

Dear Senators HILL, Heinrich & Werk, 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 Administrative Rules (Docket No. 35-0101-1002)

35.01.01 - Income Tax Administrative Rules (Docket No. 35-0101-1003)

35.01.02 - Sales and Use Tax Administrative Rules (Docket No. 35-0102-1001)

35.01.02 - Sales and Use Tax Administrative Rules (Docket No. 35-0102-1002)

35.01.03 - Property Tax Administrative Rules (Docket No. 35-0103-1003)

35.02.01 - Tax Commission Administration and Enforcement Rules

(Docket No. 35-0201-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen 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 11-5-10. 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 12-7-10.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

Jeff Youtz  
Director

## 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: Research and Legislation Staff, Nugent *MFN*

DATE: October 19, 2010

SUBJECT: Six Sets of Proposed Rules of the State Tax Commission

### **Docket No. 35-0101-1002—Income Tax Administrative Rules**

The first proposed rule change in this docket amends existing rules to conform to the Servicemen's Civil Relief Act which is exempt from Idaho income tax, the income earned from services performed in Idaho by qualifying spouses of service members. The next rule would add the tax brackets for calendar year 2010 and remove the information for calendar year 2005. Section 63-3024, Idaho Code, establishes the tax rates for individuals, trusts and estates and requires adjusting the income tax brackets annually for the effects of inflation.

The next proposed rule change implements the provisions of House Bill No. 386aa of 2010 which limited the amount added to taxable income for rollovers to other state's college savings accounts. The next proposed rule change picks up definitional changes in Senate Bill No. 1330aa of 2010 which was the bill for respectful language. One of the Tax Commission's rules uses the same language that was revised in the bill.

The next proposed change includes gains to be treated as ordinary income pursuant to Internal Revenue Code section 1231 in the examples of when gains are treated as ordinary income and don't qualify for the Idaho capital gains deduction. The Commission indicates guidance is added to the rule on how to allocate the recharacterization of capital gains to ordinary income as required by section 1(h)(8) to property that does and does not qualify for the Idaho capital gains deduction. Also the Commission indicates that information related to tax year 2001 is removed.

The next proposed rule change implements the provisions of House Bill No. 388 of 2010 to incorporate the definition of "revenue-producing enterprise" from the statute that provides an income tax deduction for capital gains. HB388 was brought to the Legislature from the State

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

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Tax Commission. The next proposed rule change will implement House Bill No. 381 of 2010 which was brought to the Legislature from the State Tax Commission and clarified the definition of "net operating loss" and to provide that net operating losses of a corporation will survive a merger subject to certain conditions.

The Commission is proposing to amend a rule to implement House Bill 382aa of 2010 which was a Tax Commission sponsored bill that provided definitions of the terms "pass-through entity" and "owner of interest in a pass-through entity"; revised the manner in which the income of pass-through entities income is reported and paid; and provided a system of backup withholding for individuals who are owners of pass-through entities or beneficiaries of a trust or estate who do not elect to have their income taxes paid on the entity's return.

The Commission is amending a rule to include the grocery credit amounts for 2010 as these amounts are scheduled for adjustments as provided by Section 63-3024A, Idaho Code. The next proposed rule implements House Bill No. 380 of 2010 which was a State Tax Commission sponsored bill and which specified filing dates for certain information returns and to authorize the State Tax Commission to provide a different date no earlier than the date required by the Internal Revenue Service for filing equivalent federal returns in a nonelectronic format.

The next proposed rule change implements House Bill No. 379 of 2010 which eliminated the campaign funding check-off option on the Idaho individual income tax returns. The Commission is also proposing a rule to implement the provisions of House Bill No. 615 of 2010 which allowed taxpayers to make a donation or designate a part of their refund go to the opportunity scholarship program on their tax returns. Finally, the Commission is proposing to amend a rule to require that the Idaho withholding permit number be on the copy of W-2 forms submitted to the Tax Commission and provides consequences of not submitting a complete or correct form.

#### **Docket No. 35-0101-1003 - Income Tax Administrative Rules**

The Commission indicates that the current Income Tax Administrative Rules incorporated by reference the Multistate Tax Commission recommended formula for the apportionment and allocation of net income of financial institutions. The Commission indicates that they have worked with these rules since 1998 and have found the rules wanting in a variety of areas. The Commission is proposing to change the rules to clarify the computation of the apportionment factor for financial institutions that they indicate will make it easier to administer and comply. They indicate the new rules will be modeled on the Multistate Tax Commission recommended formula but will not adopt it in its entirety. They state that the new rules will simplify the computation by moving away from SNAA analysis to a more understandable and workable solution for the apportionment and allocation of net income financial institutions and define areas that are currently ambiguous or subjective.

### **Docket No. 35-0102-1001 - Sales and Use Tax Administrative Rules**

The Commission is proposing to amend a rule to extend the definition of “land leveling” to rock that is obtained on a building site, crushed and then used as on the same building site. The Commission indicates that the sales of rock crushing services are generally taxable and this proposed rule could create an exception for certain sales of rock crushing, while at the same time denying the production exemption to certain rock crushers.

### **Docket No. 35-0102-1002 - Sales and Use Tax Administrative Rules**

The Commission is proposing three rule changes in this docket. First, a rule is proposed to state that a limited liability company or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one or more airplanes is not a nonresident. Another rule is proposed to be amended to state that purchases of food made with coupons or any other authorized form of payment under federal law qualify for the sales tax exemption. Finally a rule is proposed to be amended that implements Section 63-3641, Idaho Code, that provided for a rebate of sales tax collected by certain retailers if they also were constructing a highway. The language is being amended to state that after a developer has identified the location and boundaries of the center, has identified the qualifying retailers and has met the expenditure requirements, the Commission will start depositing sixty percent of the sales tax revenue from the center into the Demonstration Pilot Project Fund.

### **Docket No. 35-0103-1003 - Property Tax Administrative Rules**

The Tax Commission is proposing to amend eleven of its rules relating to property tax administration. It appears these rules might be controversial as there may not be consensus in the county assessor community over the language, nor in the real estate appraisal community. The first proposed rule change would update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity. The second proposed rule changes would update the dates of guides and standards used as references and would provide that county assessors do not need to report personal property by the North American Industrial Classification System code. The third proposed rule change would provide procedures for conducting equalization ratio studies and would allow that a follow-up ratio study of secondary categories be conducted if they are likely to be out of compliance as a result of assessment changes made by the county board of equalization.

The fourth proposed rule change provides for the funds listed in Section 50-2908, Idaho Code, (urban renewal areas). The occupancy tax is not distributed to the urban renewal agency during the year in which the urban renewal revenue allocation area is formed, but the occupancy raised for all other funds is distributed to the urban renewal agency.

The fifth proposed rule relates to the homeowner's property tax exemption and strikes the U.S. Office of Federal Housing Enterprise Oversight and replaces it with the Federal Housing Finance Agencies and provides that the "Idaho House Price Index - All Transactions" is the index that has been used and will be used to adjust the maximum homeowner's exemption. The sixth proposed rule relates to multidwelling or multipurpose buildings and the homeowner's exemption and provides that the portion of a multidwelling or multipurpose building and related land used for the primary dwelling place of the owner qualifies for the homeowner's exemption and when the assessor determines the value of the qualifying portion, the assessor shall include the related land value.

The seventh proposed rule changes recognize that the value of or the income attributed to exemption irrigation equipment should be included or considered when valuing agricultural land and the definition of "economic rent" is proposed to be changed to state that the rent attributable to exempt irrigation equipment is not included in economic rent, only rent solely attributable to the agricultural land is to be included in economic rent. The eighth proposed rule would provide guidance to appraisers for when crop share or cash rent analysis should be applied in determining the value of agricultural land and to clarify the examples by indicating that only the income attributed to the land should be used when considering either analysis.

The ninth proposed rule would compute the amount of urban renewal increment value to be included on the new construction roll in the year in which a portion of a revenue allocation area is de-annexed and to update the data included in the examples.

The tenth proposed rule would provide that the value and classification of a homesite adjacent to forest lands will be valued independently from adjacent forest lands.

The final proposed rule would provide instructions on how to compute the prorated portion of the funds affected by subsections (1)(a) through (e) of Section 50-2908, Idaho Code, when computing the levy upon which a qualified investment exemption is to be based.

#### **Docket No. 35-0201-1001 - Tax Commission Administration and Enforcement Rules**

The Commission is proposing to amend three rules relating to administration and enforcement. First, they are proposing to adopt the Internal Revenue Service alternative methods allowed to tax preparers for signing income tax returns. Second, they are addressing methods allowed for filing motor fuels tax returns electronically and the risks of disclosure when filing returns electronically. Finally, they are proposing to add the interest rate and applicable Revenue ruling for calendar year 2011 to the table that identifies this information by year.

In summation, it appears that all of the 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, & Alan Dornfest

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

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

#### **DOCKET NO. 35-0101-1002**

#### **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 20, 2010.

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 032 is being amended to conform to changes to the Servicemembers Civil Relief Act (Act). The Act now exempts from Idaho income tax the income earned from services performed in Idaho by qualifying spouses of servicemembers stationed in Idaho. Terms were modified to be consistent with those used in the Act.

Rule 075 is being amended to add the tax brackets for calendar year 2010, and remove the information for calendar year 2005 so only five years of historical data is retained in the rule. 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.

Rule 108 is being amended consistent with House Bill 386a, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years.

Rule 165 is being amended consistent with Senate Bill 1330, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 66-402 to revise terminology. Idaho Code section 66-402 is referenced in Idaho Code sections 63-3022E and 63-3025D and Rule 165 uses some of the same language that was revised in the bill.

Rule 170 is being amended to include gains treated as ordinary income pursuant to Internal Revenue Code (IRC) section 1231 in the examples of when gains are treated as ordinary income and don't qualify for the Idaho capital gains deduction. Guidance is added to the rule on how to allocate the recharacterization of capital gains to ordinary income as required by IRC section 1(h)(8) to property that does and does not qualify for the Idaho capital gains deduction. Information related to tax year 2001 is being removed.

Rules 171, 172, 745 and 756 are being amended consistent with House Bill 388, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022H to define real property for purposes of the Idaho capital gains deduction. It also amended Idaho Code section 63-3029E to link the definition of revenue-producing enterprise for purposes of the credit for qualifying new employees to the definition used for purposes of the Idaho capital gains deduction as provided in Idaho Code section 63-3022H. Information is being added to Rule 171 to specifically identify items that don't qualify for the Idaho capital gains deduction. A cross reference to Idaho Code section 63-3022H(4) and Rule 172 is being added for the definition of revenue-producing enterprise. Rule 172 is being expanded to include examples previously included in Rule 745 that now apply to both the credit and the deduction. The specific information in Rule 745 regarding qualifying and nonqualifying activities and the examples are being removed and a reference to Rule 172 is being added where this information can now be found. Changes to Rule 746 include the removal of references to tax years beginning on and after 2004 and to address consistency in the computation of qualifying new employees.

Rule 200 is being amended to remove subsection 200.02, which addresses net operating losses in the case of corporate mergers. This information is now included in Idaho Code section 63-3021 as a result of House Bill 381, passed by the 2010 Idaho Legislature. An example of how net operating losses of unitary corporations are computed and applied against income in carryback years is being added to the rule

Rule 201 is being amended to include excess net passive income as income that also may be offset with a net operating loss carried over from years an S corporation was a C corporation.

Rule 253 is being amended consistent with House Bill 386a, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years. Rule 253 addresses nonresident and part-year residents. Rollovers of amounts in Idaho college savings accounts were not previously addressed in the rule. Various changes were made throughout the rule to improve readability.

Rule 255 is being amended consistent with Idaho Code section 63-3022 to include local income taxes and general sales tax to the exception to the federal deductions allowed to nonresidents and part-year residents. Obsolete information related to the standard deduction for tax year 1999 is being removed.

Rule 261 is being amended consistent with House Bill 471, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3026A to change the sourcing of income from resident estates and trusts that a nonresident must include in income subject to Idaho tax.

Rules 290, 291, and 877 are being amended to conform to changes made in House Bill 382a, which was passed by the 2010 Idaho Legislature. The bill modified Idaho Code section 63-3022L regarding the taxation of pass-through entity income when an individual makes the election to have the pass-through entity pay his tax on such income. The bill also added new Idaho Code section 63-3036B to require backup withholding by a pass-through entity, including trusts and estates, in certain situations. Changes to Rule 290 include removing obsolete information, clarifying who can make the election and how it is made, and adding a reference to new Rule 877 with regard to backup withholding. Changes to Rule 291 include removing obsolete information and expanding on the computation of Idaho taxable income. New Rule 877 discusses the withholding requirement, exceptions to withholding, the certification of residency, the requirements of payments and reporting of withholding, and the consequences of failing to file or remit the backup withholding.

Rules 720 and 721 relate to the credit for Idaho research activities. Both rules contain information that related to tax years beginning in 2001. Since the statute of limitations has expired on all the years credit earned in tax years beginning in 2001 could be carried to, this information is no longer needed in the current administrative code and is being removed from both of these rules.

Rules 755, 756, 757, and 758 relate to the credit for qualifying new employees for tax years beginning in 2001 only. Since the statute of limitations has expired on all the years this credit could be carried to, the rules are no longer needed in the current administrative code and are being repealed.

Rule 771 is being amended to include the grocery credit amounts for 2010. These amounts are scheduled for increases each year as provided by Idaho Code section 63-3024A.

Rule 830 is being amended consistent with House Bill 380, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3037 to specify the last day of February as the date for filing information returns instead of following the requirements of the Internal Revenue Code, unless a different due date is set by rule. The rule is being amended consistent with Rule 874 so that the due date for all information returns required to be filed with the State Tax Commission is the last day of February, the same as the due date for W-2s.

Rule 840 is being repealed consistent with House Bill 379, which was passed by the 2010 Idaho Legislature. The bill repealed Idaho Code section 63-3088 to eliminate the campaign funding check-off option on the Idaho individual income tax returns. As a result, Rule 840 is no longer necessary and is being repealed.

Rule 860 is being amended consistent with House Bill 615, which added new Idaho Code section 63-3067D. The bill allows taxpayers to make a donation to the opportunity scholarship program on their tax returns. Rule 860 addresses donations to trust accounts and is being modified to include the new code section in its title.

Rule 874 is being amended to require the Idaho withholding permit number on the copy of Forms W-2 submitted to the Tax Commission and discusses the consequences of not submitting complete or correct forms.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 27, 2010.

DATED this 27th day of August, 2010.

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 PROPOSED TEXT FOR DOCKET NO. 35-0101-1002**

**032. MEMBERS OF THE UNIFORMED SERVICES (RULE 032).**

**01.** ~~Idaho Residency Status~~  **Servicemembers Civil Relief Act.** Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that a servicemember will neither lose nor acquire a residence or domicile with regard to his income tax as a result of being absent or present in a state due to military orders. (4-2-08)(\_\_\_\_)

~~02.~~  **Servicemember.** A servicemember is defined to include any member of the uniformed services as that term is defined in 10 U.S.C. Section 101(a)(5). A member of the uniformed services includes: (4-2-08)(\_\_\_\_)

~~ia.~~ A member of the armed forces, which includes a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty. It also includes a member of the National Guard who has been called to active service by the President of the United States or the Secretary of Defense of the United States for a period of more than thirty (30) consecutive days under 32 U.S.C. Section 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds. (4-2-08)

~~ib.~~ The commissioned corps of the National Oceanic and Atmospheric Administration in active service; and (4-2-08)

~~ic.~~ The commissioned corps of the Public Health Service in active service. (4-2-08)

~~b03.~~ *As a result of the Servicemembers Civil Relief Act.*  **Idaho Residency Status.** (4-2-08)(\_\_\_\_)

~~i~~**a.** A ~~qualifying~~ servicemember is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. (4-2-08)(\_\_\_\_)

~~ii~~**b.** The safe harbor exception to being a resident of Idaho set forth in Section 63-3013(2), Idaho Code, ~~shall~~ does not apply to a ~~qualified~~ servicemember. (4-2-08)(\_\_\_\_)

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

**d.** A ~~qualified~~ servicemember who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)(\_\_\_\_)

**e.** A ~~qualified~~ servicemember who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)(\_\_\_\_)

**f.** ~~The Servicemembers Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. See Subsection 032.05 of this rule for information relating to a spouse of a servicemember.~~ (4-6-05)(\_\_\_\_)

**024. ~~Active Duty Military Pay Service Compensation.~~** (3-20-97)(\_\_\_\_)

**a.** Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the ~~active duty~~ military ~~pay~~ service compensation of a ~~qualified~~ servicemember who is not domiciled in Idaho is ~~exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho sources. See Section 63-3026A(3)(c), Idaho Code.~~ (4-2-08)(\_\_\_\_)

**b.** The ~~active duty~~ military ~~pay~~ service compensation of a servicemember who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid ~~by~~ to a member of the United States Armed Forces for active duty military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. A member of the armed forces does not include the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service, unless they have been militarized by Presidential Executive Order under Title 42, United States Code. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. (4-2-08)(\_\_\_\_)

**035. ~~Military Separation Pay.~~** Military separation pay received for voluntary or involuntary separation from active military service is not considered ~~active duty~~ military ~~pay~~ service compensation. Therefore, Subsection 032.024 of this rule does not apply. (4-6-05)(\_\_\_\_)

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

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

**046. ~~Nonmilitary Income.~~** All Idaho source income earned by a ~~military~~ servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)(\_\_\_\_)

**057. ~~Nonmilitary Spouses of Servicemembers.~~** ~~Subsection 032.02 of this rule does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. Beginning on January 1, 2009, Section 511 of the Servicemembers Civil Relief Act also applies to the spouse of a servicemember if~~

the spouse has the same residence or domicile as the servicemember's home of record. In such cases: ~~(4-6-05)~~( )

**a.** The Idaho residency status of the spouse will not change as a result of residing in another state solely to be with the servicemember. ( )

**b.** If the spouse is domiciled in Idaho, all the spouse's income is subject to tax by Idaho. ( )

**c.** If the spouse is not domiciled in Idaho, income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. ~~For taxable years beginning on or after January 1, 2003, the~~ The maximum tax rate as listed for that the applicable taxable year in Subsection 075.03 of this rule ~~shall~~ applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. ~~(5-8-09)~~( )

**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~~ is 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~~ is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount ~~would then be~~ is 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 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	

IF IDAHO TAXABLE INCOME IS			IDAHO TAX	
At least	But less than	Is	Plus	
\$23,178.00 or more		\$1,515.25	+	7.8% of the amount over \$23,178.00

(4-11-06)

**ba.** 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
\$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

Tax and bracket amounts were calculated using consumer price index amounts published on June 7, 2006.

(3-30-07)( )

**eb.** 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

Tax and bracket amounts were calculated using consumer price index amounts published on May 17, 2007.

(4-2-08)( )

**dc.** 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	
\$1.00	\$1,272.00	\$0	+	1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	+	3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	+	4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	+	5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	+	6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	+	7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	+	7.4% of the amount over \$9,540.00
\$25,441.00 or more		\$1,663.19	+	7.8% of the amount over \$25,441.00

Tax and bracket amounts were calculated using consumer price index amounts published on March 12, 2008.

(5-8-09)( )

ed. For taxable years beginning in 2009, *as calculated on April 28, 2009*:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642
\$3,963	\$5,284	\$122.84	+	5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+	6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+	7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+	7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+	7.8% of the amount over \$26,418

Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.

(3-29-10)( )

e. For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	±	1.6% of taxable income
\$1,316	\$2,632	\$21.06	±	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	±	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	±	5.1% of the amount over \$3,948

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$5,264	\$6,580	\$189.52 ±	6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80 ±	7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39 ±	7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69 ±	7.8% of the amount over \$26,320

Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.

( )

**(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, an individual must 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, an account holder must 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 must 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 must 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 the addback is limited to the total of the amounts contributed to the Idaho college savings program ~~within twelve (12) months from the date of the transfer shall be added to taxable income that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year.~~ ~~(5-8-09)~~( )

**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, must 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, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. ~~(4-11-06)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

**a.** Is attributable to an impairment, such as ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from the impairment. The other condition must result in ~~impairments~~ limitations of general intellectual functioning or adaptive behavior similar to those required for individuals with ~~mental retardation~~ an intellectual disability. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501 for the developmental disability determination standards. (~~3-20-97~~)(    )

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

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

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

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

iii. Learning; (3-20-97)

iv. Mobility; (3-20-97)

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

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

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

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

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

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

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).

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

01. **Qualifying for the Idaho Capital Gains Deduction.** To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. (4-11-06)

02. **Capital Gain Net Income Limitation.** (4-11-06)

a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (4-11-06)

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. ~~For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, limited to the capital gain net income included in taxable income.~~ (4-11-06)( )

03. **Ordinary Income Limitation.** ~~The Idaho capital gains deduction may not include any g~~Gains treated as ordinary income pursuant to the Internal Revenue Code. do not qualify for the Idaho capital gains deduction, including the following: ( )

a. ~~For example, any g~~Gain from ~~the sale, exchange, or involuntary conversion~~ dispositions of certain depreciable property treated as ordinary income pursuant to Sections 1245 or 1250, Internal Revenue Code, ~~may not be included when computing the Idaho capital gains deduction.~~ (4-11-06)( )

b. Gain treated as ordinary income pursuant to Section 1231(c), Internal Revenue Code, and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code. Gain treated as ordinary income under Section 1231(c) and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code, must be prorated within each category between the gains on property that qualifies for the Idaho capital gains deduction and gains on property that do not qualify for the Idaho capital gains deduction. ( )

c. Example. One hundred thousand dollars (\$100,000) of capital gain income is treated as ordinary income. The first seventy thousand dollars (\$70,000) of ordinary income is allocated to the net section 1231 gain in the twenty-eight percent (28%) category. None of the gain in this category qualifies for the Idaho capital gains deduction since it is all treated as ordinary income. The remaining thirty thousand dollars (\$30,000) of ordinary income is allocated to gain from property in the twenty-five percent (25%) group. The gain in this category is derived from the sale on three (3) items of equipment. Two (2) of the items were qualified property located in Idaho. The third

item was located in Oregon. Each item generated a gain of twenty-five thousand dollars (\$25,000). The gain treated as ordinary income is prorated between the three (3) items, ten thousand dollars (\$10,000) to each. As a result, fifteen thousand dollars (\$15,000) of the gain on each item remains as capital gain. The fifteen thousand dollars (\$15,000) of capital gain on each of the two items of Idaho equipment qualify for the Idaho capital gains deduction. Ten thousand dollars (\$10,000) of the gain on each of the items do not qualify since it is treated as ordinary income. The gain on the Oregon equipment does not qualify for the capital gains deduction since the equipment is not located in Idaho.

\$100,000 of Gain Treated as Ordinary Income	28% Group	25% Group		
		Idaho Equipment	Idaho Equipment	Oregon Equipment
Total Gain in Category	\$70,000	\$25,000	\$25,000	\$25,000
Gain Treated as Ordinary Income	\$70,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000	\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000
Amount Remaining as Capital Gain	\$0	\$25,000 - \$10,000 = \$15,000	\$25,000 - \$10,000 = \$15,000	\$25,000 - \$10,000 = \$15,000
Gain Qualifying for Idaho Capital Gains Deduction	\$0	\$15,000	\$15,000	\$0

( )

**04. Losses From Nonqualified Property.** Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (4-11-06)

**05. Losses From Qualified Property.** (7-1-99)

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

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

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

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

**b.** A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales

during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. ~~For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to~~ is sixty percent (60%) or twelve thousand dollars (\$12,000). (5-3-03)( )

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

**01. Tangible Personal Property.** Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. ( )

**02. Real Property.** Real property qualifies for the Idaho capital gains deduction. Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. Real property does not include intangible property or severable property rights. Examples of intangible assets or property rights that do not qualify for the Idaho capital gains deduction include: ( )

- a. Easements and rights of way, including agricultural, forest, historic, or open-space easements; ( )
- b. Grazing permits; ( )
- c. Leasehold interests; ( )
- d. Options; ( )
- e. Water, mineral, hunting and fishing, renewable energy, and land surface rights; ( )
- f. Conservation easements; ( )
- g. Scenic easements. ( )

**03. Gain from Forfeited Rights and Payments.** Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. ( )

**04. 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)

**025. 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 Sections 1223 and 735, Internal Revenue Code. (5-8-09)

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. (5-8-09)

**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 paragraph~~ 171.025.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~~)

**036. 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 or partnership. 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 interests are nonqualifying property. (5-8-09)

**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. (5-8-09)

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

**01. In General.** Only the activities listed in Section 63-3022H(4), Idaho Code, qualify as a revenue-producing enterprise. ~~A revenue producing enterprise does not include retail sales, professional, managerial, or repair services.~~ (3-20-97)( )

**02. Nonqualifying Activities.** Examples of activities that do not qualify as a revenue-producing enterprise include the following: ( )

- a.** Retail sales: ( )

- b.** Professional or managerial services: ( )
- c.** Repair services or other service related activities: ( )
- d.** Transportation activities, unless they are an integral part of the taxpayer's qualifying activity: ( )
- e.** Telephone, cable, and internet services: ( )
- f.** Agricultural services, such as horse training, veterinarian services, and crop dusting. ( )

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

**04. Examples.** ( )

**a.** A taxpayer's Idaho business includes buying wool and processing it into yarn, using the yarn to manufacture clothes, and selling the clothes to the customers. Only part of the taxpayer's business activity qualifies as a revenue-producing enterprise. The activity related to retail sales does not qualify as a revenue-producing enterprise and any tangible personal property used in that activity does not qualify for the Idaho capital gains deduction. ( )

**b.** A taxpayer's Idaho business includes cutting timber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The entire business qualifies as a revenue-producing enterprise, including the selling activity, because the selling activity is at wholesale. ( )

**c.** A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. Tangible personal property used in the taxpayer's long-haul trucking business does not qualify for the Idaho capital gains deduction. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**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. Example.* (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)

	<u>XYZ USA, Inc.</u>	<u>Idaho XYZ</u>	<u>Oregon XYZ</u>	<u>Combined</u>
<b><u>Computation of Idaho Net Operating Loss (NOL):</u></b>				
Federal Taxable Income	(50,000,000)	5,000,000	(7,000,000)	(52,000,000)
State Adjustments	(5,000,000)	(150,000)	450,000	(4,700,000)
Unitary Business Income (Loss) Subject to Apportionment				(56,700,000)
Idaho Apportionment Factor	.000329	.006217	.000000	
Loss Apportioned to Idaho	(18,654)	(352,504)	0	
Income (Loss) Allocated to Idaho		35,000	0	
Idaho NOL	(18,654)	(317,504)	0	
<b><u>Application of Idaho NOL:</u></b>				
<u>Idaho Taxable Income Before Carryback:</u>				
2nd Preceding Tax Year	15,987	212,852		
1st Preceding Tax Year	29,854	447,962		
<u>Maximum Loss Available for Carryback – Limited to the lesser of the current year NOL or \$100,000</u>				
	(18,654)	(100,000)		
<u>NOL Applied to:</u>				
2nd Preceding Tax Year	(15,987)	(100,000)		
1st Preceding Tax Year	(2,667)	0		
NOL Available for Carryover	0	(217,504)		
<b><u>Taxable Income Remaining in Carryback Years:</u></b>				
2nd Preceding Tax Year	0	112,852		
1st Preceding Tax Year	27,187	447,962		

( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

(7-1-99)

**01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers.**

(3-20-97)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of IDAPA 38.05.01, "Rules of the Division of Purchasing," 201.04.b. do not apply and the net operating loss carryover ~~shall be~~ is applied as follows: ~~(5-3-03)(\_\_\_\_\_)~~

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

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

d. If the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback ~~shall~~ may not result in a refund for the closed taxable year. (3-29-10)(\_\_\_\_)

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

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection ~~shall~~ may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-29-10)(\_\_\_\_)

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

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

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

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss ~~shall~~ does not constitute an election for Idaho purposes. (3-29-10)(\_\_\_\_)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a., it is considered untimely and the net operating loss ~~shall be~~ is applied as provided in Paragraph 201.04.b. (3-29-10)(\_\_\_\_)

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

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

**08. Conversion of C Corporation to S Corporation.** ~~A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation subject to the Idaho tax on net recognized built-in gains is allowed to or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain and excess net passive income.~~ (7-1-99)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.**

Section 63-3026A(6), Idaho Code. The following items must be added to Idaho adjusted gross income in computing the Idaho adjusted income of nonresident and part-year resident individuals. (3-20-97)(\_\_\_\_)

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

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

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

02. **Net Operating Loss Deduction.** ~~Add any~~ The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (3-20-97)(\_\_\_\_)

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

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

05. **Idaho Medical Savings Account.** An account holder must Add the amount of any nonqualified withdrawal from an Idaho medical savings account ~~to the extent the withdrawal is treated as income by Idaho law if~~ the withdrawal was not made for the purpose of paying eligible medical expenses. (7-1-98)(\_\_\_\_)

06. **Idaho College Savings Program.** (\_\_\_\_)

a. An account owner must Add the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted 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 must 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, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. (\_\_\_\_)

07. **Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. An individual must Add the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on property acquired after 2007. (3-20-04)(\_\_\_\_)

08. **Certain Expenses of Eligible Educators.** ~~Add~~ The amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, in computing adjusted gross income must be added. (3-20-04)(\_\_\_\_)

(BREAK IN CONTINUITY OF SECTIONS)

255. **NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).**  
Section 63-3026A(4), Idaho Code. (3-30-07)

**01. In General.** The exemptions and deductions allowable for federal purposes, except for the deduction of state and local income taxes and the deduction for state and local general sales taxes, are allowed in part in computing Idaho taxable income. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, ~~shall be~~ are multiplied by the calculated proration. (4-2-08)(\_\_\_\_)

**02. Proration.** For taxable years beginning in or after 2007, the proration is calculated by dividing Idaho adjusted income by total adjusted income. Calculate 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)

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

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

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**290. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, ~~SHAREHOLDERS, PARTNERS, MEMBERS~~ OWNERS, OR BENEFICIARIES -- ELECTION FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011 (RULE 290).**

Section 63-3022L, Idaho Code. (3-30-07)

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

**a.** The election to have a qualifying pass-through 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~~ owner, 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.~~ For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (5-8-09)( )

**b.** The election is not available to: ( )

**i.** ~~e~~Corporations; ( )

**ii.** ~~p~~Partnerships; ~~or~~ ( )

**iii.** ~~e~~Electing small business trusts; ~~or to~~ ( )

**iv.** ~~a~~Any other person who is not an individual; ~~or~~ (3-30-01)( )

**v.** Idaho resident individuals. ( )

**e.** ~~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.~~ (5-8-09)

**02. Making the Election.** The election for a pass-through entity to report and pay the tax for a qualified nonresident individual must be made by the individual. Permission from the Tax Commission is not required. ( )

**a.** The election must be made for each taxable year to which it will apply. ( )

**b.** The election must be made on a form as prescribed by the Tax Commission. The pass-through entity must keep and maintain the election form and make it available to the Tax Commission upon request. ( )

**c.** The election must be provided to the pass-through entity by January 31 following the end of the tax year for which it is to apply. ( )

**d.** Once the election is made, it is irrevocable for that tax year. ( )

**023. 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 pass-through entity ~~shall be required to pay~~ must remit the tax withheld on ~~such income~~ any cash distributions paid to the individual as required in Section 63-3036B, Idaho Code, and Rule 877 of these rules. (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.~~ (5-8-09)

~~04. Examples. (5-8-09)~~

~~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. (5-8-09)~~

~~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. (5-8-09)~~

~~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. (5-8-09)~~

~~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. (5-8-09)~~

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, ~~SHAREHOLDERS, PARTNERS, MEMBERS~~ OWNERS, OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011 (RULE 291).**

Sections 63-3022L and 63-3026A, Idaho Code. (3-30-07)(\_\_\_\_)

**01. Compensation Reportable to Idaho In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individual officers, directors, owners, or beneficiaries who make the election allowed by Section 63-3022L, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (3-30-07)(\_\_\_\_)

~~a. C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. (3-30-07)~~

~~b. S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. (3-30-07)~~

~~c. Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. (3-30-07)~~

~~d. Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. (3-30-07)~~

~~e. Compensation reportable to Idaho for an Idaho part year resident or nonresident is determined pursuant to Rule 270 of these rules. (3-30-07)~~

**02. Pass-Through Items Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an electing individual: (3-30-07)(\_\_\_\_)

~~a. S Corporations. An S corporation may be required to pay the tax on the pass through items reportable to Idaho by an individual shareholder. Compensation paid by the pass-through entity to the officer, director, owner, or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (3-30-07)(\_\_\_\_)~~

~~b. Partnerships. A partnership may be required to pay the tax on the pPass-through items reportable to that are income from Idaho by sources of an individual who is a partner or member owner as determined pursuant to Rule 263 of these rules. (3-30-07)(\_\_\_\_)~~

~~c. Pass through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (3-30-07)( )~~

~~03. Distributable Net Income Reportable to Idaho. (3-30-07)~~

~~a. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-07)~~

~~b. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-07)~~

~~04. Deductions That Are Subject to Limitations or Elections by Individuals. A pass-through entity is not allowed to deduct items that are subject to limitations or elections at the individual level. Examples of such items include the Section 179 deduction, research and experimental expenses, mining exploration and development costs, pre-productive period expenses, and passive activity losses. Individuals may not bypass limitations on deductions by electing to have the pass-through entity pay the tax. (3-30-07)~~

~~053. Deductions That Are Not Allowed to S Corporations and Partnerships. Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (3-30-07)( )~~

~~a. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)~~

~~b. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)~~

~~c. Nonbusiness Deductions. Deductions are not allowed for nonbusiness expenses of an individual, such as those claimed as itemized deductions, charitable contributions, or personal exemptions. Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (3-30-07)( )~~

~~d. Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. ( )~~

~~e. Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. ( )~~

~~f. Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: ( )~~

~~i. The standard deduction; ( )~~

~~ii. Personal exemptions; ( )~~

~~iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-~~

through owner's share of charitable contributions made by the pass-through entity. ( )

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. ( )

(BREAK IN CONTINUITY OF SECTIONS)

**720. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- IN GENERAL (RULE 720).** (3-15-02)  
Section 63-3029G, Idaho Code.

**01. Credit Allowed Definitions.** (3-15-02)

~~a. The credit for Idaho research activities allowed by Section 63-3029G, Idaho Code, applies to taxable years beginning on and after January 1, 2001.~~ (4-6-05)

~~b.~~ The Idaho credit ~~shall be~~ is computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (3-15-02)( )

**02. Limitations.** The credit for Idaho research activities allowable in any taxable year ~~shall be~~ is limited as follows: (3-15-02)( )

**a. Tax Liability.** The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

**b. Credit for Qualifying New Employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

**c. Unitary Taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

**03. Carryovers.** The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)

**04. Pass-Through Entities.** The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

**05. Short Taxable Year Calculations.** Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations ~~shall be~~ are used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. ~~If the taxpayer makes the election in Section 63-3029G(1)(a)(i), Idaho Code, and the taxpayer's taxable year is not a calendar year for 2001, the taxpayer must use the federal short taxable year calculations to compute the credit applicable for the period beginning January 1, 2001, and ending the last day of the taxpayer's fiscal year ending in 2001.~~ (4-6-05)( )

**721. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- ELECTIONS (RULE 721).**

Section 63-3029G, Idaho Code.

(3-15-02)

~~**01. Five Year Election.** A taxpayer may elect to claim the credit for Idaho research activities for one (1) of the following five (5) year periods:~~ (3-15-02)

~~**a.** The five (5) year period beginning with the first day of the taxpayer's taxable year beginning in 2001; or~~ (3-15-02)

~~**b.** The five (5) year period beginning with January 1, 2001.~~ (3-15-02)

~~**c.** If a fiscal year taxpayer elects to claim the credit for the five (5) year period beginning with January 1, 2001, the credit for Idaho research activities allowed on the taxpayer's return for the fiscal year beginning in 2005 shall be computed using only the amounts for research activities occurring prior to January 1, 2006.~~ (3-15-02)

~~**d.** The five (5) year period election shall be made by checking the appropriate box on Form 67. The election may not be changed unless the statute of limitations is open for assessment for all years to which the credit was claimed and all such returns are amended consistently with the change in election.~~ (3-15-02)

**021. Election to Be Treated as a Start-Up Company.** Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities.

(3-15-02)

**a.** The election once made is irrevocable. (3-15-02)

**b.** The election ~~shall be~~ is made by checking the appropriate box on Form 67. (~~3-15-02~~)(\_\_\_\_)

**c.** A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company must use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. For example, if the taxpayer's fiscal year beginning in 2001 is the 8th such taxable year beginning after December 31, 1993 in which the taxpayer had Idaho qualified research expenses, the fixed-base percentage is one-half (1/2) of the percentage ~~which that~~ the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years. (~~3-15-02~~)(\_\_\_\_)

**032. Unitary Sharing.** A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code, or Paragraph 720.02.b. of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (RULE 745).**

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in ~~2000 and~~ or after 20010.

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

**01. In General.** A revenue-producing enterprise ~~means an Idaho business that begins with a natural~~

~~resource and produces, assembles, fabricates, manufactures, or processes a value-added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following:~~ is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules. (3-30-01)( )

~~a. Farming activities identified in Section 464, Internal Revenue Code, that result in a value added product;~~ (3-30-01)

~~b. Mining;~~ (3-30-01)

~~c. Logging;~~ (3-30-01)

~~d. Extracting a natural resource.~~ (3-30-01)

~~02. Nonqualifying Activities. Examples of businesses that do not qualify as a revenue producing enterprise include a business performing the following activities:~~ (3-30-01)

~~a. Retail sales;~~ (3-30-01)

~~b. Professional or managerial services;~~ (3-30-01)

~~c. Repair services or other service related activities;~~ (3-30-01)

~~d. The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing;~~ (3-30-01)

~~e. The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing;~~ (3-30-01)

~~f. Transportation activities, unless they are an integral part of a qualifying activity;~~ (3-30-01)

~~g. Activities that consume a natural resource in a process, but do not add value to the natural resource.~~ (3-30-01)

~~03. Examples.~~ (3-30-01)

~~a. A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue producing enterprise.~~ (3-30-01)

~~b. A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue producing enterprise due to the fact the taxpayer did not begin with a natural resource.~~ (3-30-01)

~~c. A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue producing enterprise. The selling activity does not qualify.~~ (3-30-01)

~~d. A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue producing enterprise due to the fact the taxpayer did not begin with a natural resource.~~ (3-30-01)

~~e. A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue producing enterprise.~~ (3-30-01)

~~f. A taxpayer's Idaho business includes using water in a process to produce electricity. Because the~~

~~Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)~~

~~g. A taxpayer's Idaho business includes growing potatoes and operating a long haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)~~

**042. Multiple Activities.** If a taxpayer's trade or business includes both a revenue-producing enterprise and other activities, the taxpayer must calculate qualifying new employees based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-07)

**053. Seasonal or New Business.** An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

**064. Unitary Taxpayers.** The activities of a taxpayer that qualify as a revenue-producing enterprise ~~shall be~~ are determined separately for each corporation that is a member of the unitary group. (3-30-01)(    )

**746. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 746).**  
Sections 63-3029E and 63-3029F, Idaho Code, ~~as in effect for taxable years beginning on and after January 1, 2004.~~  
(4-6-05)(    )

**01. In General.** ~~For taxable years beginning on and after January 1, 2004, a~~An employer may be able to earn either a one thousand dollar (\$1,000) credit or a five hundred dollar (\$500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee. (4-6-05)(    )

**02. Qualifying for the One Thousand Dollar (\$1,000) Credit.** (4-6-05)

**a.** The new employee must meet both of the following criteria to qualify for the one thousand dollar (\$1,000) credit: (4-6-05)

**i.** He must have received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked; and (4-6-05)

**ii.** He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (4-6-05)

**b.** The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar (\$1,000) credit. (4-6-05)

**03. Qualifying for the Five Hundred Dollar (\$500) Credit.** If a new employee does not meet the criteria for the one thousand dollar (\$1,000) credit, the employer may be eligible to claim the five hundred dollar (\$500) credit. To qualify for the five hundred dollar (\$500) credit, the new employee must have been employed in a revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (4-6-05)

**04. Calculating Number of Employees.** (3-30-01)

**a.** Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-20-04)

**i.** The employee must have been subject to Idaho income tax withholding. (3-20-04)

**ii.** The employee must have been employed by the employer on a regular full-time basis or on a part-

time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (4-6-05)

iii. The employee must have been performing such duties for the employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (4-6-05)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

b. Idaho Department of Labor Reports. The employer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-6-05)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

**05. Calculating the Number of New Employees.** (3-30-01)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

b. ~~The requirements as to who qualifies for the calculation of number of employees in Paragraph 746.02.a., of this rule shall apply in computing the number of employees in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule. Calculations used in computing~~ In determining who qualifies to be included in the number of employees, the law applicable to the year in which the credit is being earned must be used in calculating the number of employees for the prior years. The computations of the number of ~~new~~ employees for the prior taxable year and average for the three (3) prior taxable years must be made consistent with the computations and law applicable for the ~~current~~ taxable year in which the credit is earned. (4-2-08)( )

i. For example, an employer may qualify as a revenue-producing enterprise under the law applicable to 2010, but did not qualify as a revenue-producing enterprise under the law applicable to the prior years. For purposes of calculating the five hundred dollar (\$500) credit earned in 2010, the number of employees for the prior years must be calculated using the law applicable to 2010. ( )

ii. The employer must include in the number of employees for the prior years employees who qualify under the current law, even though the employer was unable to include these employees as qualifying employees in the prior years and did not earn the credit in the prior years. ( )

c. The number of new employees must be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-6-05)

d. The employer must determine the number of new employees who qualify for the one thousand dollar (\$1,000) credit and the number who qualify for the five hundred dollar (\$500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer ~~shall~~ may not earn the credit. For example, if a new employee has an average wage rate of ten dollars (\$10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar (\$1,000) credit or the five hundred dollar (\$500) credit. (4-6-05)( )

**06. Computing the Credit Earned.** The credit earned is the lesser of the amounts determined in Paragraphs 746.06.a. and 746.06.b. of this rule. (4-6-05)

a. The number of new employees who qualify for the five hundred dollars (\$500) credit multiplied by five hundred dollars (\$500), plus the number of new employees who qualify for the one thousand dollar (\$1,000)

- credit multiplied by one thousand dollars (\$1,000); or (4-6-05)
- b.** The net income of the trade or business, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (4-6-05)
- 07. Limitations.** In the year the credit for qualifying new employees is earned or claimed: (3-20-04)
- a.** This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (4-6-05)
- b.** See Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)
- 08. Carryover.** To claim the carryover, the employer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the employer is not required to recapture the credit claimed in previous taxable years. However, the employer must recompute the credit based on the reduced employment level to determine the correct amount of carryover. (4-6-05)
- 09. Pass-Through Entities.** See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)
- 10. Unitary Taxpayers.** (3-30-01)
- a.** A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)
- b.** Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**754. -- 759. (RESERVED).**

~~**755. CREDIT FOR QUALIFYING NEW EMPLOYEES — IN GENERAL (RULE 755).**  
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)~~

~~**01. Limitations.** If the credit for qualifying new employees is earned or claimed in a taxable year beginning in 2001, this credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax liability after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)~~

~~**02. Carryover.** To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-15-02)~~

~~**03. Pass-Through Entities.** See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)~~

~~**04. Unitary Taxpayers.** (3-15-02)~~

~~a. A corporation may not claim the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-15-02)~~

~~b. Each corporation in a unitary combined group that claims the credit for qualifying new employees is subject to Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)~~

~~**756. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 756).**~~

~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)~~

~~**01. In General.** A taxpayer is allowed a credit of five hundred dollars (\$500) per new employee in the taxable year. To compute the credit for qualifying new employees, the taxpayer shall first calculate the number of employees in the Idaho business. (3-15-02)~~

~~**02. Calculating Number of Employees.** (3-15-02)~~

~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-15-02)~~

~~i. The employee must have had Idaho income tax withheld from his wages. (3-15-02)~~

~~ii. The employee must have been employed by the taxpayer on a regular full time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (3-15-02)~~

~~iii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-15-02)~~

~~iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-15-02)~~

~~b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-15-02)~~

~~c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-15-02)~~

~~**03. Calculating the Number of New Employees.** (3-15-02)~~

~~a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-15-02)~~

~~i. The number of employees for the prior taxable year; or (3-15-02)~~

~~ii. The average of the number of employees for the three (3) prior taxable years. (3-15-02)~~

~~b. The requirements as to who qualifies for the calculation of number of employees in Subsection 756.02.a. shall apply in computing the number of employees in Subsections 756.03.a.i. and 756.03.a.ii. Calculations used in computing the credit earned in prior years when the credit was limited to employees in a revenue producing enterprise may not be used in computing the credit earned in taxable years beginning in 2001. (3-15-02)~~

~~**04. Computing the Credit Earned.** The number of new employees shall be rounded to the nearest tenth (.10) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: (3-15-02)~~

- ~~a.~~ *The number of new employees multiplied by five hundred dollars (\$500); or* (3-15-02)
- ~~b.~~ *The net income of the Idaho business, as determined pursuant to Rule 757 of these rules, multiplied by three and one-quarter percent (3.25%).* (3-15-02)
- ~~757. CREDIT FOR QUALIFYING NEW EMPLOYEES — NET INCOME OF IDAHO BUSINESS (RULE 757).~~  
~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. The net income of the Idaho business is calculated as follows:~~ (3-15-02)
- ~~01. Proprietorships.~~ *The amount reported as net profit or net loss on Schedule C or Schedule F of the federal income tax return that is from Idaho activities.* (3-15-02)
- ~~02. C-Corporations.~~ *The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocated to Idaho.* (3-15-02)
- ~~03. S-Corporations.~~ *The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns.* (3-15-02)
- ~~04. Partnerships.~~ *The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to individual partners who do not report this income on Idaho income tax returns.* (3-15-02)
- ~~05. Unitary Taxpayers.~~ *Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho.* (3-15-02)
- ~~758. CREDIT FOR QUALIFYING NEW EMPLOYEES — RECORD KEEPING REQUIREMENTS (RULE 758).~~  
~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001.~~ (3-15-02)
- ~~01. Information Required.~~ *Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following:* (5-3-03)
- ~~a.~~ *The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor;* (5-3-03)
- ~~b.~~ *Payroll records and reports documenting length of employment and hours worked;* (5-3-03)
- ~~c.~~ *The computation of the number of qualifying new employees;* (3-15-02)
- ~~d.~~ *The computation of the credit;* (3-15-02)
- ~~e.~~ *The computation of net income;* (3-15-02)
- ~~f.~~ *The continued maintenance of adequate employment levels into carryover years; and* (3-15-02)
- ~~g.~~ *The computation of any carryovers.* (3-15-02)
- ~~02. Failure to Maintain Adequate Records.~~ *Failure to maintain any of the records required by this rule may result in the disallowance of the credit.* (3-15-02)
- ~~759. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

**771. GROCERY CREDIT -- TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).**  
Section 63-3024A, Idaho Code. (5-8-09)

**01. Residents.** (5-8-09)

**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~~ The maximum credit shall be allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2010</u>	<u>\$70</u>	<u>\$50</u>
2009	\$60	\$40
2008	\$50	\$30

~~(3-29-10)~~( )

**b.** A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

**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. (5-8-09)

**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: (5-8-09)

**a.** Received assistance under the federal food stamp program; or (5-8-09)

**b.** Was incarcerated. (5-8-09)

**04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

**05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

**06. Members of the ~~Armed Forces~~ Uniformed Services.** A member of the ~~United States Armed Forces~~ uniformed services who is: ~~(5-8-09)~~( )

**a.** Domiciled in Idaho is entitled to this credit; (5-8-09)

**b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

**c.** See Rule 032 of these rules for the definition of member of the uniformed services. ( )

**07. Spouse or Dependents of Members of the ~~Armed Forces~~ Uniformed Services.** A Beginning on January 1, 2009, a spouse ~~or dependent~~ of a nonresident member of the ~~Armed Forces~~ uniformed services stationed in Idaho ~~may be an Idaho resident or part-year resident who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit.~~ The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (5-8-09)(\_\_\_\_)

**08. Claiming the Credit.** (5-8-09)

**a.** An individual who is required to file an Idaho individual income tax return ~~shall~~ must claim the credit on his return. If the credit exceeds his tax liability, the resident ~~shall will~~ receive a refund. (5-8-09)(\_\_\_\_)

**b.** An individual who is not required to file an Idaho individual income tax return must 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. (5-8-09)(\_\_\_\_)

**c.** No credit ~~shall may~~ 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. (5-8-09)(\_\_\_\_)

**09. 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 must 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. (5-8-09)

**(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 must be submitted to the Tax Commission through ~~magnetic media~~, electronic filing, or on a paper copy of 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~~ are made on a calendar year basis. The due date for information returns submitted through ~~magnetic media~~ electronic filing 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.~~ (5-8-09)(\_\_\_\_)

**04. Voluntary Withholding.** Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: (\_\_\_\_)

**a.** Obtain an Idaho withholding account number as required by Rule 870 of these rules; and (\_\_\_\_)

**b.** Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of February. (\_\_\_\_)

**831. -- 83954. (RESERVED).**

~~**840. ELECTION CAMPAIGN FUND (RULE 840).**  
Section 63-3088, Idaho Code.~~ (3-20-97)

~~**01. In General.** The individual income tax return has a block where each taxpayer may designate a portion of his income tax to be paid into the election campaign fund of a specific party qualified with the Secretary of State as of July 1 of each calendar year or he may designate no specific party.~~ (3-20-97)

~~**02. Changing Election.** An election to designate a portion of the income tax to the election campaign fund may not subsequently be changed or withdrawn once the return is filed.~~ (3-20-97)

~~**841. — 854. (RESERVED).**~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**860. DONATIONS TO TRUST ACCOUNTS (RULE 860).**  
Sections 63-3067A, ~~and~~ 63-3067B, ~~and~~ 63-3067D, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. (3-20-97)(\_\_\_\_)

**(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, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or Aaltered forms are not accepted ~~able and may be returned to the employer for correction.~~ (4-6-05)(\_\_\_\_)

**02. Furnishing Forms W-2 to Employees.** The employer ~~shall~~ must furnish each employee a W-2

before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-05)( )

**03. Filing Forms W-2 With the Tax Commission.** On or before the last day of February, each employer must 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)

**04. Corrected Forms W-2.** If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must 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 W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file 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. (5-8-09)

**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 must 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. (5-8-09)

**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 must 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 must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

**875. -- 8796. (RESERVED).**

**877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES. (RULE 877).**  
Sections 63-3022L and 63-3036B, Idaho Code. ( )

**01. In General.** A pass-through entity that makes a cash distribution to an individual owner or beneficiary must withhold Idaho income tax from such distribution unless exempt from withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. ( )

**02. Exceptions to Withholding.** Withholding by a pass-through entity is not required on distributions paid to the following pass-through owners and beneficiaries: ( )

**a.** Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. ( )

**b.** Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: ( )

**i.** Is treated as a partnership for purposes of the Internal Revenue Code; and ( )

**ii.** Has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year. ( )

- c. Resident individuals. ( )
- d. Nonresident individuals if: ( )
  - i. Such individual elects to have his Idaho tax on income from the pass-through entity reported and paid by the pass-through entity; ( )
  - ii. Such individual's share of income of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the distribution is paid; or ( )
  - iii. The distribution is subject to withholding under Section 63-3035 or 63-3036, Idaho Code. ( )

**03. Certification of Residency.** Withholding is not required on distributions made to an individual owner or beneficiary who certifies to the pass-through entity that he is an Idaho resident. The certification must be made on a form approved by the Tax Commission. The pass-through entity may rely on the certificate as evidence that distributions to such individual are exempt from withholding unless the pass-through entity knowingly accepts a false certificate. ( )

**04. Payment of Backup Withholding.** ( )

**a.** The pass-through entity must withhold amounts from distributions to nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld during a calendar year must be remitted to the Tax Commission annually on or before January 31 of the following year, unless one of the exceptions under Subsection 877.02 of this rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. ( )

**b.** Amounts remitted as backup withholding for a calendar year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his tax year which begins within such calendar year. The return made by the pass-through entity under Subsection 877.05 of this rule will be accepted by the Tax Commission as evidence of the amount withheld from his distribution. ( )

**05. Backup Withholding Returns.** Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ( )

- a. The amount of income described in Section 63-3022L(2), Idaho Code; ( )
- b. The amount of tax withheld; ( )
- c. Name, address, and social security number of each owner or beneficiary; ( )
- d. The pass-through entity's name, federal employer identification number, and signature. ( )

**06. Failure to File Returns or Remit Backup Withholding.** Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of withholding by the due date may cause interest and penalties to be imposed. ( )

**878. -- 879. (RESERVED).**

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0101-1003**  
**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:** A public hearing concerning this rulemaking will be held as follows:

**Monday, October 25, 2010 at 10:00 a.m.**

**Idaho State Tax Commission  
800 Park Blvd. Plaza IV  
Boise, ID 83712  
1st Floor, Conference Room 5**

The hearing site 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:

The Income Tax Administrative Rules currently incorporate by reference the Multistate Tax Commission (MTC) Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. After working with these rules since 1998, the Tax Commission has determined that the financial rules include various areas that are subjective and ambiguous. Many of the difficulties to administer and comply with the rule lie with the property factor calculation, where the value of loans and credit card receivables are assigned to a state numerator by determining where the preponderance of substantive contacts occur. This determination is required to be made on a case-by-case basis by an extensive analysis of the substantive contacts associated with each individual loan, measured by the activities of solicitation, investigation, negotiation, approval, and administration (referred to as the SINAA provisions). The SINAA provisions are difficult to apply: taxpayers do not apply them on a case-by-case basis as required by the rule; the SINAA activities are difficult to quantify, resulting in subjective determinations; and the analysis required is not clearly defined, making the determination ambiguous. Other problems found in the current rules include the failure to address or fully develop definitions for issues that can be subject to varying interpretations, and the unanticipated widespread use of REMICs in entity restructuring, which separates the ownership of the loans and receivables from the ownership of the income streams. Due to the fact the MTC is years away from recommending a new formula and because the current rule is causing substantial resources to be exhausted, both by the Tax Commission and taxpayers attempting to comply with it, the Tax Commission is proposing a set of rules that will clarify the computation of the apportionment factor for financial institutions, making it easier to administer and to comply with. The new rules will be modeled on the MTC Recommended Formula, but will not adopt it in its entirety. The new rules will simplify the computation by moving away from the SINAA analysis to a more workable and realistic solution for the apportionment and allocation of net income of financial institutions as well as define areas that are currently ambiguous or subjective.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**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 27, 2010.

DATED this 27th day of August, 2010.

Janice Boyd  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0101-1003**

**006. INCORPORATION BY REFERENCE (RULE 006).**

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

**01. MTC Special Industry Regulations.** These documents are found on the Multistate Tax Commission (MTC) Web site at [www.mtc.gov/Uniformity.aspx?id=496](http://www.mtc.gov/Uniformity.aspx?id=496), or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (4-2-08)

**02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.** ~~This document~~ The Tax Commission has modeled its rule for financial institutions on the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions," but does not incorporate the MTC Recommended Formula in its entirety. See Rules 582 through 587 of these rules. The MTC Recommended Formula is found on the MTC Web site at [www.mtc.gov/Uniformity.aspx?id=496](http://www.mtc.gov/Uniformity.aspx?id=496), or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. ~~See Rule 582 of these rules.~~ (4-2-08)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).**

Sections 63-3027 and 63-3030(a)(9), Idaho Code. (3-30-07)

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

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax

- Commission may require, an alternative method, including the following: (3-30-07)
- a. Separate accounting as provided in Rule 5859 of these rules; (~~3-30-07~~)(\_\_\_\_)
  - b. The exclusion of a factor pursuant to Rule 590 of these rules; (3-30-07)
  - c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (3-30-07)
  - d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (3-30-07)
- 03. Information Provided to Partners.** The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: (4-5-00)
- a. The ~~apportioned~~ partner's share of each pass-through item of income and deduction; (~~4-5-00~~)(\_\_\_\_)
  - b. The ~~apportioned~~ partner's share of each Idaho addition and subtraction; (~~4-5-00~~)(\_\_\_\_)
  - c. The partner's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (~~4-5-00~~)(\_\_\_\_)
  - d. ~~Income~~ The partner's share of income allocated to Idaho; (~~3-15-02~~)(\_\_\_\_)
  - e. The partnership's apportionment factor, and if the partner is not an individual, the partnership's property, payroll and sales factor numerators and denominators if the partner is not an individual amounts, including the amount of capitalized rent expense; and (~~3-15-02~~)(\_\_\_\_)
  - f. The partner's distributive share of partnership gross income ~~multiplied by the Idaho apportionment factor~~; if the partner is an individual, trust, or estate. (~~3-15-02~~)(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**286. S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO (RULE 286).** (4-2-08)  
Sections 63-3027 and 63-3030(a)(4), Idaho Code.

**01. In General.** An S corporation that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of S corporation income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-2-08)

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 286.01 of this rule does not fairly represent the extent of the business activity in Idaho, the S corporation may file a request to use or the Tax Commission may require an alternative method, including the following: (4-2-08)

- a. Separate accounting as provided in Rule 5859 of these rules; (~~4-2-08~~)(\_\_\_\_)
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (4-2-08)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (4-2-08)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (4-2-08)

**03. Information Provided to Shareholders.** An S corporation must provide to each shareholder information necessary for the shareholder to compute his Idaho income tax. Such information must include: (4-2-08)

- a. The ~~apportioned~~ shareholder's share of each pass-through item of income and deduction; (4-2-08)( )
- b. The ~~apportioned~~ shareholder's share of each Idaho addition and subtraction; (4-2-08)( )
- c. The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-2-08)( )
- d. ~~Income~~ The shareholder's share of income allocated to Idaho; ~~and~~ (4-2-08)( )
- e. The S corporation's apportionment factor; and ( )
- ef. The shareholder's distributive share of S corporation gross income ~~multiplied by the Idaho apportionment factor.~~ (4-2-08)( )

**04. Protection Under Public Law 86-272.** An S corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (4-2-08)

**05. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**580. SPECIAL RULES -- SPECIAL INDUSTRIES (RULE 580).**  
Section 63-3027(s), Idaho Code. (3-20-97)

**01. Adoption of MTC Special Industry Regulations.** This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 006.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries must apportion income in accordance with the applicable MTC regulation: (5-3-03)

- a. **Construction Contractors.** The apportionment of income derived by a long-term construction contractor must be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-20-97)
- b. **Airlines.** The apportionment of income derived by an airline must be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-20-97)
- c. **Railroads.** The apportionment of income derived by a railroad must be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-20-97)
- d. **Trucking Companies.** The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others must be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. (7-1-98)
- e. **Television and Radio Broadcasting.** The apportionment of income derived from television and radio broadcasting must be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-20-97)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material must be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-20-97)

~~g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. (7-1-98)~~

**02. Financial Rules Modeled on the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.** The Tax Commission has modeled its rules for financial institutions on the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions," but does not incorporate the MTC Recommended Formula in its entirety. Financial institutions must apportion income in accordance with Rules 582 through 587 of these rules for taxable years beginning on or after January 1, 2011. ( )

**023. References.** See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

**582. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- DEFINITION OF FINANCIAL INSTITUTION (RULE 582).**

Section 63-3027(s), Idaho Code.

(7-1-98)

**01. Adoption of Modeled on MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions.** ~~This rule incorporates by reference Rules 582 through 587 of these rules are modeled on the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions," as adopted in Subsection 006.02 of these rules.~~ A copy of ~~this regulation~~ the MTC's Recommended Formula may be obtained from the main office of the Idaho State Tax Commission. (5-3-03)( )

**02. Definition of Financial Institution.** ~~For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" ¶~~The term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply: (7-1-99)( )

a. Predominantly means over fifty percent (50%) of a taxpayer's gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. ~~Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However,~~ ¶The classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the predominant character of the gross income for two (2) consecutive years and the average of the corporation's gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income ~~shall~~ must be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building ~~shall be~~ is excluded. (7-1-98)( )

b. Deals in means conducting transactions in the course of a trade or business on its own account ~~as opposed to~~ and includes brokering the capital of others. (7-1-98)( )

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. (7-1-98)

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. (7-1-98)

**03. Entities Presumed to Be Financial Institutions.** The following entities are presumed to be financial institutions as defined in Subsection 582.02: (7-1-98)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (7-1-98)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (7-1-98)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (7-1-98)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (7-1-98)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (7-1-98)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (7-1-98)

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (7-1-98)

**04. Exclusion from Rule.** The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections Paragraphs 582.03.a. through 582.03.f. and 582.03.h. (7-1-98)(\_\_\_\_)

~~**05. Act Defined.** For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. (7-1-99)~~

~~**06. The Apportionment Percentage.** References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) shall be replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. (7-1-99)~~

~~583.---584.~~ (RESERVED).

**583. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- DEFINITIONS APPLICABLE TO THE FINANCIAL RULES (RULE 583).**

Section 63-3027(s), Idaho Code. ( )

**01. In General.** The definitions in Subsection 583.02 of this rule apply to Rules 582 through 587, unless the context provides otherwise. ( )

**02. Terms.** ( )

**a.** "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed. ( )

**b.** "Borrower or credit card holder located in Idaho" means: ( )

**i.** A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in Idaho; or ( )

**ii.** A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in Idaho. ( )

**c.** "Business income" means "business income" as defined in Section 63-3027(a)(1), Idaho Code. ( )

**d.** "Commercial domicile" means: ( )

**i.** The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or ( )

**ii.** If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year. ( )

**e.** "Compensation" means "compensation" as defined in Section 63-3027(a)(3), Idaho Code. ( )

**f.** "Credit card" means credit, travel, or entertainment card. ( )

**g.** "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card. ( )

**h.** "Financial corporation" means "financial institution" as defined in Rule 582 of these rules. ( )

**i.** "Financial organization" means "financial institution" as defined in Rule 582 of these rules. ( )

**j.** "Loan" means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, credit card receivables, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under Section 595, Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; noninterest bearing balances due from other depository institutions; cash items in the process of collection;

federal funds sold; securities purchased under agreements to resell; and assets held in a trading account. ( )

**k.** “Loan secured by real property” means that fifty percent (50%) or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property. ( )

**l.** “Merchant discount” means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program that accepts a credit card in payment for merchandise or services sold to the card holder. ( )

**m.** “Nonbusiness income” means “nonbusiness income” as defined in Section 63-3027(a)(4), Idaho Code. ( )

**n.** “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower. ( )

**o.** “Person” means an individual, estate, trust, partnership, corporation, and any other business entity. ( )

**p.** “Principal base of operations” with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the “principal base of operations” means the place of more or less permanent nature from which the employee regularly: ( )

i. Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer; or ( )

ii. Communicates with customers or other persons; or ( )

iii. Performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points. ( )

**q.** “Real property and tangible personal property owned” means real property and tangible personal property: ( )

i. On which the taxpayer may claim depreciation for federal income tax purposes; or ( )

ii. To which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax; but ( )

iii. Excluding coin, currency, or property acquired in lieu of or pursuant to a foreclosure. ( )

**r.** “Regular place of business” means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer. ( )

**s.** “Syndication” means an extension of credit funded by two or more persons and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount. ( )

**t.** “Taxable in another state” means “taxable in another state” as defined in Section 63-3027(c), Idaho Code and related rules. ( )

**u.** “Transportation property” means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like. ( )

**584. (RESERVED).**

**585. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- SALES FACTOR (RULE 585).**

Section 63-3027(s), Idaho Code.

( )

**01. In General.**

( )

**a.** The sales factor is a fraction as provided in Section 63-3027(p), Idaho Code. The sales factor includes only those receipts described in this rule that constitute business income and are included in apportionable income for the taxable year.

( )

**b.** Net gains. When referenced in this rule, "net gains" means the amount of net gains, but not less than zero (0).

( )

**02. Receipts from the Lease of Real Property.** The numerator of the sales factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within Idaho or receipts from the sublease of real property if the property is located within Idaho.

( )

**03. Receipts from the Lease of Tangible Personal Property.**

( )

**a.** Tangible personal property located in the state when placed in service. Except as described in Paragraph 585.03.b. of this rule, the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within Idaho when it is first placed in service by the lessee.

( )

**b.** Receipts from the lease or rental of transportation property. Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in Idaho. The extent an aircraft is deemed to be used in Idaho is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of departures of the aircraft in Idaho and the denominator of which is the total number of departures of the aircraft for the taxable year. If the extent of the use of any transportation property within Idaho cannot be determined, the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

( )

**04. Interest, Fees, and Penalties Imposed in Connection with Loans Secured by Real Property.**

( )

**a.** The numerator of the sales factor includes interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within Idaho. If the property is located both within Idaho and one or more other states, the receipts described in this subsection are included in the numerator of the sales factor if more than fifty percent (50%) of the fair market value of the real property is located within Idaho. If more than fifty percent (50%) of the fair market value of the real property is not located within any one (1) state, the receipts described in this subsection are included in the numerator of the sales factor if the borrower is located in Idaho.

( )

**b.** The determination of whether the real property securing a loan is located within Idaho is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

( )

**05. Interest, Fees, and Penalties Imposed in Connection with Loans Not Secured by Real Property.** The numerator of the sales factor includes interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in Idaho.

( )

**06. Net Gains from the Sale of Loans.** The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of Section 1286, Internal Revenue Code.

( )

**a.** Sale of loans secured by real property. The amount of net gains from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.04 of this rule and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property. ( )

**b.** Sale of loans not secured by real property. The amount of net gains from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.05 of this rule and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property. ( )

**07. Receipts from Fees, Interest, and Penalties Charged to Card Holders.** The numerator of the sales factor includes fees, interest, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the billing address of the card holder is in Idaho. ( )

**08. Net Gains from the Sale of Credit Card Receivables.** The numerator of the sales factor includes all net gains from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties in the nature of interest from credit card receivables and fees charged to card holders. ( )

**09. Card Issuer's Reimbursement Fees.** The numerator of the sales factor includes: ( )

**a.** Credit cards. All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders. ( )

**b.** Debit cards. All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders. ( )

**c.** Other cards. All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders. ( )

**10. Receipts from Merchant Discount.** The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in Idaho. Such receipts are computed net of any card holder charge backs and must be reduced by any interchange transaction fees and any issuer's reimbursement fees paid to another for charges made by its card holders. ( )

**11. Receipts from ATM Fees.** The sales factor includes all ATM fees that are not forwarded directly to another bank. ( )

**a.** Fees charged by taxpayer issuing ATM card. The numerator of the sales factor includes fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer if the cardholder's billing address is in Idaho. ( )

**b.** Fees charged by another. The numerator of the sales factor includes fees charged to a cardholder, other than the taxpayer's cardholder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in Idaho. ( )

**12. Loan Servicing Fees.** ( )

**a.** Servicing fees from loans secured by real property. The numerator of the sales factor includes loan servicing fees derived from loans secured by real property located in Idaho. If the real property is located both within Idaho and one (1) or more other states, the determination of whether the receipts are included in the numerator is made pursuant to Subsection 585.04 of this rule. ( )

**b.** Servicing fees from loans not secured by real property. The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property if the borrower is located in Idaho. ( )

**c.** Servicing fees received from loans not owned by servicer. If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor includes such fees if the borrower is located in Idaho. ( )

**13. Receipts from Services.** The numerator of the sales factor includes receipts from services not otherwise apportioned under this section if the receipts would be included in the Idaho numerator pursuant to Section 63-3027, Idaho Code. ( )

**14. Receipts from Investment Assets and Activities and Trading Assets and Activities of the Financial Institution.** ( )

**a.** Interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities are included in the sales factor. Investment assets and activities and trading assets and activities include investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in Subparagraphs 585.14.a.i. and 585.14.a.ii. of this rule, the sales factor includes the amounts described in such subparagraphs. ( )

**i.** The sales factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. ( )

**ii.** The sales factor includes the amount by which interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities. ( )

**b.** The numerator of the sales factor includes interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities described in Paragraph 585.14.a. of this rule that are attributable to Idaho. ( )

**i.** The amount of interest, dividends, net gains, and other income from investment assets and activities in the investment account to be attributed to Idaho and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such assets. ( )

**ii.** The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Idaho and included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.i. of this rule from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such funds and such securities. ( )

**iii.** The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in Subparagraphs 585.14.b.i. and 585.14.b.ii. of this rule attributable to Idaho and

included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.ii. of this rule by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such assets. ( )

iv. For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in Subsections 586.03 and 586.04 of these rules. ( )

c. If the method set forth in Paragraph 585.14.b. of this rule does not fairly represent the taxpayer's business activity in Idaho, the taxpayer may elect or the Tax Commission may require the use of the method set forth in this paragraph. ( )

i. The amount of interest, dividends, net gains (but not less than zero (0)), and other income from investment assets and activities in the investment account to be attributed to Idaho and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the gross income from all such assets and activities. ( )

ii. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Idaho and included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.i. of this rule from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the gross income from all such funds and such securities. ( )

iii. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in Subparagraphs 585.14.c.i. and 585.14.c.ii. of this rule, attributable to Idaho and included in the numerator is determined by multiplying the amount described in Subparagraph 585.14.a.ii. of this rule by a fraction. The numerator of the fraction is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within Idaho. The denominator of the fraction is the gross income from all such assets and activities. ( )

d. If the taxpayer elects or is required by the Tax Commission to use the method set forth in Paragraph 585.14.c. of this rule, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the Tax Commission, or the Tax Commission requires the use of a different method. ( )

e. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of Idaho by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside Idaho. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business, and one (1) such regular place of business is in Idaho and one (1) such regular place of business is outside Idaho, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer. ( )

f. Interest in a REMIC, or other mortgage-backed or asset-backed security is not a trade or investment asset if the holder of the interest is directly or indirectly related to the person who originated or issued the loans that were later securitized. ( )

**15. All Other Receipts.** The numerator of the sales factor includes all other receipts that would be included in the Idaho numerator pursuant to Section 63-3027, Idaho Code. ( )

**16. Receipts Not Taxable.** ( )

**a.** All receipts that would be assigned under this section to a state in which the taxpayer is not taxable must be excluded from both the numerator and the denominator of the sales factor. ( )

**b.** All receipts that are excluded or removed from apportionable income, such as U.S. Government interest, must be excluded from both the numerator and the denominator of the sales factor. ( )

**586. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- PROPERTY FACTOR (RULE 586).**  
Section 63-3027(s), Idaho Code. ( )

**01. In General.** The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within Idaho during the taxable year, the average value of real property and tangible personal property owned by the taxpayer that is located or used within Idaho during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within Idaho during the taxable year, and the denominator of which is the average value of all such property located or used within and without Idaho during the taxable year. ( )

**02. Property Included.** The property factor includes property only when the income or expenses of such property are included in the computation of apportionable income for the taxable year. This includes property that would have been included in the computation of apportionable income if not fully depreciated or expensed, or depreciated or expensed to a nominal amount. ( )

**03. Value of Property Owned by the Taxpayer.** ( )

**a.** The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization. ( )

**b.** Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes must be treated as charged-off for purposes of this section. ( )

**c.** Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding. ( )

**04. Average Value of Property Owned by the Taxpayer.** The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2). If averaging on this basis does not properly reflect average value, the taxpayer may elect or the Tax Commission may require averaging on a more frequent basis. When averaging on a more frequent basis is elected by the taxpayer or required by the Tax Commission, the same method of valuation must be used consistently by the taxpayer with respect to property within and without Idaho and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission or the Tax Commission requires a different method of determining average value. ( )

**05. Average Value of Real Property and Tangible Personal Property Rented to the Taxpayer.** ( )

**a.** The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes must be determined annually by multiplying the gross rents payable during the taxable year by eight (8). ( )

**b.** If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission or the Tax

Commission requires a different method of valuation. ( )

**06. Location of Real Property and Tangible Personal Property Owned by or Rented to the Taxpayer.** Real property and tangible personal property owned by or rented to the taxpayer is considered to be located within Idaho in the same manner as that determination is made pursuant to Section 63-3027, Idaho Code. ( )

**07. Location of Loans.** ( )

**a. Secured Loans.** A loan is considered to be located within Idaho if fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan was real or personal property located in Idaho at the time the loan was incurred. The term "value" as used in this paragraph means the fair market value as of the time the original loan was incurred. ( )

**b. Unsecured Loans.** If a loan is not secured by real or personal property, the loan is considered to be located within Idaho if the billing address of the borrower is in Idaho. ( )

**08 Location of Credit Card Receivables.** Credit card receivables are considered to be located within Idaho if the billing address of the card holder is in Idaho. ( )

**09. Period for Which Properly Assigned Loan Remains Assigned.** A loan that has been properly assigned to a state remains assigned to said state for the length of the original term of the loan unless a change of material fact occurs. A material change includes refinancing the loan with collateral that is not located within the originally-assigned state at the time of refinancing. It is presumed that a material change does not include transferring the loan to a related entity. ( )

**587. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- PAYROLL FACTOR (RULE 587).** Section 63-3027(s), Idaho Code. The payroll factor is a fraction, the numerator of which is the total amount paid in Idaho during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without Idaho during the taxable year. The payroll factor for a financial institution must be computed in the same manner as set forth in Section 63-3027(n), Idaho Code, and related rules. ( )

**588. (RESERVED).**

**5859. EXCEPTIONS TO APPORTIONMENT FORMULA -- SEPARATE ACCOUNTING (RULE 5859).** Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission shall must notify the taxpayer whether the request has been approved or denied. This determination shall must be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. (3-20-97)( )

~~586. — 589. (RESERVED).~~

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1001**  
**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 20, 2010.

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 012 is being amended to extend the definition of "land leveling" to rock that is obtained on a building site, crushed, and then used as backfill on the same building site.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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:

Sales of rock crushing services are generally taxable. The amendment to Rule 012 creates an exception for certain sales of rock crushing and, at the same time, denies the production exemption to certain rock crushers. The fiscal impact is the difference between the revenue lost on the crushing sales and the revenue gained on certain rock crushing equipment purchases that would otherwise be exempt.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [February 3, 2010, Idaho Administrative Bulletin, Volume 10-02, page 21](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (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 27, 2010.

DATED this 27th day of August, 2010.

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

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1001**

**012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).**

**01. In General.** This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable. (7-1-93)

**a.** Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees of a contractor, they are acting as contractors and are consumers just as other contractors. (7-1-93)

**b.** Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation. (7-1-93)

**c.** The terms “contractor” and “subcontractor” are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. (3-4-10)

**02. Contract.** A contract to improve real property may be in any of the following forms. (7-1-93)

**a.** Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. (7-1-93)

**b.** Cost-plus Contract. A cost-plus contract is an agreement to furnish materials and services at the contractor’s cost plus a fixed sum or percentage of the cost. (7-1-93)

**c.** Guaranteed Price Contract. A guaranteed price contract is an agreement to furnish materials and services with a guaranteed price which may not be exceeded. (7-1-93)

**d.** Time and Material Contract. A time and material contract is an agreement to sell a specific list of materials and supplies at retail or an agreed price and to complete the work for an additional agreed price or hourly rate for services rendered. (7-1-93)

**e.** The contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into, whether it is a lump sum, time and material, or a cost-plus contract. (3-4-10)

**03. Use.** As used in this rule, the term use includes exercising any right or power over tangible personal property in performing a contract to improve real property, regardless of who owns the material or if the material is leased. (7-1-93)

**04. Real Property.** See Rules 010 and 067 of these rules. (3-15-02)

**05. Use Tax Reporting Number.** Contractors need a use tax number if they make purchases on which sales tax has not been charged. In this case, they are required to report and pay the Idaho use tax to the state. If a contractor pays sales tax to his vendors on ALL purchases, he does not have to obtain a use tax number. (7-1-93)

**06. Purchases by Contractors.** Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They must pay the sales or use tax on their purchase of equipment, tools, and supplies. They

must also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. (7-1-93)

**07. Fuels.** A contractor must pay tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. (7-1-93)

**08. Custom-Made Goods.** Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he must pay sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (7-1-93)

**09. Value.** The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: (7-1-93)

**a.** When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the amount subject to tax is the cost of material to the contractor who fabricated the goods. (7-1-93)

**b.** When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. (7-1-93)

**10. Materials Provided by Project Owner.** (7-1-93)

**a.** If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax. (7-1-93)

**b.** If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is subject to use tax. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property. (7-1-93)

**c.** A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to a structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable. (7-1-93)

**11. Subcontractor.** In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. (6-23-94)

**12. Land Leveling.** ( )

**a.** Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they are subject to tax on equipment, material, and supplies purchased for land leveling. (7-1-93)

**b.** Notwithstanding the provisions of Rule 013 of these rules, contractors who crush rock are performing a nontaxable service if the rock is obtained on a construction site, and the crushed rock is used on the same site, for such purposes as backfill, land leveling, site preparation, or site cleanup. The use of such rock, backfill, or other related materials is not subject to tax; however, such a contractor is not primarily devoted to mining and his use of rock crushing equipment, or other equipment and supplies, does not qualify for exemption under Section 63-3622D, Idaho Code. ( )

**c.** The sale or use of crushed rock that is removed from a construction site and used elsewhere is taxable. See Rule 013 of these rules. ( )

**13. Exempt Purchases by Contractors.** A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska. This exemption also applies to a contractor improving real property in Washington if he will not owe a sales or use tax for his activity there, even though a sales or use tax may be owed by a third party. Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See Rule 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states with a sales tax, such as Nevada, Utah, or Wyoming. (3-15-02)

- 14. Cross-References.** (7-1-93)
- a.** Road and paving contractors, see Rule 013 of these rules. (3-15-02)
  - b.** Contractor/retailers, see Rule 014 of these rules. (3-15-02)
  - c.** Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1002**  
**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 20, 2010.

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 037 is being amended to add a provision similar to Rule 107 which states: "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 airplanes is not a nonresident."

Rule 114 is being amended to state that purchases of food made with coupons or any other authorized form of payment under federal law qualify for the exemption.

Rule 136 is being amended to state that after a developer has identified the location and boundaries of the center, identified the qualifying retailers, and has met the expenditure requirements the Commission will start depositing 60% of the sales tax revenue from the center into the Demonstration Pilot Project Fund. Rule 136 also changes the language and expenditure requirements to conform to the new statute.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Husted (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 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1002

**037. AIRCRAFT AND FLYING SERVICES (RULE 037).**

**01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)

**a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

**b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

**c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

**d. Nonresident Individual.** An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

**e. Nonresident Businesses and Other Organizations.** 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 required to be 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. 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 airplanes or other aircraft is not a nonresident. The use of an airplane owned by such an entity will be subject to use tax upon its first use in Idaho. (~~3-20-04~~)( )

**f. Day.** For the purpose of this rule any part of a day is a day. (7-1-94)

**g. Transportation of freight or passengers for hire.** "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. (3-4-10)

**02. Sales of Aircraft.** Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

**a.** Primarily used to transport passengers or freight for hire; (2-18-02)

**b.** Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

**c.** Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

**i.** The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)

**ii.** The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

**03. Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section

40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

**04. Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

**05. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)

**b.** When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

**06. Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

**07. Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

**a.** Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

**b.** When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

**08. Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

**09. Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

**a.** Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

**b.** When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

**10. Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. RECORDS REQUIRED, FOOD STAMPS, ELECTRONIC BENEFITS TRANSFERS, AND WIC CHECKS (RULE 114).**

**01. In General.** ~~The~~ Sales of food purchased ~~with food stamps or with electronic benefits transfer cards issued~~ under the Federal Food Stamp Program, the Federal Food, Conservation and Energy Act of 2008, or ~~with food checks issued by~~ the Federal Special Supplemental Food Program for Women, Infants, and Children, WIC, ~~is~~ are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the purchaser uses food stamps, vouchers, electronic benefits transfer cards, or any other exchange medium authorized by federal law.

(7-1-99)( )

**02. Records Required.** Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-99)

**a. WIC Checks.** WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-99)

**b. Food Stamps.** Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-99)

**c. Electronic Benefits Transfer (EBT) Payments.** Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. (7-1-99)

**02. Records Required.** Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-99)

**a. WIC Checks.** WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-99)

**b. Food Stamps.** Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-99)

**c. Electronic Benefits Transfer (EBT) Payments.** Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**136. REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS (RULE 136).**

**01. Rebate of Sales Tax.** Section 63-3641, Idaho Code, provides for a rebate of sales taxes to be paid to real estate developers who build a qualifying retail complex at a cost of four million dollars (\$4,000,000) or more

and who expend more than ~~eight~~ six million dollars (\$86,000,000) for the installation of a highway interchange or for ~~freeway interchange~~ improvements on an ~~interstate~~ highway. For the purposes of this rule, the term “qualifying shopping center” shall mean a qualifying retail complex as specified by Section 63-3641, Idaho Code. ~~(4-2-08)~~ ( )

**02. Qualifying Shopping Center Location.** Qualified ~~R~~retailers that are located in a qualifying shopping center must apply for a separate sellers’ permit and ~~file a separate sales tax return for that location~~ report sales separately for that location. For instance, if a retailer has multiple stores in Idaho it must file a separate return for any store located in a qualifying shopping center. A retailer who ceases operation in a qualifying shopping center must notify the Tax Commission and cancel the sellers’ permit for that location. ~~(4-2-08)~~ ( )

**03. Confidential Information.** Information about an individual store’s sales or aggregate sales for stores located in a qualifying shopping center is confidential and may not be released to the public. (4-2-08)

**04. Developer Responsibilities.** The developer of a qualifying shopping center must provide the names and taxpayer identification numbers of the stores located in the shopping center to the Tax Commission. The developer must also notify the Tax Commission whenever a new retailer begins operation or when a retailer ceases operations in a qualifying shopping center. (4-2-08)

**05. Certifying Expenditures Prior to Rebate Payment.** No rebate will be paid unless the Idaho Department of Transportation or an appropriate political subdivision of the state of Idaho has certified as to the amounts actually expended and that the expenditures were made for the purpose of constructing ~~a highway interchange or for freeway interchange~~ approved transportation improvements. ~~(4-2-08)~~ ( )

**06. Disposition of Revenue from a Qualifying Shopping Center.** The Tax Commission will deposit sixty percent (60%) of the sales and use tax reported by qualifying retailers in the demonstration pilot project fund after a developer has: ( )

- a.** Identified the location and boundaries of the retail complex; ( )
- b.** Identified the qualified retailers making retail sales within the complex; and ( )
- c.** Verified that it has met the expenditure requirements of Subsection 136.01 of this rule. ( )

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-1003**  
**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 Section 63-105A, 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 20, 2010.

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 006 is being amended to update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity.

Rule 114 is being amended to update the dates of guides and standards used as references. Assessors do not need to report personal property by the North American Industrial Classification System (NAICS) code.

Rule 131 is being amended to provide procedures for conducting equalization ratio studies and to allow a follow-up ratio study of secondary categories be conducted if they are likely to be out of compliance as a result of assessment changes made by the county board of equalization.

Rule 317 is being amended to explain that for the funds listed in Section 50-2908, Idaho Code, the occupancy tax is not distributed to the urban renewal during the year in which the urban renewal revenue allocation is formed, however, the occupancy tax raised for all other funds is distributed to the urban renewal.

Rule 609 is being amended to delete the U.S. Office of Federal Housing Enterprise Oversight and replace it with the Federal Housing Finance Agency and clarifies that the Idaho House Price Index - All Transactions is the index that has been used and will be used to adjust the maximum homeowner's exemption.

Rule 610 is being amended define Multidwelling or Multipurpose Building and Related Land and requires that the related land value be included in the determination of the exemption amount.

Rule 613 is being amended to recognize that the value of or the income attributed to exempt irrigation equipment should not be included or considered when valuing agricultural land and the definition of "Economic Rent" has been changed to state that the rent attributable to exempt irrigation equipment is not included in economic rent, only the rent solely attributable to the agricultural land is included in economic rent.

Rule 614 is being amended to provide guidance to appraisers for when crop share or cash rent analysis should be applied in determining the value of agricultural land and to clarify the given examples by indicating that only the income attributed to the land should be used when considering either analysis.

Rule 802 is being amended to explain how to compute the amount of urban renewal increment value to be included on the new construction roll in the year in which a portion of a revenue allocation area is de-annexed and to update the data included in the examples.

Rule 961 is being amended to explain that the value and classification of a homesite adjacent to forest lands will be valued independently from the adjacent forest lands.

Rule 989 is being amended to provide instructions on how to compute the prorated portion of the funds effected by Idaho Code sections 50-2908(1)(a) through (e) when computing the levy upon which a QIE recapture is to be based.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 proposed changes were of a simple nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Rule 006 references working documents and requires yearly maintenance. The reference to the IAAO's website for the ratio study standard and the various dates for the manuals will be verified and updated.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest 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 27, 2010.

DATED this 27th day of August, 2010.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
PO Box 36  
Boise, ID 83722-0410  
(208) 334-7544

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-1003**

**006. INCORPORATION BY REFERENCE (RULE 006).**

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

**01. Availability of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-3-03)

**a.** "Standard on Ratio Studies" published in 2007~~10~~ by the International Association of Assessing Officers. This document can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on ~~June~~ ~~July 18~~~~22~~, 2009~~10~~. (3-29-10)( )

- b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2009~~10~~ for the September through December period by the National Appraisal Guides Incorporated. ~~(3-29-10)~~(\_\_\_\_)
- c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2009~~10~~ for the September through December period by the National Appraisal Guides Incorporated. ~~(3-29-10)~~(\_\_\_\_)
- d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2009~~10~~ and the first quarter in 2010~~11~~ by R. E. R. Publishing Corporation, Agent as a publication of ~~Commonwealth Business Media, Inc~~ UBM Global Trade. ~~(3-29-10)~~(\_\_\_\_)
- e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)
- f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)
- g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)
- h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)
- i.** “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114).**

Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, *each assessor will to the extent practicable report the following information to the State Tax Commission in the same manner and at the same time as the abstracts under Section 63-509, Idaho Code.* ~~(3-30-07)~~

~~01- Homeowner's Exemption Information. Beginning in 2007 and each year thereafter, each county assessor will, to the extent practicable, report to the State Tax Commission in the same manner and at the same time as the abstract under Section 63-509, Idaho Code, the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner's exemption under Section 63-602G, Idaho Code, for the current year's assessment roll. Additionally, beginning in 2007 and each year thereafter, each county assessor will, to the extent practicable, report to the State Tax Commission the following stratification for improved properties granted the homeowner's exemption number of properties and the aggregate total market value of the properties granted the homeowner's exemption in each group starting with the group of properties valued at less than or equal to twenty-five thousand dollars (\$25,000) and including each subsequent group with value increases of twenty-five thousand dollars (\$25,000) and ending with the group of properties exceeding the value of more than two hundred fifty thousand dollars (\$250,000).~~ ~~(3-30-07)~~(\_\_\_\_)

~~a- Total quantity and total market value of all properties less than or equal to twenty five thousand dollars (\$25,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually less than or equal to twenty five thousand dollars (\$25,000) in market value.~~ ~~(3-30-07)~~

~~b- Total quantity and total market value of all properties more than twenty five thousand dollars~~

*(\$25,000) but less than or equal to fifty thousand dollars (\$50,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than twenty five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000) in market value.*

*(3-30-07)*

*e. Total quantity and total market value of all properties more than fifty thousand dollars (\$50,000) but less than or equal to seventy five thousand dollars (\$75,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than fifty thousand dollars (\$50,000) but less than or equal to seventy five thousand dollars (\$75,000) in market value.*

*(3-30-07)*

*d. Total quantity and total market value of all properties more than seventy five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than seventy five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000) in market value.*

*(3-30-07)*

*e. Total quantity and total market value of all properties more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty five thousand dollars (\$125,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty five thousand dollars (\$125,000) in market value.*

*(3-30-07)*

*f. Total quantity and total market value of all properties more than one hundred twenty five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred twenty five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000) in market value.*

*(3-30-07)*

*g. Total quantity and total market value of all properties more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy five thousand dollars (\$175,000) in market value.*

*(3-30-07)*

*h. Total quantity and total market value of all properties more than one hundred seventy five thousand dollars (\$175,000) but less than or equal to two hundred thousand dollars (\$200,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred seventy five thousand dollars (\$175,000) but less than or equal to two hundred thousand dollars (\$200,000) in market value.*

*(5-8-09)*

*i. Total quantity and total market value of all properties more than two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty five thousand dollars (\$225,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty five thousand dollars (\$225,000) in market value.*

*(5-8-09)*

*j. Total quantity and total market value of all properties more than two hundred twenty five thousand dollars (\$225,000) but less than or equal to two hundred fifty thousand dollars (\$250,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred twenty five thousand dollars (\$225,000) in market value but less than or equal to two hundred fifty thousand dollars (\$250,000) in market value.*

*(5-8-09)*

*k. Total quantity and total market value of all properties more than two hundred fifty thousand dollars (\$250,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred fifty thousand dollars (\$250,000) in market value.*

*(5-8-09)*

~~02- **Personal Property Data.** Beginning in 2008 and each year thereafter, each county assessor will to the extent practicable separately report to the State Tax Commission the total market value and any exempt value of personal property for each of the following classifications or subclassifications thereof from the North American Industry Classification System (NAICS) and will separately detail this value by applicable secondary categories. (3-30-07)~~

~~a- **Forestry and logging personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all forestry and logging personal property within NAICS classifications 113, 115, and 1133 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~b- **Mining personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all mining personal property within NAICS classifications 21, 212, and 213 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~c- **Heavy construction personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all heavy construction personal property within NAICS classification 234 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~d- **Food manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all food manufacturing personal property within NAICS classification 311 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~e- **Dairy product manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all dairy product manufacturing personal property within NAICS classification 3115 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~f- **Wood product manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all wood product manufacturing personal property within NAICS classification 321 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~g- **Chemical manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all chemical manufacturing personal property within NAICS classification 325 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~h- **Computer and electronic product manufacturing (high tech) personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all computer and electronic product manufacturing (high tech) personal property within NAICS classification 334 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~i- **Locally assessed telecommunications personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all locally assessed telecommunications personal property within NAICS classifications 5133 and 51332 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~j- **Other personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all other personal property within NAICS classification 81 or any other NAICS classification not listed in~~

~~Paragraphs 114.02.a. through 114.02.i. as listed on the personal property declaration by the property owner or an agent for the property owner.~~ (3-30-07)

~~03. Cross-Reference. For the descriptions of secondary categories, see Rules 510, 511, and 512 of these rules.~~ (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**131. USE OF RATIO STUDY TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131).** (3-30-07)  
Section 63-109, Idaho Code.

**01. Equalization Ratio Study.** Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. Equalization ratio studies must consist of at least five (5) sales and/or appraisals. The State Tax Commission may delete sales when necessary to improve representativeness. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be the median. ~~(4-2-08)(\_\_\_\_\_)~~

**02. Tested For Equalization.** ~~Beginning with the 2007 ratio study to be complete prior to the first Monday in April, 2008, Except as provided in Subsection 131.03 of this rule,~~ categories to be tested for equalization purposes are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided adequate samples can be obtained. ~~(3-30-07)(\_\_\_\_\_)~~

**03. Follow-Up Ratio Study.** When indicated, based on criteria in Paragraph 131.03.a. and 131.03.b. of this rule, a follow-up ratio study shall be conducted to test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. A follow-up ratio study shall be indicated whenever: (4-2-08)

**a.** The annual ratio study, provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any primary category as described in Subsections 130.02 through 130.06 of these rules are out of compliance with the equalization standards of this rule; or (4-2-08)

**b.** The State Tax Commission is informed after the county board of equalization adjourns and before the state board of equalization adjourns of the implementation of assessment changes likely to result in a finding that a ~~primary~~ category found in compliance with equalization standards following the annual ratio study would be found out of compliance with these standards for the current year's assessments. The follow-up ratio study authorized under this option shall be conducted for the primary category likely to be out of compliance with equalization standards and for any secondary categories comprising the primary category, provided adequate samples can be obtained. ~~(4-2-08)(\_\_\_\_\_)~~

**04. Notice of Follow-Up Ratio Study.** The State Tax Commission shall notify the county assessor of the reason for and results of the follow-up ratio study. If the follow-up ratio study is conducted as provided in Paragraph 131.03.b. of this rule, the notice shall be sent to the county board of equalization and county assessor and shall describe the assessment changes that resulted in the need for the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual, or any follow-up ratio study, and the reason for the proposed adjustments. (4-2-08)

**05. Use of Ratio Study Results.** The results of the annual ratio study or any follow-up ratio study shall

be one (1) source of information upon which the State Tax Commission may rely when testing assessments for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any primary, or, if applicable under the provisions of Subsection 131.03.b. of this rule, secondary category, described in Subsections 130.02 through 130.067 of these rules, show, with reasonable statistical certainty as defined in Subsection 131.09 of this rule, that the appropriate measure of level of ~~any primary~~ the category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that ~~primary~~ category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in ~~any primary~~ the category or ~~subcategory~~ any portion of the category included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. Within any primary category, except as provided in Subsection 131.06 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for that primary category. (4-2-08)(\_\_\_\_)

**06. Exception from Requirement for at Least One (1) Observation for Use of Secondary Category in Adjusted Value Determination.** Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

**07. Use of Alternate Ratio Study.** When the follow-up ratio study required by Subsection 131.03 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any primary category, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). (3-30-07)

**08. Submission of Additional Information.** Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

**09. Reasonable Statistical Certainty.** For the purposes of Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized shall mean that the appropriate measure of level determined by the ratio study for ~~the primary~~ any category tested for equalization must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: (3-30-07)(\_\_\_\_)

**a.** The appropriate measure of level for the ~~primary~~ category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or (3-30-07)(\_\_\_\_)

**b.** The appropriate measure of level for the ~~primary~~ category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the ~~primary~~ category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study completed prior to August 31, 2007 will be considered as one of the most recent previous two (2) ratio studies. (4-2-08)(\_\_\_\_)

**10. Cross References.** The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

**317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).**

Section 63-317, Idaho Code. (5-3-03)

**01. Property Subject to Occupancy Tax.** Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

**02. Prorated Market Value.** The market value for occupancy tax purposes shall be the full market value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. (3-29-10)

**03. Notice of Appraisal.** When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

**04. Examples for Calculation of Value Less Homestead Exemption (HO).** The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): (3-30-07)

**a.** Example for prorated market value exceeding maximum amount of the homestead exemption for tax year 2009. Each year the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.

Full Market Value of Home - \$300,000
Prorated Market Value for 11 Month Occupancy - $\$300,000 \times 11/12 = \$275,000$
Taxable Value - $\$275,000 - \$104,471 \text{ (HO)} = \$170,529$

(3-29-10)

**b.** Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home - \$120,000
Prorated Market Value for 3 Month Occupancy - $\$120,000 \times 3/12 = \$30,000$
Taxable Value - $\$30,000 - \$15,000 \text{ (HO)} = \$15,000$

(3-30-07)

**05. Market Value.** The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-30-07)

**06. Allocation to Urban Renewal Agencies.** Occupancy tax revenue shall be distributed to urban renewal agencies in the same manner as property taxes. ( )

**a.** The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. (5-8-09)

**b.** Except for occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules, for parcels within a newly formed revenue allocation area or within an area newly annexed to an existing revenue allocation area, occupancy tax for the tax year during which the formation or annexation took effect must be distributed to the urban renewal agency. ( )

**07. Property Qualifying for the Homestead Exemption on Occupancy Value.** When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).** Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-30-07)

**01. Homestead Exemption.** The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

**02. Idaho Annual Housing Price Index Change.** The successor to the United States Office of Federal Housing Enterprise Oversight is the Federal Housing Finance Agency. Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the annual change in the Idaho annual Housing Price Index-All-Transactions, published by the United States office of federal housing enterprise oversight Federal Housing Finance Agency or its successor. The following procedure shall be used: (3-30-07)( )

**a.** Step 1. Calculate the average Idaho Housing Price Index-All-Transactions of the four (4) most recently available quarters as of September 15. (3-30-07)( )

**b.** Step 2. Calculate the average Idaho Housing Price Index-All-Transactions of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (3-30-07)( )

**c.** Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)

**d.** Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (3-30-07)

**03. Partial Ownership.** Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of this rule. (4-2-08)

**a.** Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	\$62,000	Mr. Smith's interest
Homeowner's Exemption	\$31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest (land and improvement)	\$54,500	Mr. Anderson's interest
Homeowner's Exemption	\$27,250	For Mr. Anderson as owner occupant

(3-30-07)

**b.** Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

(3-30-07)

**c.** Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 200710 (\$89,325 101,153 X 66.67%)	<del>\$59,550</del> 67,439	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest

Description	Value	Notes
Homeowner's Exemption Maximum for 200710 ( <del>\$89,325</del> 101,153 X 33.33%)	\$29,775 33,714	Ms. Smith's Homeowner's Exemption

(4-2-08)( )

**d.** Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X 66.67%)	\$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 200710 is 50% up to <del>\$89,325</del> 101,153)	\$86,671	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 33.33%)	\$86,658	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(4-2-08)( )

**04. Determination of Residency.** The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (4-11-06)

**05. Notification of Erroneous Claims.** When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination. (3-29-10)

**610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (RULE 610).**

Sections 63-602G and 63-701(2), Idaho Code. (4-5-00)( )

**01. Scope.** This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

**02. Definitions.** The following definitions apply to this rule: ( )

**02a. Dual Residency Couples.** As used in this rule, "dual residency couple" means a husband and wife, each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 609.03 of these rules. (4-2-08)

**b. Multidwelling or Multipurpose Building.** "Multidwelling or Multipurpose Building" means a

building which is the primary dwelling place of the owner and which has a portion used for any purpose other than the primary dwelling place of the owner. ( )

c. Related Land. "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home. ( )

**03. Dual Residency Couples -- General Principles.** (7-1-99)

**a.** Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 609.03 of these rules. (4-2-08)

**b.** If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. (7-1-99)

**c.** Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(7) Idaho Code.) Thus, there is no authority to reduce the value of the improvement proportionally to reflect one (1) spouse's ownership in community property before determining the amount of the homeowner's exemption. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. (3-15-02)

**d.** An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property except as provided in Subsection 610.07. (3-15-02)

**04. Example -- Both Residences are Community Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid because the couple can not make more than one (1) application. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**05. Example -- One Residence Is Community Property, the Other Is Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

**06. Example -- Both Residences are Separate Property.** (7-1-99)

**a.** Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

**b.** Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. (7-1-99)

**07. Apportionment of Homeowner's Exemption by Dual Residency Couples.** Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement shall be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties shall not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. (4-5-00)

**08. Multiple Ownerships Including Community Interests as Partial Owners.** A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a two-thirds (2/3) partial interest and the child holds a one-third (1/3) partial interest in the property. Qualification of the property for the homeowner's exemption is as follows: (7-1-99)

**a.** If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to two-thirds (2/3) of the value of the improvement. (3-15-02)

**b.** If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to one-third (1/3) of the value of the improvement. (3-15-02)

**c.** If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. (3-15-02)

**d.** If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to two-thirds (2/3) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. The two-thirds (2/3) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Subsection Paragraph 610.03.c. of this rule. (3-15-02)(\_\_\_\_)

**e.** If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. (3-15-02)

**09. Determining the Qualifying Portion of a Multidwelling or Multipurpose Building and the Related Land.** The portion of a Multidwelling or Multipurpose Building and Related Land used for the primary dwelling place of the owner qualifies for the homeowner's exemption. When determining the value of the qualifying portion, the assessor shall include the Related Land value. (\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).**

Section 63-602K, Idaho Code. (4-6-05)

**01. Definitions.** (4-5-00)

**a.** Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

**b.** Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

**c.** Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. The rent attributable to exempt irrigation equipment is not included in economic rent. Only the rent solely attributable to the agricultural land is included in economic rent. (4-5-00)( )

**d.** Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

**02. Calculation of Net Income from Cash Rent.** Net Income from cash rent is calculated in the following manner. (4-5-00)

**a.** Crops Grown. Determine the crops typically grown in the area. (4-5-00)

**b.** Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)

**c.** Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)

**d.** Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

**03. Calculation of Net Income from Crop Share Rent.** Net income from crop share rent is calculated in the following manner. (4-5-00)

**a.** Crops Grown. Determine the crops typically grown in the area. (4-5-00)

**b.** Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)

**c.** Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)

**d.** Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)

**e.** Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. (4-5-00)

**f.** Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)

**g.** Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

**04. Determination of Five Year Average Crop Prices.** The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. (4-6-05)

**05. Farm Credit System Interest Rate.** Annually, the State Tax Commission shall calculate the five (5) year rolling average Farm Credit System interest rate (FCSIR). Using the twenty (20) year fixed rate interest rates received bi-monthly from Northwest Farm Credit Services in Spokane, Washington, calculate the average Farm Credit System interest rate for the prior year applying the formula in Paragraph 613.05.a. of this rule. Calculate the five (5) year rolling average Farm Credit System interest rate applying the formula in Paragraph 613.05.b. of this rule. (3-30-07)

**a.** Formula for Calculating Average Farm Credit System Interest Rate for Prior Year.  $FCSIR_5 = (R_1 + R_2 + R_3 + R_4 + R_5 + R_6 + R_7 + R_8 + R_9 + R_{10} + R_{11} + R_{12})/12$ .

FCSIR <sub>5</sub>	is the average Farm Credit System interest rate for the prior year.
R <sub>1</sub>	is the interest rate received for January of the prior year.
R <sub>2</sub>	is the interest rate received for February of the prior year.
R <sub>3</sub>	is the interest rate received for March of the prior year.
R <sub>4</sub>	is the interest rate received for April of the prior year.
R <sub>5</sub>	is the interest rate received for May of the prior year.
R <sub>6</sub>	is the interest rate received for June of the prior year.
R <sub>7</sub>	is the interest rate received for July of the prior year.
R <sub>8</sub>	is the interest rate received for August of the prior year.
R <sub>9</sub>	is the interest rate received for September of the prior year.
R <sub>10</sub>	is the interest rate received for October of the prior year.
R <sub>11</sub>	is the interest rate received for November of the prior year.
R <sub>12</sub>	is the interest rate received for December of the prior year.

(3-30-07)

b. Formula for Calculating Five (5) Year Rolling Average Farm Credit System Interest Rate.  $FCSIR = (FCSIR_1 + FCSIR_2 + FCSIR_3 + FCSIR_4 + FCSIR_5)/5$ .

FCSIR <sub>5</sub>	is the average Farm Credit System interest rate for the prior year.
FCSIR <sub>4</sub>	is the average Farm Credit System interest rate for two (2) years ago.
FCSIR <sub>3</sub>	is the average Farm Credit System interest rate for three (3) years ago.
FCSIR <sub>2</sub>	is the average Farm Credit System interest rate for four (4) years ago.
FCSIR <sub>1</sub>	is the average Farm Credit System interest rate for five (5) years ago.

(3-30-07)

**06. Notification.** In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. (4-6-05)

**07. Cross Reference.** For agricultural land taxable value calculation examples, see Rule 614 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

**614. SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND - EXAMPLES (RULE 614).** Sections 63-602K and 63-604, Idaho Code. The following examples show calculations for the taxable value of agricultural land. The example in Subsection 614.01 of this rule shows one (1) calculation of an average property tax rate, the example in Subsection 614.02 of this rule shows one (1) calculation of a capitalization rate (cap rate), the example in Subsection 614.03 of this rule shows calculations using cash rent agreements, and the example in Subsection 614.04 of this rule shows calculations using crop share agreements. The choice to use cash rent or crop share analysis in determining the taxable value of agricultural land should be predicated on the quantity and quality of data available and the analysis that produces the most reliable and supportable value conclusion. (3-30-07)( )

**01. Average Property Tax Rate Calculation Example.**

	Tax Code Areas	Property Tax Rates
	8	1.1323951%
	9	1.1186222%
	10	1.1226782%
	11	1.1714841%
	12	1.1674300%
	13	1.0692041%

	<b>Tax Code Areas</b>	<b>Property Tax Rates</b>
	15	1.1603100%
	16	1.1323951%
	17	1.1323951%
Average Property Tax Rate		1.1341015%

(3-30-07)

**02. Capitalization Rate Calculation Example.**

Average Property Tax Rate	1.13%
5-Year Average Farm Credit Bank Interest Rate	8.22%
Total Capitalization Rate (Cap Rate)	9.35%

(3-30-07)

**03. Cash Rent Agreement Calculation Example.**

<b>Crops</b>	<b>Contract Rents Per Acre (Land Only)</b>	<b>Rotation In Percent</b>	<b>Weighted Income Per Acre</b>
Barley	\$100.00	14.42%	\$14.42
Beans	\$100.00	22.46%	\$22.46
Beets	\$170.00	20.33%	\$34.56
Corn/Grain	\$100.00	0.00%	\$0.00
Corn/Silage	\$110.00	0.00%	\$0.00
Hay/Alfalfa	\$120.00	21.32%	\$25.58
Potatoes	\$200.00	0.00%	\$0.00
Wheat	\$100.00	21.48%	\$21.48
Peas	\$125.00	0.00%	\$0.00
Oats	\$110.00	0.00%	\$0.00
Total Income Per Acre			\$118.50

Value per acre equals net income per acre divided by Cap rate:

Total Income Per Acre	\$118.50
Less Water Costs	\$23.00
Less Management (@ 5%)	\$5.93
Net Income Per Acre	\$88.57
Cap Rate	9.35%
Value Per Acre	\$958

(3-30-07)( )

**04. Crop Share Agreement Calculation Example:**

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income to Land	Rotation Percent	Per Acre Share of Gross Inc. to Land
Barley	100.00	\$2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46
G/Corn	0.00	\$3.22	\$0.00	33.33%	\$0.00	0.00%	\$0.00
S/Corn	0.00	\$24.40	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31
Potatoes	0.00	\$4.74	\$0.00	25.00%	\$0.00	0.00%	\$0.00
Wheat	98.00	\$3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.17
Peas	0.00	\$8.68	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Oats	0.00	\$1.66	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Total Income Per Acre						100.00%	\$167.28

Value per acre equals net income per acre divided by Cap rate:

Total Income Per Acre \$167.28		Expenses
Water	=	\$23.00
Fertilizer	=	\$14.77
Chemicals	=	\$9.04
Seed	=	\$2.05
Management	=	\$8.36
Harvest	=	\$14.67
Total Expense Per Acre	=	\$71.89
Net Income	=	\$95.39
Cap Rate	=	9.35%
Value Per Acre	=	\$1,020

(3-30-07)( )

**05. Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules.

(3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

**01. Definitions.** (4-5-00)

**a.** “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a secondary category change and in ~~an increase~~ change in taxable land value to be reflected on the current property roll. (~~3-30-07~~)(    )

~~i. This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (3-30-07)~~

~~ii. The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (3-30-07)~~

~~iii. When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (3-30-07)~~

**b.** “Incremental Value as of December 31, 2006.” “Incremental value as of December 31, 2006” means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll ~~in~~ for the 2006 tax year. (~~4-2-08~~)(    )

**c.** “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

**02. New Construction Roll Listing.** “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (    )

**a.** Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit; ~~and the separate listing must show the year or years of the new construction roll that would have been appropriate for this additional new construction.~~ The taxing district has the burden of proving the new construction was omitted from any new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (~~4-2-08~~)(    )

**b.** Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. (    )

c. Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. ( )

**03. Special Provisions for Value Increases and Decreases. Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule.** ( )

a. Value increases. Certain related land value increases are to be included on the new construction roll. ( )

i. Increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll provided, however, that no amount previously included shall be reported again. ( )

ii. The increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. ( )

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. ( )

i. Value decreases are to be reported only for land for which taxable market value had previously been added to any new construction roll. ( )

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). ( )

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). ( )

iv. Value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. ( )

v. Only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. ( )

**034. Manufactured Housing. “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county.** (7-1-97)

**045. Partial New Construction Values. Except as provided in Subsection 802.056 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.056 of this rule, any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s**

or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.056 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2004. The improvement was occupied February 2, 2004. Assume the ten thousand dollar (\$10,000) value was on the 2004 new construction roll. Assume that in 2005 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2005 new construction roll is calculated as follows:

2005 Value	\$90,000
2004 Value Already Reported on New Construction Roll	<\$10,000>
2005 New Construction Roll Value (this improvement)	\$80,000

(4-2-08)( )

**056. Change in Status.**

(4-2-08)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted.

(5-8-09)( )

**b.** Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an ~~revenue allocation area~~ RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the "incremental value as of December 31, 2006," shall be added to the appropriate year's new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year's new construction roll.

(4-2-08)( )

**c.** When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006."

( )

**i.** Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value.

( )

**ii.** Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area.

( )

**iii.** Step 3. Add any positive difference calculated in Step 2 to the current year's new construction roll value.

( )

**iv.** Step 4. Adjust the "incremental value as of December 31, 2006" for the RAA by subtracting the increment value determined in Step 1.

( )

**v.** The following table shows the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006" applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

<u>Steps (as designated in Paragraph 802.06.c.)</u>	<u>Area</u>	<u>Value</u>
	December 31, 2006, increment value of the original RAA	\$10,000,000

<u>Steps (as designated in Paragraph 802.06.c.)</u>	<u>Area</u>	<u>Value</u>
<u>Step 1</u>	<u>December 31, 2006, increment value of the de-annexed area</u>	<u>\$1,000,000</u>
	<u>December 31, 2009, increment value of the de-annexed area</u>	<u>\$3,000,000</u>
<u>Steps 2 and 3</u>	<u>Amount related to the de-annexed area to be added to the 2010 new construction roll</u>	<u>\$2,000,000</u>
<u>Step 4</u>	<u>Adjustment amount to be deducted from the original RAA's "incremental value as of December 31, 2006"</u>	<u>&lt;\$1,000,000&gt;</u>
	<u>Adjusted "incremental value as of December 31, 2006" for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)</u>	<u>\$9,000,000</u>

( )

**067. Limitation on Annexation and New Construction Roll Value.** For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

**078. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**961. HOMESITE ASSESSMENT AND FORESTLANDS OF LESS THAN FIVE ACRES AND CONTIGUOUS PARCELS (RULE 961).**

Sections 63-1702 and 63-1703, Idaho Code.

( )

**01. Definitions.** The following definitions apply to the valuation of residential parcels that are contiguous to lands classified as forestlands.

( )

**a. Homesite.** The "homesite" is that portion of land, contiguous with but not qualifying as forestlands, and the associated site improvements used for residential purposes.

( )

**b. Associated Site Improvements.** The "associated site improvements" include developed access, grading, sanitary facilities, water systems, and utilities.

( )

**02. Homesite Assessment.** Each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year.

( )

**a. Accepted Assessment Procedures.** Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states.

( )

**b. Appropriate Market and Comparable Selection.** The appropriate market is the market most similar to the homesite and improvements located on the homesite. In applying the sales comparison approach, the appraiser

should select comparables having actual or potential residential use. ( )

**c.** The value and classification of the homesite will be independent of the classification and valuation of the remaining land. ( )

**d.** Assigning secondary category. List and report the secondary category for the homesite using the chart in Paragraph 961.02.d. of this rule.

<u>Description of Land</u>	<u>Secondary Category</u>
Rural and Nonsubdivided	10
Rural and Subdivided	15
Urban	20

( )

**03. Forestlands of Less Than Five Acres and Contiguous Parcels.** A parcel of forestland that is less than five (5) acres is not eligible for valuation and taxation as forestland unless the land is contiguous with one (1) or more other parcels of forestland under the same ownership and the contiguous parcels together constitute five (5) acres or more of forestland as defined in Section 63-1701, Idaho Code. The five (5) acre minimum requirement must exclude any homesite. In the following examples each parcel of land is forestland as defined in Section 63-1701, Idaho Code, unless otherwise stated in the example. (4-6-05)( )

**01a.** Example 1. A landowner owns a fifteen (15) acre parcel which contains four (4) acres of forestland, nine (9) acres of irrigated row crop, and two (2) acres of homesite. The four (4) acres of forestland is not eligible for valuation and taxation as forestland. (4-6-05)

**02b.** Example 2. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland, that are not contiguous either to one another or to the five hundred (500) acre parcel. The five hundred (500) acre parcel is eligible for valuation and taxation as forestland. The six (6) one (1) acre parcels, are not eligible for valuation and taxation as forestland. (4-6-05)

**03c.** Example 3. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland that are contiguous to the five hundred (500) acre parcel but may or may not be contiguous to one another. The entire five hundred and six (506) acres are eligible for valuation and taxation as forestland. (4-6-05)

**04d.** Example 4. A landowner owns six (6) noncontiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are not eligible for valuation and taxation as forestland. (4-6-05)

**05e.** Example 5. A landowner owns six (6) contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are eligible for valuation and taxation as forestland. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).**  
Section 63-3029B, Idaho Code. (4-6-05)

**01. In General.** If a taxpayer has elected the property tax exemption (also known as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property

tax benefit shall be subject to recapture. (3-29-10)

**02. Notification by Taxpayer That Property Ceases to Qualify.** If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the due date of that taxpayer's income tax return, irrespective of any income tax extensions of the income tax payment, for the income taxable year in which such event occurs. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: (3-29-10)

- a. A description of the item that ceases to qualify, (4-6-05)
- b. The county where the item was located, (4-6-05)
- c. The date the item was placed in service, (4-6-05)
- d. The date the item was no longer qualified for the QIE, (4-6-05)
- e. The amount of value exempted from property tax each year, and (4-6-05)
- f. The amount of the property tax benefit recapture. (4-6-05)

**03. Notification in Case of Failure by Taxpayer to File Form 49ER.** If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

**04. Protest of Recapture.** If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

**05. Property Tax Benefit Subject to Recapture.** For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than one (1) year	100%
Equal to one (1) year but less than two (2) years	80%
Equal to two (2) years but less than three (3) years	60%
Equal to three (3) years but less than four (4) years	40%
Equal to four (4) years but less than five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. (3-30-07)

**06. County Average Property Tax Levy -- Locally Assessed Property Located in One (1) County**

**or Nonapportioned Centrally Assessed Property.** For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

**a.** Property Tax Budget Summation - General. Except as provided in Paragraph 989.06.b. of this rule, ~~F~~for each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)( )

**b.** Property Tax Budget Summation - Special Rules for Counties with Urban Renewal Revenue Allocation Areas. This provision is applicable when taxing districts in the county have funds with levies calculated including all or part of an urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code. ( )

**i.** For any such fund, the prorated portion is determined by multiplying the levy of the fund by the taxable value within the county, including the increment value, used to determine the levy for that fund. ( )

**ii.** For any such fund for which the entire increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ( )

**iii.** For any such fund for which part of the increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ( )

**iv.** Provided that some taxing district funds within the county are subject to the levy calculation procedures identified in Subparagraphs 989.06.b.ii. and/or iii. of this rule, for all funds other than those identified in this rule, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ( )

**bc.** Average Property Tax Levy. ( )

**i.** For counties without urban renewal revenue allocation areas, ~~T~~he average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a. of this rule, by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)( )

**ii.** For counties with urban renewal revenue allocation areas and funds with levies calculated including all or part of urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code, the average property tax levy shall be computed by summing the quotients determined by dividing the sums determined in Subparagraphs 989.06.b.ii., iii., and iv., by the taxable value of the county including the entire increment value, part of the increment value, or none of the increment value, depending on whether all, part, or none of the increment value has been used to determine the levy. ( )

**ed.** Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

**07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property.** For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

**08. Noticing Remittance for the Recapture of the Property Tax Benefit.** When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

- a.** Owner. Name of the owner receiving the QIE; (4-6-05)
- b.** Property Description. A description of the property that received the QIE; (4-6-05)
- c.** First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)
- d.** Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)
- e.** Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)
- f.** Amount Remitted. The amount of money remitted for any item. (4-6-05)

**09. No Allocation of Remittances to Urban Renewal Agencies.** Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)

**10. Penalty and Interest.** Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)

**11. Cross Reference.** For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)

## IDAPA 35 - STATE TAX COMMISSION

### 35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1001

#### 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 20, 2010.

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:

New Rule 153 is being promulgated to adopt the Internal Revenue Service alternative methods allowed to tax preparers for signing income tax returns.

Rule 155 is being amended to address the methods allowed for filing motor fuels tax returns electronically and the risks of disclosure when filing returns electronically.

Rule 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2011 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: None.

**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.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**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 27, 2009.

DATED this 25th day of August, 2010.

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 PROPOSED TEXT FOR DOCKET NO. 35-0201-1001

151. -- 1542. (RESERVED).

**153. TAX PREPARERS -- ALTERNATIVE METHODS OF SIGNING INCOME TAX RETURNS (RULE 153).**

A tax preparer, as defined in Section 48-603B, Idaho Code, may sign an Idaho income tax return in a manner allowed by Internal Revenue Service Notice 2004-54. This includes signing the return by means of a rubber stamp, mechanical device, or computer software program. The requirements for using the alternative methods under Internal Revenue Service Notice 2004-54 must be followed for Idaho income tax purposes if this method of signing a return is used for the Idaho return. Use of the alternative signature for the tax preparer does not alter the requirement for the taxpayer or authorized officer or representative to sign the return as provided in Rule 150 of these rules or to follow the requirements of Section 48-603B, Idaho Code. ( )

**154. (RESERVED).**

**155. TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY (RULE 155).**  
Sections 63-115, 63-3039, and 9-328, Idaho Code. (4-2-08)

**01. Tax Returns Filed Electronically.** Pursuant to Section 63-115, Idaho Code, a taxpayer may file a tax return with the Tax Commission electronically only when the Tax Commission has established and implemented procedures permitting electronic filing of a specific tax return. A return may only be filed electronically by using the procedures and formats established by the Tax Commission for the particular return. (7-1-99)

**02. Signatures.** See Rule 150 of these rules. (7-1-99)

**03. Acknowledgment of Data Transmissions.** Persons filing returns by electronic data stream may be sent an acknowledgment of receipt of a successfully transmitted return. An acknowledgment means only that the Tax Commission received the return. An acknowledgment is not a finding by the Tax Commission about the correctness of the return. If any transmission is received in an unintelligible, unreadable, or ~~garbled~~ corrupted form and the Tax Commission cannot identify the taxpayer, no acknowledgment will be sent. (7-1-99)( )

**04. Methods Allowed for Filing Motor Fuels Tax Returns Electronically.** The following methods are acceptable methods for filing motor fuels tax returns electronically. ( )

**a.** Secured methods. Encrypted e-mail secured through public or private key encrypting. ( )

**b.** Unsecured methods. Nonencrypted e-mail. ( )

**05. Risks of Disclosure.** By filing a return electronically, the taxpayer agrees to the risks of disclosure in submitting information electronically. A taxpayer or third party may not hold the Tax Commission responsible for any loss, liability, damage, whether direct, indirect or consequential, personal injury, or expenses of any nature whatsoever that may be suffered by the taxpayer or any third party as a result of or which may be attributable, directly or indirectly, from transmitting the taxpayer's information to the Tax Commission. ( )

(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.**

<b>PERIOD</b>	<b>RATE OF INTEREST</b>	<b>INTERNAL REVENUE SERVICE REVENUE RULING</b>
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
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20

(3-29-10)( )