (3-30-07)(\_\_\_\_)

**e.** An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.054.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars (\$8,000) computed as follows: (\$40,000 Idaho gain X 1/3 interest X 60% = \$8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars (\$10,667). Idaho gain X 1/3 interest X 80% = \$10,667). (3-30-07)(\_\_\_\_)

**f.** Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**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. See Rule 194 of these rules for examples of the limitations when costs 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. Social Security Medicare Part D.** Amounts paid for Medicare D, which is a voluntary prescription drug insurance program for individuals with Medicare A or B, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. ( )

**056. 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)~~

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
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	\$0
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
<b>HEALTH INSURANCE</b>		
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
<b>LONG-TERM CARE INSURANCE</b>		

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
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)

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
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
<b>HEALTH INSURANCE</b>	
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
<b>LONG-TERM CARE INSURANCE</b>	
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
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)

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

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
1. Health insurance expenses claimed on federal Schedule A	\$10,000

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
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
<b>HEALTH INSURANCE</b>		
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
<b>LONG-TERM CARE INSURANCE</b>		
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

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)

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>		
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	\$14,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
<b>HEALTH INSURANCE</b>		
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
<b>LONG-TERM CARE INSURANCE</b>		
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



<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
13. <i>Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)</i>	\$0
14. <i>Long-term care insurance deducted elsewhere on the federal return</i>	\$50
15. <i>Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)</i>	\$4,000

(4-6-05)

**194. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE -- EXAMPLES OF LIMITATIONS (RULE 194).**

Sections 63-3022P and 63-3022Q, Idaho Code.

( )

**01. 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).

( )

**02. Example with Seven and One-Half Percent of Federal Adjusted Gross Income Equal to Zero**

(0).

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
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	\$0
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
<b>HEALTH INSURANCE</b>	
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
<b>LONG-TERM CARE INSURANCE</b>	
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

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>14.</b> Long-term care insurance deducted elsewhere on the federal return	\$50
<b>15.</b> Long-term care insurance deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0

( )

**03. Example with Seven and One-Half Percent of Federal Adjusted Gross Income Equal to Three Thousand Dollars (\$3,000).**

( )

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

( )

**04. Example with Seven and One-Half Percent of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000).**

( )

<b>HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS</b>	
<b>1.</b> Health insurance expenses claimed on federal Schedule A	\$10,000
<b>2.</b> Long-term insurance expenses claimed on federal Schedule A	\$4,000
<b>3.</b> Other medical expenses claimed on federal Schedule A	\$2,000
<b>4.</b> Total medical expenses claimed on federal Schedule A	\$16,000

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

( )

**05. Example with Seven and One-Half Percent of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).**

( )

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

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)	\$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

( )

1945. -- 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)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. See Rule 193 of these rules. ~~(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. The adjustments required by this subsection do not apply to property acquired after 2007. ~~(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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. The following are exceptions to this rule. (4-11-06)

**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)

**d.** Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. (4-11-06)

**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. Payment of Penalties.** Payment of penalties shall be sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalties paid shall be Idaho source income. ( )

**034. 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 Paragraph 266.01.a. of this rule. (4-11-06)

**05. Timing of Sourcing Determination for Intangible Personal Property.** The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments shall be Idaho source income. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**273. IDAHO COMPENSATION -- UNEMPLOYMENT COMPENSATION (RULE 273).** ( )  
Section 63-3026A(3), Idaho Code.

**01. In General.** If an individual receives unemployment compensation benefits that are related to work performed in Idaho, all or part of the unemployment compensation benefits are Idaho source income, even though the unemployment compensation benefits may relate to services performed in Idaho in an earlier taxable year. If the unemployment compensation benefits are received for employment in Idaho and in one or more other states, the portion of the unemployment compensation benefits that constitutes Idaho source income shall be determined by multiplying the unemployment compensation benefits received by the proration of Idaho wages to total wages used in computing the unemployment compensation benefits. ( )

**02. Example.** John, a nonresident of Idaho, worked in Idaho and Oregon during 2007, earning forty-five thousand dollars (\$45,000), of which fifteen thousand dollars (\$15,000) was for personal services provided in Idaho. On January 1, 2008, John was laid off by his employer. During 2008, he received unemployment compensation benefits totaling twelve thousand dollars (\$12,000) from the state of Oregon. These benefits were based on his total wages of forty-five thousand dollars (\$45,000) received during 2007. Because part of the unemployment compensation benefits received by John in 2008 related to his work in Idaho, John has Idaho source income from the unemployment compensation benefits. To determine the amount of Idaho source income John received, he must compute the percentage of Idaho wages to total wages that was used to compute the unemployment compensation benefits and apply that percentage to the amount of unemployment compensation benefits he received. This computation must be made even though John did not perform personal services in Idaho in 2008, the year the unemployment compensation benefits were received. The unemployment compensation taxable to Idaho is four thousand dollars (\$4,000) computed as follows: (\$15,000 Idaho wages divided by total wages of \$45,000 = 1/3 X unemployment compensation received of \$12,000 = \$4,000 of Idaho source income). ( )

**273.—274. (RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

**290. TAX PAID BY ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, OR BENEFICIARIES -- ELECTION (RULE 290).** (3-30-07)  
Section 63-3022L, Idaho Code.

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

**a.** The election to have ~~the~~ a qualifying 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 individual's Idaho taxable income. The individual's Idaho taxable income is described in Rule 291 of these rules. (3-30-07)

e. An individual may not make the election for his income received from a corporation other than an S corporation if the corporation reports less than fifty percent (50%) of its taxable income to Idaho. ( )

**02. Failure to Make Election.** 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 Rule 291 of these rules on an Idaho individual income tax return when such return is required, the entity shall be required to pay the tax on such income. (3-30-07)

**03. Multiple Pass-Through Entities.** An individual may make the election even though he is an officer, director, shareholder, partner, member, or beneficiary in more than one (1) qualifying entity provided that all his income is subject to the election in Section 63-3022L(2), Idaho Code. ( )

**04. Examples.** ( )

a. An individual is a partner in Partnership A and Partnership B. He has no other Idaho taxable income. The individual may make the election for both partnerships. ( )

b. An individual is a partner in Partnership A and a shareholder of S Corporation B. He has no other Idaho taxable income. The individual may make the election for both entities. ( )

c. An individual is a partner in Partnership A and a director of Corporation B, which has an Idaho apportionment factor of twelve percent (12%) and no nonbusiness income reported to Idaho. The individual received compensation from Corporation B for his work as a director. Because the provisions of Section 63-3022L, Idaho Code, do not apply to a corporation with less than fifty percent (50%) of its income taxable to Idaho, the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code. As a result, the individual may not make the election for either Partnership A or Corporation B. ( )

d. An individual is a partner in Partnership A and received rental income from a house he owned in Idaho. Because the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code, the individual may not make the election for Partnership A. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ producing that item of income. The activity *generally*

~~does not~~ includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. ~~However, income producing activity shall include transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can only work for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result.~~ ( )

**a.** Income producing activity includes the following: (4-11-06)( )

~~a.i.~~ The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the use of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service; (3-20-97)( )

~~b.ii.~~ The sale, rental, leasing, licensing or other use of real property; (3-20-97)

~~e.iii.~~ The rental, leasing, licensing or other use of tangible personal property; (3-20-97)

~~d.iv.~~ The sale, licensing or other use of intangible personal property; and (3-20-97)

~~e.b.~~ 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~~ in a manner consistent with generally accepted accounting principles and according to accepted conditions or practices of the taxpayer's trade or business to perform the income producing activity that gives rise to the particular item of income. ~~Only the direct costs paid by the taxpayer shall be considered. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property that give rise to the particular item of income.~~ (4-11-06)( )

**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):  $(200 \text{ man hours} / 600 \text{ man hours}) \times \$9,000$ . (3-20-97)

**06. Services on Behalf of the Taxpayer.** An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to Idaho if such income producing activity is in Idaho. ( )

a. Such income producing activity is in Idaho; ( )

i. When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in Idaho by the agent or independent contractor. However, if the activity occurs in more than one state, the location where the income producing activity is actually performed shall be deemed to be not reasonably determinable at the time of filing under Subsection 550.06 of this rule. ( )

ii. If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract. ( )

iii. If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or ( )

iv. If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile. ( )

b. If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under Subparagraphs 550.06.a.i. through 550.06.a.iii. of this rule, or the taxpayer's customer's domicile cannot be determined under Subparagraph 550.06.a.iv. of this rule, or, although determinable, such income producing activity is in a state in which the taxpayer is not taxable, such income producing activity shall be disregarded. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- IN GENERAL (RULE 700).**

Section 63-3029, Idaho Code. (3-30-07)

**01. Taxpayers Entitled to the Credit.** The credit for taxes paid to another state shall be allowed only to qualifying individuals. ( )

**a.** The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. ~~as~~ ( )

**b.** The credit is allowed to part-year resident individuals who were domiciled or residing in Idaho at the time the income was earned in another state. ( )

**c.** Income earned in another state shall be determined under Section 63-3026A, Idaho Code, and related rules. An individual who is not domiciled in Idaho but who qualifies as a resident in accordance with Section 63-3013(b), Idaho Code, does not qualify for this credit. (4-2-08)( )

**02. Taxes Eligible for the Credit.** The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid to another state by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. (~~3-30-07~~)( )

**03. 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)

**04. 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)

**05. 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. Tax paid to cities or counties does not qualify for the credit. (3-30-07)

**06. Limitations.** The credit for taxes paid to another state shall be limited as follows: (3-30-07)

**a.** The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, or trust. (3-30-07)

**b.** If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit shall reduce the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars (\$400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars (\$300), but he is entitled to a three-hundred sixty dollar (\$360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars (\$60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual (\$400 - \$60 = \$340). The credit for tax paid to the other state is limited to three hundred forty dollars (\$340). (3-30-07)

**c.** The credit may not exceed the proportion of the tax otherwise due to Idaho that the amount of the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. For example, if the adjusted gross income derived in another state is twelve thousand dollars (\$12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars (\$50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ( $\$12,000/\$50,000 = 24\% \times$  tax paid to Idaho). (3-30-07)

**07. Rounding.** For taxable years beginning in or after 2007, the proration calculated under Section 63-3029, Idaho Code, shall be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ( $\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$ ). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ( $\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$ ). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). (4-2-08)

**701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- PART-YEAR RESIDENTS (RULE 701).**  
Section 63-3029, Idaho Code. (3-30-07)

**01. Income Subject to Tax by Both States.** For purposes of the credit for income taxes paid to another state, income subject to tax by both states shall mean the total amount of income a taxpayer receives from sources outside of Idaho during the portion of the year he is domiciled or residing in Idaho. Both the source state and Idaho must impose an income tax on this income. Income received during the portion of the year the taxpayer was not domiciled or residing in Idaho does not qualify. (~~3-30-07~~)(\_\_\_\_)

**02. Examples.** The following examples assume the taxpayer earned only wage income. (3-30-07)

**a.** Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. (3-30-07)

**b.** Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. (3-30-07)

**c.** Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his wages income earned during the year since he is domiciled in California. Idaho will tax only the wages income he earned in Idaho while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because he is not domiciled in Idaho this income is not earned in another state. If Taxpayer C received other income while residing in Idaho that is taxed by Idaho but sourced to another state, such as gains on the sale of stock, he may be entitled to a credit for taxes paid on this income. (~~3-30-07~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~9~~ 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)~~

ea. 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)

eb. 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)

ec. 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)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment for property acquired after 2007. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**770. GROCERY CREDIT -- TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 2008 (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. GROCERY CREDIT -- TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
Section 63-3024A, Idaho Code. ( )

**01. Residents.** ( )

**a.** A resident individual may claim a credit 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. Such credit shall be allowed as follows:

<u>TAX YEAR</u>	<u>IDAHO TAXABLE INCOME \$1,000 OR LESS</u>	<u>IDAHO TAXABLE INCOME MORE THAN \$1,000</u>
<u>2008</u>	<u>\$50</u>	<u>\$30</u>

( )

**b.** A resident age sixty-five (65) or older may claim an additional credit of twenty dollars (\$20) for each personal exemption described in Paragraph 771.01.a., of this rule, who is age sixty-five (65) or older. ( )

**02. 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. ( )

**03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: ( )

**a.** Received assistance under the federal food stamp program; ( )

**b.** Was incarcerated; or ( )

**c.** Resided illegally in the United States. ( )

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. ( )

**05. Members of the Armed Forces.** A member of the United States Armed Forces who is: ( )

**a.** Domiciled in Idaho is entitled to this credit; ( )

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. ( )

**06. Spouse or Dependents of Members of the Armed Forces.** A spouse or dependent of a nonresident member of the Armed Forces 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. ( )

**07. Claiming the Credit.** ( )

**a.** An individual who is required to file an Idaho individual income tax return shall claim the credit on his return. If the credit exceeds his tax liability, the resident shall receive a refund. ( )

**b.** An individual who is not required to file an Idaho income tax return shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. ( )

**c.** No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. ( )

**08. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The



election shall be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. ( )

~~774.~~ -- 774. (RESERVED).

**(BREAK IN CONTINUITY OF SECTIONS)**

**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)

**d.** Idaho credits may not pass through to partners or owners based on special allocations. ( )

**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. If a pass-through entity is paying the tax for an electing partner, shareholder, or beneficiary under Section 63-3022L, Idaho Code, the entity may apply any credits attributable to that individual that were earned during the taxable year against the tax computed for that individual. Unused credits from taxable years in which a partner, shareholder, or beneficiary did not make the election may not be applied against the tax by the pass-through entity. Tax due from the recapture of credits shall be reported by the entity for each electing individual. For example, Idaho investment tax credit earned during the taxable year that would have passed through to the owner or beneficiary ~~could~~ may 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. Unused credits from taxable years in which a partner, shareholder, or beneficiary did not make the election may not be carried over by the pass-through entity. (3-30-01)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO 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)
- ~~l. Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. (4-11-06)~~
- ~~m. Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. (4-11-06)~~
- ~~n. Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. (4-11-06)~~
- ~~o. Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. (4-11-06)~~
- ~~p. Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. (4-11-06)~~
- ~~q. Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. (4-11-06)~~
- ~~r. Credit for live organ donation expenses as authorized by Section 63-3029K, Idaho Code. (3-30-07)~~
- ~~s. Biofuel infrastructure investment tax credit as authorized by Section 63-3029M, Idaho Code. (4-2-08)~~
- 03. Adjustments to Credits.** (4-11-06)
  - a. Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. (4-11-06)
  - b. Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. (4-11-06)
  - c. If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. (4-11-06)
- 800. VALID INCOME TAX RETURNS (RULE 800).** (3-20-97)  
Section 63-3030, Idaho Code.
- 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. (4-2-08)
- 03. Verification of Idaho Income Tax Withheld.** A taxpayer who files an Idaho individual income tax return that is submitted on paper and reports Idaho income tax withheld shall attach appropriate Forms W-2 and 1099

and other information forms that verify the amount of the Idaho income tax withheld and claimed on the Idaho income tax return. Returns filed electronically shall include the W-2 and 1099 information in the electronic record transmitted. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 through magnetic media, electronic filing, or on federal Form 1099. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-30-07)

**03. Due Date of Information Returns.** Information returns shall be made on a calendar year basis. The due date for information returns submitted through magnetic media or on paper is the last day of February, following the close of the calendar year. The due date for information returns submitted through electronic filing is March 31 following the close of the calendar year. (3-20-97)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 or loss 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. A partnership, estate, trust or S corporation that has Idaho taxable income or loss shall pay the permanent building fund tax. For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule.~~ (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, except as provided in Subsection 855.05 of this rule. (3-30-07)

**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)

**05. Taxpayers Protected Under Public Law 86-272.** The permanent building fund tax shall not apply to a taxpayer whose Idaho business activities fall under the protection of Public Law 86-272, since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act and is not required to file an income tax return. (3-30-07)

**06. Entities That Pay the Tax for Individuals Making the Election Under Section 63-3022L, Idaho Code.** When an individual officer, director, shareholder, partner, member, or beneficiary makes the election under Section 63-3022L, Idaho Code, to have the corporation, partnership, trust, or estate pay his Idaho income tax on income from the entity, the entity shall pay the permanent building fund tax for each qualifying individual making the election. If an individual is making the election for more than one (1) entity for a taxable year, each entity shall be required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has made multiple elections for a taxable year. (\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ seven hundred fifty dollars (\$~~607~~750) 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. Employers who owe less than ~~fifty dollars (\$50) monthly or six~~ seven hundred fifty dollars (\$~~607~~750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (3-30-07)(\_\_\_\_)

**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	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(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 January. 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. (4-11-06)

**02. Filing of Annual Reconciliation Returns.** (4-6-05)

**a.** In General. ~~Beginning January 1, 2004, a~~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~~ February. 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.** (3-30-07)

**a.** 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. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (3-30-07)

**b.** W-2s filed electronically shall be filed with the Tax Commission on or before March 31. (3-30-07)

**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~~ W-2s electronically by Section 6011, Internal Revenue Code, shall file ~~in a similar manner or~~ through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the ~~magnetic media or machine-readable form~~ electronic filing shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file ~~on magnetic media~~ electronically 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. (~~3-30-07~~)(    )

**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 as determined using the calculations in Rule 270 of these rules. ~~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)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~901. 919. (RESERVED).~~

~~920. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — DEFINITIONS (RULE 920). Title 63, Chapter 29, Idaho Code. For purposes of administering the Idaho Corporate Headquarters Incentive Act of 2005 and Rules 920 through 926 of these rules, the following definitions apply: (4-11-06)~~

~~01. Buildings and Structural Components. Buildings and structural components shall mean buildings~~

~~and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508.~~ (4-11-06)

~~02. Corporate Headquarters Investment Tax Credit. Corporate headquarters investment tax credit shall mean the additional income tax credit allowed by Section 63-2903, Idaho Code.~~ (4-11-06)

~~03. Corporate Headquarters New Jobs Tax Credit. Corporate headquarters new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-2905, Idaho Code.~~ (4-11-06)

~~04. Corporate Headquarters Tax Incentive Criteria. Corporate headquarters tax incentive criteria shall mean the tax incentive criteria defined in Section 63-2902(2)(j), Idaho Code. See Rule 922 of these rules for more information.~~ (4-11-06)

~~05. Corporate Headquarters Tax Incentives. Corporate headquarters tax incentives shall mean the tax incentives allowed by Title 63, Chapter 29, Idaho Code.~~ (4-11-06)

~~06. Corporate Headquarters Real Property Improvement Tax Credit. Corporate headquarters real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-2904, Idaho Code.~~ (4-11-06)

~~07. Investment in New Plant. Investment in new plant shall mean investment in headquarters or administrative facilities:~~ (4-11-06)

~~a. That is constructed or erected by the taxpayer, or~~ (4-11-06)

~~b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant.~~ (4-11-06)

~~c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings.~~ (4-11-06)

~~08. Majority of the Company's Services. A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-2902(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded.~~ (4-11-06)

~~09. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations.~~ (4-11-06)

~~10. National Headquarters or Administrative Facilities. A national headquarters is that office or location of a multistate business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the national headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all regional offices, operating facilities or any other offices of the business enterprise. The national headquarters is subordinate only to the ownership of the organization or its representatives.~~ (4-11-06)

~~11. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee.~~ (4-11-06)



- ~~12. **Project Period.** The project period is a period of time that begins and ends as follows: (4-11-06)~~
- ~~a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: (4-11-06)~~
- ~~i. The date of a physical change to the project site, or (4-11-06)~~
- ~~ii. The date new employees begin providing personal services at the project site. (4-11-06)~~
- ~~b. The project period shall end at the earlier of: (4-11-06)~~
- ~~i. The conclusion of the project, or (4-11-06)~~
- ~~ii. December 31, 2009. (4-11-06)~~
- ~~13. **Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. (4-11-06)~~
- ~~14. **Regional Headquarters or Administrative Facilities.** A regional headquarters is one (1) of several management offices or facilities of a multistate business that is responsible for planning, directing and controlling a majority of the business operations within a subdivided area of the United States. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. It has final authority over all matters within its region and is subordinate only to the national headquarters. (4-11-06)~~
- ~~921. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — IN GENERAL (RULE 921).**  
Sections 63-4401 and 63-2906, Idaho Code. (4-11-06)~~
- ~~01. **Coordination with Idaho Small Employer Incentive Act of 2005.** A taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under the corporate headquarters incentive act of 2005, shall not be allowed any of the tax incentives provided by the small employer incentive act of 2005. (4-11-06)~~
- ~~02. **Pass-Through Entities.** The income tax credits 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 credits, for pass through entities paying tax, and the application of limitations on pass-through credits. (4-11-06)~~
- ~~03. **Reorganizations, Mergers and Liquidations.** The corporate headquarters investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho corporate headquarters investment tax credits and real property improvement tax credits. See Rule 926 of these rules for information related to the recapture required by an acquiring corporation. (4-11-06)~~
- ~~04. **Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. (4-11-06)~~
- ~~05. **Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the corporate headquarters investment tax credit, real property improvement tax credit, and new jobs 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 credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. 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. (4-11-06)~~

~~922. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 CORPORATE HEADQUARTERS TAX INCENTIVE CRITERIA (RULE 922). Section 63-2902, Idaho Code. (4-11-06)~~

~~01. In General. The corporate headquarters tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for corporate headquarters tax incentives. To meet the corporate headquarters tax incentive criteria, a taxpayer shall satisfy the following requirements at the project site, during the project period: (4-11-06)~~

~~a. Making capital investment in new headquarters or administrative facilities totaling fifty million dollars (\$50,000,000) or more; (4-11-06)~~

~~b. Increasing employment by at least five hundred (500) new employees who meet the requirements of Section 63-2902(2)(j)(ii)(1), Idaho Code, and (4-11-06)~~

~~c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by five hundred (500) new employees has been reached. (4-11-06)~~

~~02. Certification. A taxpayer shall certify that he has met, or will meet, the corporate headquarters tax incentive criteria before he can claim any of the corporate headquarters tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the corporate headquarters tax incentives: (4-11-06)~~

~~a. A description of the qualifying project; (4-11-06)~~

~~b. The estimated or actual start date of the project; (4-11-06)~~

~~c. The estimated or actual end date of the project; (4-11-06)~~

~~d. The location of the project site or sites; (4-11-06)~~

~~e. Information as to whether the project site is the location of the company's national or regional headquarters; (4-11-06)~~

~~f. The estimated or actual percent of the company's administrative services handled at the project site; (4-11-06)~~

~~g. The estimated or actual number of new administrative jobs created during the project period; and (4-11-06)~~

~~h. The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. (4-11-06)~~

~~03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a corporate headquarters income tax incentive is claimed or carried over. (4-11-06)~~

~~923. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 CORPORATE HEADQUARTERS INVESTMENT TAX CREDIT (RULE 923). Sections 63-2903 and 63-2906, Idaho Code. (4-11-06)~~

~~01. Credit Allowed. (4-11-06)~~

~~a. The corporate headquarters investment tax credit allowed by Section 63-2903, Idaho Code, may be~~

~~earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~

~~**b.** The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-11-06)~~

~~**02.** **Taxpayers Entitled to the Credit.** The corporate headquarters investment tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. (4-11-06)~~

~~**03.** **Qualified Investments.** (4-11-06)~~

~~**a.** Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. (4-11-06)~~

~~**b.** Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. (4-11-06)~~

~~**04.** **Limitations.** The corporate headquarters investment tax credit allowable in any taxable year shall be limited as follows: (4-11-06)~~

~~**a.** The corporate headquarters investment tax credit claimed during a taxable year may not exceed the lesser of: (4-11-06)~~

~~**i.** Five million dollars (\$5,000,000); or (4-11-06)~~

~~**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters 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. (4-11-06)~~

~~**b.** 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. (4-11-06)~~

~~**05.** **Carryovers.** The carryover period for the corporate headquarters investment tax credit is fourteen (14) years. (4-11-06)~~

~~**06.** **Coordination with Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who is eligible to claim the corporate headquarters investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the corporate headquarters investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. (4-11-06)~~

~~**924. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — CORPORATE HEADQUARTERS REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 924).** Sections 63-2904 and 63-2906, Idaho Code. (4-11-06)~~

~~**01.** **Credit Allowed.** (4-11-06)~~

~~**a.** The corporate headquarters real property improvement tax credit allowed by Section 63-2904, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005, and before December 31,~~

~~2009.~~

~~(4-11-06)~~

~~**b.** The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the corporate headquarters real property improvement tax credit.~~

~~(4-11-06)~~

~~**02. Taxpayers Entitled to the Credit.** The corporate headquarters real property improvement tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria.~~

~~(4-11-06)~~

~~**03. Buildings and Structural Components of Buildings.**~~

~~(4-11-06)~~

~~**a.** To qualify for the corporate headquarters real property improvement tax credit, buildings and structural components of buildings must meet the following requirements:~~

~~(4-11-06)~~

~~**i.** The buildings and structural components of buildings must be new as defined in Subsection 920.07 of these rules.~~

~~(4-11-06)~~

~~**ii.** The buildings and structural components of buildings must be placed in service at the project site.~~

~~(4-11-06)~~

~~**iii.** The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the corporate headquarters real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity.~~

~~(4-11-06)~~

~~**b.** Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the corporate headquarters real property improvement tax credit.~~

~~(4-11-06)~~

~~**04. Limitations.** The corporate headquarters real property improvement tax credit allowable in any taxable year shall be limited as follows:~~

~~(4-11-06)~~

~~**a.** The corporate headquarters real property improvement tax credit claimed during a taxable year may not exceed the lesser of:~~

~~(4-11-06)~~

~~**i.** Five hundred thousand dollars (\$500,000); or~~

~~(4-11-06)~~

~~**ii.** One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters real property improvement 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.~~

~~(4-11-06)~~

~~**b.** 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.~~

~~(4-11-06)~~

~~**05. Carryovers.** The carryover period for the corporate headquarters real property improvement tax credit is fourteen (14) years.~~

~~(4-11-06)~~

~~**925. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — CORPORATE HEADQUARTERS NEW JOBS TAX CREDIT (RULE 925).**~~

~~Sections 63-2905 and 63-2906, Idaho Code.~~

~~(4-11-06)~~

- ~~01. Credit Allowed. (4-11-06)~~
- ~~a. The corporate headquarters new jobs tax credit allowed by Section 63-2905, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~
- ~~b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the corporate headquarters new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. (4-11-06)~~
- ~~c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (4-11-06)~~
- ~~02. Taxpayers Entitled to the Credit. The corporate headquarters new jobs tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. (4-11-06)~~
- ~~03. Calculating Number of Employees. (4-11-06)~~
- ~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-2902(c) and 63-2905, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (4-11-06)~~
- ~~i. The employee must have worked primarily within the project site for the taxpayer. (4-11-06)~~
- ~~ii. The employee must have received earnings at a rate of more than twenty four dollars and four cents (\$24.04) per hour worked. (4-11-06)~~
- ~~iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (4-11-06)~~
- ~~iv. The employee must have been subject to Idaho income tax withholding. (4-11-06)~~
- ~~v. The employee must have been covered for Idaho unemployment insurance purposes. (4-11-06)~~
- ~~vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (4-11-06)~~
- ~~vii. 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. (4-11-06)~~
- ~~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. (4-11-06)~~
- ~~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. (4-11-06)~~
- ~~04. Calculating the Number of New Employees. (4-11-06)~~
- ~~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: (4-11-06)~~
- ~~i. The number of employees for the prior taxable year; or (4-11-06)~~

~~ii. The average of the number of employees for the three (3) prior taxable years. (4-11-06)~~

~~b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 925.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 925.04.a.i., and 925.04.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. (4-11-06)~~

~~e. 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. (4-11-06)~~

~~05. **Computing the Credit Earned.** The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. (4-11-06)~~

~~a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). (4-11-06)~~

~~b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). (4-11-06)~~

~~e. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). (4-11-06)~~

~~d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). (4-11-06)~~

~~06. **Limitations.** The corporate headquarters new jobs tax credit allowable in any taxable year shall be limited as follows: (4-11-06)~~

~~a. The corporate headquarters new jobs tax credit 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 corporate headquarters new jobs 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. (4-11-06)~~

~~b. **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. (4-11-06)~~

~~07. **Carryovers.** The carryover period for the corporate headquarters new jobs tax credit is ten (10) years. (4-11-06)~~

~~08. **Coordination with Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code.** A taxpayer who has new employees who are eligible for the corporate headquarters new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the corporate headquarters new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (4-11-06)~~

~~926. **IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 — RECAPTURE (RULE 926).** Section 63-2907, Idaho Code. (4-11-06)~~

~~01. **Failure to Meet Tax Incentive Criteria.** If a taxpayer fails to meet the corporate headquarters tax incentive criteria, the full amount of the corporate headquarters investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. (4-11-06)~~

~~02. **Year Deficiency Occurs.** Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below five hundred (500). (4-11-06)~~

~~03. **Early Disposition of Investment in New Plant.** (4-11-06)~~

~~a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: (4-11-06)~~

~~i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; (4-11-06)~~

~~ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; (4-11-06)~~

~~iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; (4-11-06)~~

~~iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; (4-11-06)~~

~~v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. (4-11-06)~~

~~04. **Failure to Maintain Increased Employment.** (4-11-06)~~

~~a. If the increased level of employment of five hundred (500) new employees is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: (4-11-06)~~

~~i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; (4-11-06)~~

~~ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; (4-11-06)~~

~~iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; (4-11-06)~~

~~iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; (4-11-06)~~

~~v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. (4-11-06)~~

~~e. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. (4-11-06)~~

~~05. **Reorganizations, Mergers and Liquidations.** (4-11-06)~~

~~a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. (4-11-06)~~

~~b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. (4-11-06)~~

~~927.—929. (RESERVED).~~

~~930. **IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — DEFINITIONS (RULE 930).** Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005 and Rules 930 through 936 of these rules, the following definitions apply: (4-11-06)~~

~~01. **Buildings and Structural Components.** Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. (4-11-06)~~

~~02. **Headquarters or Administrative Facilities.** A headquarters is that office or location of a business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all other offices or operating facilities of the business enterprise. (4-11-06)~~

~~03. **Investment in New Plant.** Investment in new plant shall mean investment in headquarters or administrative facilities: (4-11-06)~~

~~a. That is constructed or erected by the taxpayer, or (4-11-06)~~

~~b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. (4-11-06)~~

~~c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (4-11-06)~~

~~04. **Majority of the Company's Services.** A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-4402(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. (4-11-06)~~

~~05. **Making Capital Investments.** The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. (4-11-06)~~

~~06. **New Employee.** A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous~~



~~position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (4-11-06)~~

- ~~07. **Project Period.** The project period is a period of time that begins and ends as follows: (4-11-06)~~
- ~~a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: (4-11-06)~~
  - ~~i. The date of a physical change to the project site, or (4-11-06)~~
  - ~~ii. The date new employees begin providing personal services at the project site. (4-11-06)~~
  - ~~b. The project period shall end at the earlier of: (4-11-06)~~
  - ~~i. The conclusion of the project, or (4-11-06)~~
  - ~~ii. December 31, 2009. (4-11-06)~~
- ~~08. **Project Site.** The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. (4-11-06)~~
- ~~09. **Small Employer Investment Tax Credit.** Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. (4-11-06)~~
- ~~10. **Small Employer New Jobs Tax Credit.** Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. (4-11-06)~~
- ~~11. **Small Employer Real Property Improvement Tax Credit.** Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. (4-11-06)~~
- ~~12. **Small Employer Tax Incentive Criteria.** Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 932 of these rules for more information. (4-11-06)~~
- ~~13. **Small Employer Tax Incentives.** Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. (4-11-06)~~
- ~~931. **IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — IN GENERAL (RULE 931).** Sections 63-4401 and 63-4406, Idaho Code. (4-11-06)~~
- ~~01. **Coordination with Idaho Corporate Headquarters Incentive Act of 2005.** The tax incentives provided by the small employer incentive act of 2005 shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. (4-11-06)~~
- ~~02. **Pass Through Entities.** The income tax credits 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 credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. (4-11-06)~~
- ~~03. **Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the~~

~~distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 936 of these rules for information related to the recapture required by an acquiring corporation.~~ (4-11-06)

**04. Relocations.** ~~The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity.~~ (4-11-06)

**05. Unitary Taxpayers.** ~~A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs 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 credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. 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.~~ (4-11-06)

**932. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 932).**  
~~Section 63-4402, Idaho Code.~~ (4-11-06)

**01. In General.** ~~The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period:~~ (4-11-06)

**a.** ~~Making capital investment in new headquarters or administrative facilities totaling five hundred thousand dollars (\$500,000) or more, and~~ (4-11-06)

**b.** ~~Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code.~~ (4-11-06)

**c.** ~~Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by ten (10) new employees has been reached.~~ (4-11-06)

**d.** ~~Increasing employment by at least one (1) new employee for each fifty thousand dollars (\$50,000) of investment in new headquarters or administrative facilities. For example, if a taxpayer invests four million dollars (\$4,000,000) in new administrative facilities, he must have increased employment by eighty (80) new employees to meet the small employer tax incentive criteria.~~ (4-11-06)

**02. Certification.** ~~A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives:~~ (4-11-06)

**a.** ~~A description of the qualifying project;~~ (4-11-06)

**b.** ~~The estimated or actual start date of the project;~~ (4-11-06)

**c.** ~~The estimated or actual end date of the project;~~ (4-11-06)

**d.** ~~The location of the project site or sites;~~ (4-11-06)

**e.** ~~Information as to whether the project site is the location of the company's national or regional headquarters;~~ (4-11-06)

**f.** ~~The estimated or actual percent of the company's administrative services handled at the project site;~~ (4-11-06)

- ~~g-~~ *The estimated or actual number of new administrative jobs created during the project period; and* (4-11-06)
- ~~h-~~ *The estimated or actual cost of capital investment in new administrative facilities for each year in the project period.* (4-11-06)
- ~~03-~~ ***Copy of Certification Form Required.*** *A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over.* (4-11-06)
- 933. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 933).**  
*Sections 63-4403 and 63-4406, Idaho Code.* (4-11-06)
- ~~01-~~ ***Credit Allowed.*** (4-11-06)
- ~~a-~~ *The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005, and before December 31, 2009.* (4-11-06)
- ~~b-~~ *The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code.* (4-11-06)
- ~~02-~~ ***Taxpayers Entitled to the Credit.*** *The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.* (4-11-06)
- ~~03-~~ ***Qualified Investments.*** (4-11-06)
- ~~a-~~ *Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments.* (4-11-06)
- ~~b-~~ *Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify.* (4-11-06)
- ~~04-~~ ***Limitations.*** *The small employer investment tax credit allowable in any taxable year shall be limited as follows:* (4-11-06)
- ~~a-~~ *The small employer investment tax credit claimed during a taxable year may not exceed the lesser of:* (4-11-06)
- ~~i-~~ *One million two hundred fifty thousand dollars (\$1,250,000); or* (4-11-06)
- ~~ii-~~ *Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer 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.* (4-11-06)
- ~~b-~~ *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.* (4-11-06)
- ~~05-~~ ***Carryovers.*** *The carryover period for the small employer investment tax credit is fourteen (14) years.* (4-11-06)

~~06. Coordination with Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year.~~ (4-11-06)

~~934. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 934).~~

~~Sections 63-4404 and 63-4406, Idaho Code.~~ (4-11-06)

~~01. Credit Allowed.~~ (4-11-06)

~~a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009.~~ (4-11-06)

~~b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit.~~ (4-11-06)

~~02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria.~~ (4-11-06)

~~03. Buildings and Structural Components of Buildings.~~ (4-11-06)

~~a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements:~~ (4-11-06)

~~i. The buildings and structural components of buildings must be new as defined in Subsection 930.03 of these rules.~~ (4-11-06)

~~ii. The buildings and structural components of buildings must be placed in service at the project site.~~ (4-11-06)

~~iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the small employer real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity.~~ (4-11-06)

~~b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit.~~ (4-11-06)

~~04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows:~~ (4-11-06)

~~a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of:~~ (4-11-06)

~~i. One hundred twenty five thousand dollars (\$125,000); or~~ (4-11-06)

~~ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement 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. (4-11-06)~~

~~b. 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. (4-11-06)~~

~~05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. (4-11-06)~~

~~**935. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 935).**~~

~~Sections 63-4405 and 63-4406, Idaho Code. (4-11-06)~~

~~**01. Credit Allowed. (4-11-06)**~~

~~a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. (4-11-06)~~

~~b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. (4-11-06)~~

~~c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (4-11-06)~~

~~**02. Taxpayers Entitled to the Credit.** The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (4-11-06)~~

~~**03. Calculating Number of Employees. (4-11-06)**~~

~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(c) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (4-11-06)~~

~~i. The employee must have worked primarily within the project site for the taxpayer. (4-11-06)~~

~~ii. The employee must have received earnings at a rate of more than twenty four dollars and four cents (\$24.04) per hour worked. (4-11-06)~~

~~iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (4-11-06)~~

~~iv. The employee must have been subject to Idaho income tax withholding. (4-11-06)~~

~~v. The employee must have been covered for Idaho unemployment insurance purposes. (4-11-06)~~

~~vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (4-11-06)~~

~~vii. 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. (4-11-06)~~

~~**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. (4-11-06)~~

~~**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. (4-11-06)~~

~~**04. Calculating the Number of New Employees. (4-11-06)**~~

~~**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: (4-11-06)~~

~~**i.** The number of employees for the prior taxable year; or (4-11-06)~~

~~**ii.** The average of the number of employees for the three (3) prior taxable years. (4-11-06)~~

~~**b.** The requirements as to who qualifies for the calculation of number of employees in Paragraph 935.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 935.04.a.i., and 935.04.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. (4-11-06)~~

~~**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. (4-11-06)~~

~~**05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. (4-11-06)**~~

~~**a.** If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). (4-11-06)~~

~~**b.** If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). (4-11-06)~~

~~**c.** If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). (4-11-06)~~

~~**d.** If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). (4-11-06)~~

~~**06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: (4-11-06)**~~

~~**a.** The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs 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. (4-11-06)~~

~~*b.* 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. (4-11-06)~~

~~*07.* Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. (4-11-06)~~

~~*08.* Coordination with Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (4-11-06)~~

~~**936. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 — RECAPTURE (RULE 936).**  
Section 63-4407, Idaho Code. (4-11-06)~~

~~*01.* Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. (4-11-06)~~

~~*02.* Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. (4-11-06)~~

~~*03.* Early Disposition of Investment in New Plant. (4-11-06)~~

~~*a.* If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~*b.* The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: (4-11-06)~~

~~*i.* One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; (4-11-06)~~

~~*ii.* Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; (4-11-06)~~

~~*iii.* Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; (4-11-06)~~

~~*iv.* Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; (4-11-06)~~

~~*v.* Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. (4-11-06)~~

~~*04.* Failure to Maintain Increased Employment. (4-11-06)~~

~~*a.* If the required increased level of employment is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. (4-11-06)~~

~~*b.* The recapture percentage shall be determined as follows. If the increased level of employment is maintained: (4-11-06)~~

- ~~i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; (4-11-06)~~
- ~~ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; (4-11-06)~~
- ~~iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; (4-11-06)~~
- ~~iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; (4-11-06)~~
- ~~v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. (4-11-06)~~
- ~~e. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. (4-11-06)~~

~~05. Reorganizations, Mergers and Liquidations. (4-11-06)~~

~~a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. (4-11-06)~~

~~b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. (4-11-06)~~

~~93701. -- 939. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

**941. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- IN GENERAL (RULE 941).**

Sections 63-4401 and 63-4406, Idaho Code. (3-30-07)

~~01. Coordination with Idaho Corporate Headquarters Incentive Act of 2005. The tax incentives provided by the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. (3-30-07)~~

**021. Pass-Through Entities.** The income tax credits 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 credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-30-07)

**032. Reorganizations, Mergers and Liquidations.** The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including a mere change in the form of conducting the trade or business and transactions to which Section 381(a), Internal Revenue Code, applies shall not cause recapture to occur so long as the property is retained in such trade or business as qualified investment in new plant and the taxpayer retains a substantial interest in such trade or business. To the extent that provisions of the Internal Revenue Code allow an



acquiring taxpayer to succeed to and take into account unused investment credits of the distributor or transferor taxpayer, such provisions shall apply to the acquiring taxpayer with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 946 of these rules for information related to the recapture required by an acquiring taxpayer. (3-30-07)

**043. Relocations.** The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. (3-30-07)

**054. Unitary Taxpayers.** A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. 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. (3-30-07)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-3624, 63-3635 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 014:** Amend Sales Tax Rule 014 to state that contractors or retailers should not charge sales tax to the homeowner for installed real property improvements. The rule would also state that the tax is imposed when the contractor purchases items he installs into real property. Idaho Code § 63-3609 states that contractors improving real property are the consumers of the materials they install and must pay sales or use tax on all their purchases of materials. The contractors do not charge sales tax to the owner of the building, for whom they are working. Many contractors and retailers are charging sales tax on sales of installed, built-in appliances, carpet, fences, and other real property improvements.

**Rule 024:** Amend Rule 024 to conform to the statute. Recently enacted H.B. 2008 exempts from sales tax separately stated charges for personal property tax on leased equipment, if certain conditions apply. Sales Tax Rule 024 currently states that such charges are taxable.

**Rule 044:** Idaho Code § 63-3613 does not provide a definition of "trade-in." The proposed amendment would require a "trade-in" to be a single transaction and that the sales documents must describe both the property traded-in and the property purchased.

**Rule 067:** Amend Sales Tax Rule 067 to state that, in most cases store fixtures are to be considered personal property. Also, add a subsection stating that cable that must be removed from buildings when abandoned is personal property. It is not always clear whether store fixtures are improvements to realty or personal property for sales tax purposes. Idaho Code § 55-308 states that such fixtures are generally personal property if the owner is a tenant or lessor of the building. It is not practical to treat lessors and owners differently. Also, the Commission believes that data cable that must be removed if abandoned is personal property as a matter of law.

**Rule 079:** Amend Rule 079 to conform to the current law. In 2008 the legislature amended the manufacturing exemption, Idaho Code § 63-3622D, to include a business that processes fuel to be used to energy, even if the business does not own or sell the fuel that it processes. Sales Tax Rule 079 currently states that businesses must sell the products they produce. The only exceptions are custom farmers and contract miners.

**Rule 100:** Amend Rule 100 to state that a purchase must be made under the prescription or work order of one of the specifically named types of practitioners. Idaho Code § 63-3622N, as recently amended, states that purchases must be made under the prescription of a licensed practitioner. The definition of "practitioner" includes "any person licensed by the state under title 54, Idaho Code, to prescribe, administer or distribute items identified in subsection (2)(a) of this section." Many of the items can be purchased without a prescription. The statute could be interpreted to mean that a prescription from any licensed professional would qualify. All occupational licenses are granted under Title 54, including professions that have nothing to do with health care, such as engineers, attorneys, and accountants.

**Rule 101:** Amend the rule to state that the use of the fleet will become taxable on the day after the end of registration period for which the mileage requirement is not met. This is a technical correction only and is not meant to be substantive. Idaho Code § 63-3622R provides an exemption from sales tax for I.R.P fleets if the fleet's out of state

mileage is greater than 10% of the total fleet mileage. Sales Tax Rule 101 states that tax is due at the end of any registration period for which the out of state mileage is less than 10%. This is not actually the date when the tax is due.

**Rule 105:** Amend rule 105 to state that the Tax Commission can allow retailers that report less than \$12,000 per year in taxable sales to file annually. Also, the rule should be amended to raise the threshold amount for quarterly and semiannual filers from \$600 per reporting period to \$750. Most retailers in Idaho file monthly sales tax returns; however, many retailers are remitting little or no sales tax. Idaho Code § 63-3623(h) allows the Tax Commission to allow filing periods other than monthly.

**Rule 107:** Amend Rule 107 to comport with the new statute. Recently enacted H.B. 602 changed the definition of "ATV" in Idaho Code 63-3622R. Rule 107 uses the old definition of ATV.

**Rule 130:** Delete the requirement for a social security number from the rule. Sales Tax Rule 130 states that Sales Tax Form ST-124 requires a participating retailer to provide a social security number. The form no longer requires this.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0801**

**014. CONTRACTORS/RETAILERS (RULE 014).**

**01. In General.** This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in Rule 012 of these rules also apply to contractor/retailers and should be reviewed along with this rule. (3-15-02)

**02. Contractor/Retailer.** In many cases, a contractor is also a retailer. For instance, mechanical contractors may operate retail plumbing shops. In this case, the contractor must have a sales tax permit and report sales made directly to customers, just like any other retailer. Also, he is a consumer when performing contracts to

improve real property. Such a contractor might make separate purchases of material to be used on a specific job. He probably would do so with major items such as boilers, furnaces, and similar items. He also may remove necessary materials, probably small items such as joints, pipes, and tools, from his general inventory. (7-1-93)

**03. Record Keeping Procedure.** For convenience, the contractor-retailer may choose to follow any consistent procedure that can apply to his particular operation. (7-1-93)

**a.** For instance, if the majority of a contractor-retailer's business is performing contracts to improve real property, he may wish to pay tax on all his purchases, keep a record of all his normal retail sales and then regularly apply for credit against the sales and use tax due the state for tax paid on purchase. (7-1-93)

**b.** If the majority of the contractor/retailer's business is retail sales, he may wish to make all his purchases without paying tax by giving his suppliers a resale certificate, keeping a record of his withdrawals from stock for use on contracts and paying a use tax to the state on these materials. (7-1-93)

**c.** If the contractor does major jobs, he may want to use separate accounting procedures, and make his purchases for stock without paying tax by issuing a resale certificate, but pay tax on his major job material purchases. See Rule 128 of these rules. (3-15-02)

**04. Inventory Withdrawals.** When any withdrawal is made from nontaxed inventory, the use tax is due to the state when the material is delivered to the job site, regardless of when it is actually used in performing a contract. (7-1-93)

**05. Sales with Agreement to Install.** ~~A regular over-the-counter~~ The sale of ~~a complete unit with an agreement to install it is not a contract to improve real property. This applies to~~ certain types of tangible personal property which requires only minimal hookup, connection, or installation by a retailer or by his arrangement is a transaction which is considered to be a sale of tangible personal property to a final consumer. Examples include, but are not limited to, sales of stoves, refrigerators, washing machines, dryers, ~~and other electrical appliances built-in~~ dishwashers, and water softeners. In this case, ~~a tax is collected from the buyer by the seller~~ the retailer should collect tax from the buyer. If the installation charges are properly separated, tax is due only on the cost of the unit. ~~This does not apply to sales, with installation, of plumbing fixtures, or heating, ventilation, and air conditioning units that are intended to become fixtures to real estate. Nor does it include sales of carpet or other floor coverings, with installation, that are nailed, glued, or otherwise intended to be permanently affixed to floors. Retail sales of appliances or other materials without installation are sales of personal property and are subject to sales tax on the retail sales price.~~ (7-1-93)( )

**a.** Example: A retailer sells and installs a built-in dishwasher to a customer. This is treated like a sale of personal property. The retailer should collect tax on the retail sales price of the dishwasher. Separately stated charges for installation are not taxable. ( )

**b.** Example: A retailer agrees to sell and install carpet for Customer A. The vendor will install the carpet in Customer A's home. This is contract, regardless of whether the charges for the sale and installation of the carpet are billed on a single invoice or on multiple invoices. The retailer should pay use tax on its purchase cost of the carpet and not collect sales tax on the sale to its customer. ( )

**c.** Example: A retailer agrees to sell cabinets to a customer, and to arrange for the installation of the cabinets in Customer B's home. The vendor then arranges for a third party contractor to install the cabinets. Once again this is a contract to improve realty. The retailer must pay use tax on its cost of the cabinets and not collect sales tax from the customer. ( )

**d.** Example: A retailer sells tile to a Customer. The retailer does not provide for installation of the tile. The customer contracts separately with a tile layer to lay that tile in the customer's home. This is a retail sale of personal property. The retailer should collect tax on the retail sales price. ( )

**06. Sales of Both Tangible Personal Property and Improvements to Real Property.** If a contract includes both retail sales of personal property and improvements to real property, the contractor-retailer must collect sales tax on the retail portion of the contract. Also, if he does not pay sales tax to his vendor, he must pay use tax on

the materials used to perform the real property portion of the contract. (7-1-93)

**a.** Example: A cabinet builder contracts to build and install kitchen cabinets and build a portable, freestanding china hutch. In the case of the cabinets, he is a contractor and must pay tax on his material costs. In the case of the china hutch, he is a retailer and must charge his customer sales tax on the full price of the hutch, including labor. (7-1-93)

**b.** Example: A cabinet builder is hired by Contractor X to fabricate and deliver cabinets to the job site. Contractor X will do the installation. In this case, the cabinet builder is a retailer and must charge sales tax to Contractor X on the full sales price, including labor. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).**

**01. In General.** The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

**02. Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment. (3-15-02)

**03. Fully Operated Equipment Rentals.** (7-1-93)

**a.** A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. (7-1-93)

**b.** A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and the property supplied is of no value to the customer without the owner's employees. (7-1-93)

**c.** The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See Rule 073 of these rules. (7-1-99)

**d.** If the equipment or property has value to the customer without the owner's or supplier's employees, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the employees of the owner or supplier. (7-1-93)

**e.** Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the rental company's employee, so the leasing company is not required to charge sales tax on the lease of the crane. (7-1-93)

**f.** Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a lease subject to sales tax. (7-1-93)

**04. Mixed Use of Rental Equipment.** (7-1-93)

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, he is the consumer of the equipment while it is used by his employees to perform his service contract. Accordingly, he must pay use tax on the reasonable rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (7-1-93)

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. (7-1-93)

**05. Operator Required to Be Paid by Customer.** In some cases, an equipment owner supplies equipment along with an operator but a union contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental must be clearly stated on the face of the invoice or other billing document. The State Tax Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. (7-1-99)

**06. Maintenance of Rental Equipment.** If the owner who rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (7-1-93)

**07. Rentals to Exempt Entities.** The rental or lease of equipment invoiced directly to an entity exempt from sales tax, such as the state of Idaho or one (1) of its political subdivisions, is not subject to sales tax. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. (7-1-93)

**08. Exempt Equipment Rentals.** Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule 128 of these rules. (3-15-02)

**09. Rental Payments Applied to Future Sales.** Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

~~**10. Personal Property Tax.** Separately stated personal property tax must be included in the rental price subject to tax. For example, some industries rent or lease tangible personal property for a certain monthly, or other period, rental charge, plus a separately stated amount determined by the owner lessor's personal property tax liability on the equipment. Even though the amount of property tax is separately stated from the basic rental charge, it must be included in the total rental price subject to tax. (7-1-93)~~

**10. Out-of-State Rental/Lease.** Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. (7-1-93)

**121. Lease-Purchase and Lease with Option to Purchase.** (7-1-93)

a. Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated terms of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. (7-1-93)

**b.** Lease with option to purchase agreements include transfers in which the personal property owner, lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property. The owner/lessor must collect sales tax from the lessee at the time the rental is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price, the residual, when the option is exercised. (7-1-93)

**132. Cross-References.** (7-1-93)

- a.** See Rule 025 of these rules on real property rental. (7-1-99)
- b.** See Rule 037 of these rules on aircraft and flying services. (7-1-99)
- c.** See Rule 038 of these rules on flying clubs. (7-1-99)
- d.** See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)
- e.** See Rule 049 of these rules on warranties and service agreements. (7-1-99)
- f.** See Rule 073 of these rules on transient equipment. (7-1-99)
- g.** See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).**

**01. Trade-Ins.** A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. To qualify for the trade-in allowance, property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. Sales documents, executed not later than the date the trade-in property is delivered to the seller, must identify both the property traded-in and the property purchased. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). (~~3-30-01~~)( )

**03. Disallowed Trade-In Deductions.** Trade-in deductions are not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. (3-30-01)

**a.** Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

**b.** Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays

use tax on ten thousand dollars (\$10,000). (7-1-93)

**04. Insurance Settlements.** An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)

**05. Core Charges.** Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

**06. Trade-In for Rental/Lease Property.** When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

**a.** The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

**b.** The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

**c.** A combination of the two (2) methods, above. (7-1-93)

**d.** Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000). (3-30-01)

**i.** Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment. (3-30-01)

**ii.** Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. (3-30-01)

**iii.** Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly. (3-30-01)

**07. Rental/Lease Property Traded-In.** When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax. (3-30-01)



b. Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000). (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**067. REAL PROPERTY (RULE 067).**

**01. Improvements or Fixtures.** Improvements or fixtures to real property include: (7-1-93)

a. Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)

b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)

c. Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)

**02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

a. Annexation to the realty, either actual or constructive. (7-1-93)

b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

c. Intention to make the article a permanent addition to the realty. (7-1-93)

**03. Example 1:** The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)

**04. Example 2:** The three (3) factor test would not be met in Subsection 067.03, ~~Example 1 of this rule~~, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. ~~(7-1-93)~~( )

**05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(c), Idaho Code. (7-1-93)

**06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: ( )

**a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or ( )

**b.** It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. ( )

**07. Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**079. PRODUCTION EXEMPTION (RULE 079).**

**01. In General.** ~~The Sales Tax Act~~ Idaho Code Section 63-3622D, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (7-1-93)( )

**a.** A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property ~~for resale~~ that it will sell and is intended to be ultimately sold at retail. (6-23-94)( )

**b.** The business of custom farming or operating a farm or ranch for profit. (7-1-93)

**c.** The business of contract mining or operating a mine for profit. (6-23-94)

**d.** Businesses devoted to processing tangible personal property for use as fuel for the production of energy. ( )

**02. Qualifying Businesses.** The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

**a.** For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

**b.** The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

**c.** To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. ( )

**03. Exempt Purchases.** As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

**a.** Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

- b.** Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)
- c.** Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)
- d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)
- e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)
- f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)
- g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)
- h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)
- i.** Equipment used primarily to fabricate production equipment. (7-1-93)
- 04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)
- 05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)
- a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
- b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
- c.** A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)
- d.** Office equipment and supplies. (7-1-93)
- e.** Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)
- f.** Equipment and supplies used in selling and distribution activities. (7-1-93)
- g.** Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)
- h.** Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)
- i.** Transportation equipment and supplies. (7-1-93)

- j.** Aircraft of any type and supplies. (7-1-93)
- k.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)
- l.** Other incidental items not directly used in production. (7-1-93)
- m.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)
- n.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)
- o.** Parts to repair recreation-related vehicles. (7-1-93)
- p.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)
- 06. Real Property.** The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. (7-1-93)
- 07. Change in Primary Use of Property.** If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)
- 08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

  - a.** Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)
  - b.** Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)
  - c.** Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)
- 09. Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)
- 10. Special Rules.** Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PRESCRIPTIONS (RULE 100).**

**01. In General.** Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-99)

**a.** Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

**b.** Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state ~~under Title 54, Idaho Code, to prescribe such items to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.~~ Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(3), Idaho Code, will not qualify for the exemption. (7-1-93)(    )

**c.** Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

**d.** Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

**02. Seller Must Document Exempt Sale.** The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

**a.** Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

**b.** Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

**03. Purchases by Practitioners.** A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (3-15-02)

**04. Purchases by Nursing Homes and For Profit Hospitals.** The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

**a.** The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)

**b.** The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)

**c.** An exemption certificate must be completed and provided to the vendor of the exempted items. See

Rule 128 of these rules. (3-15-02)

**05. Sale of Eyeglasses, Removable Contact Lenses, and Other Products by Optometrists, Oculists, and Ophthalmologists.** The sale of eyeglasses, removable contact lenses and other related products, such as carrying cases, sunglasses, and cleaning solutions by optometrists, oculists, or ophthalmologists is subject to the sales tax, regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser. (6-23-94)

**a.** Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient. (7-1-93)

**b.** Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost. (7-1-93)

**06. Dental and Orthodontic Appliances.** The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. (7-1-99)

~~**07. Fillings.** The practitioner is the consumer of the material used to produce fillings he provides to his patients and must pay tax when he purchases such material. (7-1-99)~~

**101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).**

**01. In General.** An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (3-30-07)

**02. Motor Vehicles.** An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

**a.** Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; (4-6-05)

**b.** Register the vehicle under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

**c.** Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the international registration plan. (4-6-05)

**03. Trailers.** An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

**a.** Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan (IRP), or other similar proportional or pro rata registration plan; and (4-6-05)

**b.** The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any registration period under the International Registration Plan or other similar plan. (3-30-07)

**04. Title or Base Plate.** The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

**05. Documentation.** Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be

completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

**06. Repair Parts and Supplies.** The exemption does not apply to parts, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. Purchases of glider kits as defined by Section 49-123, Idaho Code, will qualify if they are assembled into glider kit vehicles that will be immediately registered under the International Registration Plan or other similar plan. (3-30-07)

**07. Failure To Meet Interstate Mileage Requirement.** ~~Use tax will become due~~ The use of a truck purchased exempt under the IRP exemption provided by Section 63-3622R, Idaho Code will become taxable at the end of any registration period for which the out of state mileage is less than ten percent (10%) of the total fleet mileage. Tax will be due on the value of the trucks and trailers on the twentieth day of the month following the end of the registration period. ~~(3-30-07)(\_\_\_\_\_)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).**

**01. Time and Imposition of Tax.** (7-1-93)

**a. Sales Tax.** Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. (7-1-93)

**b. Use Tax.** Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

**c. Taxable Sales Create State Revenue.** The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. (7-1-93)

**02. Returns.** (7-1-93)

**a. Monthly Filing Generally Required.** All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. (7-1-93)

**b. Request to File Quarterly or Semiannually.** Retailers or persons who owe ~~six~~ seven hundred fifty dollars (~~\$600~~ 750) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semiannually instead of monthly. ~~(4-6-05)(\_\_\_\_\_)~~

**c. Request to File Annually.** Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (7-1-93)

**d.** Variable Filing. If the Tax Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. (4-6-05)

**e.** Change in Filing Frequency. If the Tax Commission finds it necessary or convenient for the efficient administration of the Sales Tax Act, it may require taxpayers reporting taxable sales of less than twelve thousand dollars (\$12,000) per year to file annually. ( )

**ef.** Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer must enclose his seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. (7-1-93)

**03. Valid Return.** A tax return or other document required to be filed in accordance with Section 63-3623, 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 is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

**a.** The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

**b.** All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided. (7-1-93)

**c.** A sales or use 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 required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

**04. Perpetual Extensions of Time to File Revoked.** Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule. (7-1-93)

**05. Use of Estimates Extension of Time Returns.** (7-1-93)

**a.** The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed. (7-1-93)

**b.** If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (4-6-05)



**c.** The estimated tax remitted must be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code. (7-1-93)

**d.** Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission. (7-1-93)

**06. Forms Required.** (7-1-93)

**a.** Separate Payments. The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment must accompany the return. If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission. A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. (7-1-93)

**b.** Retailers Must Report Own Use and Nontaxed Transactions. All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax. (7-1-93)

**c.** Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

**07. Payment of Tax.** (7-1-93)

**a.** Payment to Accompany Return. The return filed in accordance with this rule must be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Idaho State Tax Commission. (7-1-93)

**b.** Payment of One Hundred Thousand Dollars (\$100,000) or Greater. All taxes due to the state must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. (7-1-93)

**c.** Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. (3-20-04)

**08. Filing Dates--General Rule.** The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semiannual, and annual accounts. If the twentieth is 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. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).**

**01. In General.** This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

**02. Gifts of Motor Vehicles.** When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

**a.** No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

**b.** The recipient assumes no indebtedness. (7-1-93)

**c.** The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

**d.** The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

**i.** A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

**ii.** The back of the title may be marked as a gift and signed by the donor. (2-18-02)

**03. Nonresidents.** (3-30-07)

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

**b.** For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-30-07)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)

**a.** If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

**b.** Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned

motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)

**05. Military Personnel.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

**a.** If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (4-2-08)

**c.** Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

**d.** Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

**e.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

**f.** Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

**g.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

**a.** The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the

affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

**09. Bulk Sale Transfers.** A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

**10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho.** (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under ~~eight nine~~ hundred ~~fifty~~ (850 900) pounds, ~~forty-eight~~ ~~fifty~~ (48 50) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of ~~less than~~ ten (10) psi, or less, has handlebar steering and a seat designed to be straddled by the operator. (~~3-20-04~~)( )

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

**f.** For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

**g.** To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

**11. Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. PROMOTER SPONSORED EVENTS (RULE 130).**

**01. Promoter's Responsibility.** Promoters at promoter sponsored events, as defined in Section 63-3620C, Idaho Code, shall obtain a completed copy of a Form ST-124 from each participant at the event. The promoter shall forward a copy of the completed Form ST-124 to the State Tax Commission within ten (10) days following the beginning of the event. The promoter shall also maintain a copy in its file. (3-30-01)

**02. Period of Time for Which a Form ST-124 Is Valid.** If the Form ST-124 is not used to issue a temporary seller's permit, a Form ST-124 completed by a participant shall be valid until the following June 30, unless the participant information changes. The promoter need only obtain a Form ST-124 from each participant at the first show in which the participant participates after July 1 of any given year. The promoter shall forward to the State Tax Commission the names, address, tax identification number and phone number, if known, of participants who do not complete a new Form ST-124 as described in Subsection 130.03. (3-30-01)

**03. Participant's Failure to Provide a Form ST-124 to the Promoter.** If a participant does not provide the completed Form ST-124 to the promoter, the promoter will provide to the State Tax Commission within ten (10) days following the beginning of the event, a list of participants who have failed to provide a completed Form ST-124. (3-30-01)

**04. Examples.** (3-30-01)

**a.** The promoter sponsors events on July 16, September 22, and December 18, of year one (1), and March 4, and July 30 of year two (2). Participant A attends and makes sales at all events. The promoter will need to obtain a copy of the Form ST-124 from Participant A for the July 16, year one (1) event and the July 30, year two (2) event. For the other events, the promoter will only need to include Participant A in the list of participants who did not complete a Form ST-124 and forward this list to the State Tax Commission. (3-30-01)

**b.** Participant B attends the July 16, event and completes a Form ST-124 stating it will not be selling any items of tangible personal property. Participant B also attends the September 22, event but in this event it will be

selling tangible personal property. The promoter will need to obtain a new Form ST-124 and forward it to the State Tax Commission. (3-30-01)

**05. Use of the Form ST-124.** The Form ST-124 must be used every time a promoter issues a temporary seller's permit. A promoter must use the Form ST-124 to issue temporary permits even to those participants who have attended events during the preceding year. The promoter will provide the participant with the Form ST-124 who will upon completing the form, return it to the promoter. The promoter will retain a copy of the Form ST-124 and provide a copy to the State Tax Commission. The Form ST-124 shall include the following: (3-30-01)

**a.** The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. (3-30-01)

**b.** The name, address, and phone number of participant in the event. (3-30-01)

**c.** The participant's federal employer identification number ~~or social security number.~~(3-30-01)( )

**d.** Either: (3-30-01)

i. The participant's seller's permit number; or (3-30-01)

ii. A statement that an Idaho sales tax permit will be obtained before the date of the event; or (3-30-01)

iii. A statement from the participant that no taxable retail sales will be made at this event. (3-30-01)

**g.** Other information the State Tax Commission may deem necessary. (3-30-01)

**06. Temporary Seller's Permit Issued by Promoter.** Before a promoter may claim the income tax credit provided for by Section 63-3620C, Idaho Code, the promoter must forward a completed Form ST-124 to the State Tax Commission for each temporary seller's permit the promoter assigns, along with the documentation for the permit. (3-30-01)

**07. Promoter's Sales Tax Liability.** The promoter shall not be held responsible for collecting sales tax on sales made by participants other than sales made by the promoter himself. (3-30-01)

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-2501, and 63-2553, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 022:** Add the words "or distributors" to Rule 022.01.a. Cigarette and tobacco tax Rule 022.01 states that a tobacco distributor may claim a credit for sales to out of state retailers. Sales to out of state distributors (wholesalers) are also exempt.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0110-0801

##### 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; ~~(5-3-03)~~(\_\_\_\_)
- 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)



## IDAPA 35 - STATE TAX COMMISSION

### 35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 015:** Unclaimed property rule 015 states that an unclaimed property report must meet the requirements of Administration and Enforcement Rule 150, which deals with income tax returns. This is incorrect. An unclaimed property report must meet the requirements of Idaho Code 14-517. Strike the reference to Rule 150.

**Rule 017:** Unclaimed property Rule 017 states that interest is due from the original due date of an unclaimed property report. Idaho Code 14-517 refers to reporting abandoned property and the rule should use parallel language. Strike the words "original due date of the report" and replace them with the words "date that the property should have been reported." This is a technical correction only.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August, 2008.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0111-0801

**015. REPORT OF ABANDONED PROPERTY (RULE 015).**

**01. Incomplete Report.** A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in ~~Administrative and Enforcement Rule 150~~ Section 14-517, Idaho Code. A report that does not meet the statutory requirements ~~of a valid tax return~~ may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code.

(7-1-98)( )

**02. Voluntary Payments of Unclaimed Property.** A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state.

(3-20-04)

**03. Underlying Shares and Cumulative Dividends.** The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50).

(4-11-06)

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. ADDITIONS AND PENALTIES (RULE 017).**

Penalties and interest may be applied on all delinquent amounts reported or resulting from an audit. These additions and penalties are applicable, even though the delinquent account may be remitted directly from the holder to the owner. Interest is to be computed from the ~~original due date of the report~~ date that the property should have been reported regardless of any extension of time to file granted by the administrator under Section 14-517(4), Idaho Code. A penalty may be imposed if the report is filed after the approved extension date. In the appropriate circumstances, the State Tax Commission may waive penalties imposed.

(7-1-98)( )

## IDAPA 35 - STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0801

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 200:** Administration and Enforcement Rule 200 is being amended to add requirements for taxpayers to provide copies of documents when requested by the State Tax Commission for the purpose of verifying the correctness of the tax return. The amendments specify the acceptable formats of the copies and add the penalty under Idaho Code section 3046(a) as a possible consequence if the taxpayer fails to produce requested records in support of amounts or information shown on an income tax return.

**Rule 310:** Idaho Code section 63-3045 establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. The rule is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2009 to the table that identifies this information by year.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 20th day of August 2008.

Janice Boyd  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-0801

**200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (RULE 200).** (3-20-97)  
Sections 63-3042 and 63-3043, Idaho Code.

**01. Retention of Working Papers.** Each taxpayer shall retain and make available on request all business records and working papers used in the preparation of, or relevant to the correctness of, any tax return subject to examination by the Tax Commission. (3-20-97)

**02. Requirement to Provide Copies of Documents.** ( )

**a.** Definitions for purposes of this rule. ( )

**i.** “Electronic Format” means electronically stored records or electronically created information that is in a format acceptable to the Tax Commission. Examples include ASCII delimited files with file definition, XML, and Excel. ( )

**ii.** “Hard copy” means any documents, records, or other data printed on paper. ( )

**iii.** “Machine-sensible record” means a collection of related information in an electronic format that is intended for use by a computer. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems. ( )

**iv.** “Photocopy” (photocopied) means a copy or reproduction of an original document including books, records, and working papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping. ( )

**b.** Books, records, and working papers shall be provided either as a photocopy, an electronic reproduction, or be made available for photocopying, scanning, or other electronic reproduction at a specified time and place for the purpose of verifying the information on the tax return and issues under examination. ( )

**c.** When business records or workpapers are displayed or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers. ( )

**d.** Taxpayers who maintain their records in both machine-sensible and hard-copy format shall make their records available to the Tax Commission in machine-sensible record format upon the Tax Commission's request. ( )

**023. Failure to Comply.** In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in ~~appropriate adjustments by the Tax Commission, including either or both of~~ the following: (3-20-97)( )

**a.** The disallowance of claimed deductions, credits, or exemptions to which the requested information relates; (3-20-97)

**b.** The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates; (3-20-97)( )

**c.** The imposition of the penalty authorized by Section 63-3046(a), Idaho Code. ( )

**034. Discovery.** The Tax Commission may engage in all forms of discovery permitted by the Idaho

Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions, and requests for production or inspection. Failure to respond to a discovery request in the manner required by the Idaho Rules of Civil Procedure results in the reissuance of a summons to the taxpayer and the imposition of sanctions permitted by statute or these rules for failure to respond to the summons. (3-20-97)

**045. Cost Reimbursement to a Third-Party.** If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents (\$0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. (3-20-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**310. INTEREST RATES (RULE 310).**

Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
<u>Calendar Year 2009</u>	<u>5% simple interest</u>	<u>Revenue Ruling 2008-46</u>

(4-2-08)( )