

Dear Senators STEGNER, Siddoway, Werk, and
Representatives LAKE, Collins, Killen:

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

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No.
35-0101-1102);

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No.
35-0102-1101);

IDAPA 35.01.07 - Rules Pertaining To The Kilowatt Hour Tax Administrative Rules (Docket No.
35-0107-1101);

IDAPA 35.01.08 - Rules Pertaining To The Mine License Tax Administrative Rules (Docket No.
35-0108-1101);

IDAPA 35.02.01 - Rules Pertaining To The Tax Commission Administration & Enforcement
Rules (Docket No. 35-0201-1101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/12/2011. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/09/2011.

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 enclosed.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee

FROM: Division Manager - Mike Nugent

DATE: September 22, 2011

SUBJECT: State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No. 35-0101-1102)

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No. 35-0102-1101)

IDAPA 35.01.07 - Rules Pertaining To The Kilowatt Hour Tax Administrative Rules (Docket No. 35-0107-1101)

IDAPA 35.01.08 - Rules Pertaining To The Mine License Tax Administrative Rules (Docket No. 35-0108-1101)

IDAPA 35.02.01 - Rules Pertaining To The Tax Commission Administration & Enforcement Rules (Docket No. 35-0201-1101)

Income Tax Rules These proposed rules implement the provisions of HB8, HB102, HB297 and SB1079 as well as HB630 of 2010, changes to the Servicemembers Civil Relief Act and the court case of *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134.

HB8 amended the State Income Tax Law to not allow a nonresident with additional income with a pass-through entity to forego withholding, to change the timing of withholding from the actual distribution of income to the time when the income is required to be reported on the taxpayer's individual return, to provide that publicly-traded partnerships are not required to withhold income tax if conditions are met, and to clarify the computation of reportable income from the sale of a publicly traded partnership.

HB102 was the annual Internal Revenue Code conformance bill and updated references to the Internal Revenue Code and to revise how the adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed as a result of two 2010 Congressional enactments.

HB297 revised the income tax credit for new employees, with a three-year sunset date.

SB1079 extended the time for which active duty military personnel may receive a state refund due them, essentially extending the statute of limitations for eligible veterans for the receipt of monies due them.

HB630 passed the Legislature in 2010, not 2011, as indicated in the notice of intended agency action, and it increases the existing income tax credit for donations to the following organizations located within the state of Idaho to help them cope with recent budget reductions: public and nonprofit private K12 schools and

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universities in Idaho, Idaho Public Broadcasting, Idaho State Historical Society, Idaho libraries and museums. The bill also temporarily added the following to the list of eligible donees: Idaho Commission of Hispanic Affairs, Idaho Commission for the Blind and Visually Impaired, Idaho Council on Developmental Disabilities, Idaho State Independent Living Council, Idaho Council for the Deaf and Hard of Hearing. For individual taxpayers, the tax credit remains equal to 50% of the contribution, but would be limited to 50% (rather than 20%) of the taxpayer's total Idaho income tax liability. The maximum annual amount of the credit is increased from \$100 (\$200 on a jointly filed return) to \$500 (\$1,000 on a jointly filed return). For corporate taxpayers, the tax credit remains equal to 50% of the contribution and limited to 10% of the corporation's total Idaho income tax liability. The maximum annual credit is increased from \$1,000 to \$5,000. All provisions enacted by this legislation will sunset in five years after enactment.

The proposed rule change to implement the Confederated Tribes of the Colville Indian Reservation case provided that income earned by an enrolled member living on a reservation working off the reservation is subject to tax only if the income is earned in Idaho.

Sales Tax Rules. The State Tax Commission is proposing to promulgate administrative rules to implement the provisions of HB213, HB214 and SB1052 in 2011.

HB213 clarified that for sales tax purposes, sales price shall not include a gratuity or tip when serving meals and, therefore, is not taxed, making consistent that services are exempt from sales tax.

HB214 provided the use tax shall not apply to any use of a motor vehicle which is registered or licensed under the laws of the state of residence of a nonresident student while such nonresident student is enrolled as a full-time student in an institution of post-secondary education that is both physically located in Idaho and recognized as accredited by the State Board of Education.

SB1052 provided an exemption from the use tax for military personnel temporarily assigned in this state and spouses who accompany them.

Kilowatt Hour Tax. This proposed rule allows producers of electricity whose previous year's annual tax liability was equal to or less than fifteen thousand dollars to file a quarterly return, at the discretion of the tax commission, no later than the last day of the month following the end of the calendar quarter to which the return relates. The proposed rule provides when a filing cycle is changed, the change will take effect on January 1 of the following year.

Mine License Tax Rules. This proposed rule would define "valuable mineral" for mine license tax purposes to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone but also any other substance not gaseous or liquid in its natural state which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to Section 613 of the Internal Revenue Code. This includes, but is not limited to, calcium carbonates, garnet, granite, pumice, quartzite, scoria, shale, slate and stone (including dimension and ornamental stone). Sand and gravel are not included in the definition.

Administration and Enforcement Rules. This proposed rule implements HB680 of 2010 and not 2011 as indicated by the State Tax Commission which transferred the administration of the Unclaimed Property Division from the State Tax Commission to the Office of State Treasurer.

All five sets of proposed rules appear to be within the statutory authority granted to the State Tax Commission. One point we would caution both the State Tax Commission and the Office of the Rules Coordinator is that both need to do a better job of making sure legislation that is being implemented is referred to in the proper year. There were two typographical errors in the Notice of Intended Rulemaking as to when the enabling legislation passed. This may seem like a nit-picky thing, but if either of those rules were to end up before a

court, a court could have a convenient reason to invalidate the rule because the public was misled by the wrong date or dates.

cc: State Tax Commission
Cynthia Adrian & McLean Russell

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1102

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 19, 2011.

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 001 is being amended to add the reference to Idaho Code section 63-3039 and subsections 001.03 through 001.05, which address the effective date, closed years or issues, and transactions before an effective date of the rules in this chapter.

Rule 030 is being amended to include the reference to Rule 032 with regard to the safe harbor exception and military servicemembers and their spouses.

Rule 032 is being amended to conform to changes to the Servicemembers Civil Relief Act (Act). The Act now changes the Idaho terminology to match the federal terminology used.

Rule 033 is being amended so the exemption for income earned on an Indian reservation matches the federal law as determined in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134. Subsection 02 is being corrected so that income earned by an enrolled member living on a reservation working off the reservation is subject to tax only if the income is earned in Idaho. Information is added to clarify other issues not currently addressed such as how filing requirements are determined.

Rule 075 is being amended to add the tax brackets for calendar year 2011, and remove the information for calendar year 2006 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.

Rules 105, 120, 125, 253 & 254 are being amended consistent with House Bill 102, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3022O to end the conformity to bonus depreciation for property placed in service after 2009. Rules 105, 120, 125, 253 & 254 are modified to indicate the additional years to which the bonus depreciation adjustments apply.

Rule 121 is being amended to remove information related to the standard deduction for tax year 1999.

Rule 171 is being amended to clarify that real property must be held 12 months to qualify as required by the statute. The amendment also addresses the difference in computing the holding period of property received in liquidating versus nonliquidating distributions from partnerships and S corporations.

Rule 250 is being amended to address when interest and dividend income is received by a part-year resident.

Rule 263 is being amended to specifically address the sourcing of guaranteed payments and distributions in excess of basis that a nonresident individual partner would report to Idaho.

Rule 266 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3022L to change when a nonresident is ineligible to make the election to have a

pass-through entity pay his tax on such income. It also modified section 63-3026A to change what a nonresident who sells an interest in a publicly traded partnership must report as Idaho source income. Rule 266 is modified since it addresses the gains or losses from the sale of a partnership interest.

Rule 267 is being promulgated to address the amount of a suspended passive activity loss a part-year resident is allowed to deduct on their Idaho return, which would be based on the proportion of the year the individual resided in Idaho.

Rule 270 is being amended to provide more information on what constitutes an Idaho work day.

Rule 275 is being amended to provide clarification as to what does and doesn't qualify as investment income for nonresidents.

Rule 290 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended the Idaho Code section 63-3022L to change when a nonresident is ineligible to make the election to have a pass-through entity pay his tax on such income. It also modified section 63-3026A to change what a nonresident who sells an interest in a publicly traded partnership must report as Idaho source income. Rule 290 is modified to conform to changes to Idaho Code section 63-3022L since it lists who can make the election.

Rule 570 is being amended to address how the receipts from the sale of stock in another corporation will be sourced for purposes of the sales factor numerator when it represents the sale of operational assets of a business.

Rule 582 is being amended to eliminate the "presumption" language included in the rule and state unequivocally that the entities listed are financial institutions, consistent with the definition in other states and the recommended definition by the Multistate Tax Commission.

Rule 705 is being amended consistent with House Bill 630, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3029A to limit the qualifying contributions to monetary donations. Rule 705 is modified to correct the types of contributions that qualify for the credit consistent with the law change.

Rule 711 is being amended to address how the investment tax credit may be shared in the year a corporation with ITC is acquired.

Rules 712 & 713 are being repealed because the maximum carryover period on the years covered in these rules has expired.

Rules 745-748 are being amended consistent with House Bill 297, which was passed by the 2011 Idaho Legislature. The bill repealed Idaho Code section 63-3029E and amended Idaho Code section 63-3029F to revise the income tax credit allowed for qualifying new employees. Rules 745-748 are modified to indicate the applicable years for earning the previous credit and using the carryover.

Rules 755-759 are being promulgated consistent with House Bill 297, which was passed by the 2011 Idaho Legislature. The bill repealed Idaho Code section 63-3029E and amended Idaho Code section 63-3029F to revise the income tax credit allowed for qualifying new employees. Rules 755-759 are being promulgated to clarify new provisions of the law.

Rules 761 & 762 are being repealed because the statute of limitations has expired on the tax years covered in these rules.

Rule 771 is being amended to add tax year 2011 and the applicable grocery credit amounts to the table.

Rule 815 is being amended consistent with S1079, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3033 to provide an individual serving in the Armed Forces or in support of the Armed Forces serving in a combat zone or contingency operation with an extension of time to pay tax without interest if an extension of time to file was allowed under Internal Revenue Code section 7508. Rule 815 is modified since it addresses the accrual of interest with extensions.

Rule 877 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3036B to modify the base on which backup withholding is computed from actual distributions to distributive or pro rata income. Rule 877 is modified to conform to the statutory changes and change the due date for filing the backup withholding from January 31 to April 15.

Rule 880 is being amended consistent with S1079, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3072 to provide individuals who receive an extension of time to file a tax return with additional time to receive a refund of withholding. Rule 880 is modified since it addresses the limitations on refunds of withholding and estimated payments.

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

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

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

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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 OF DOCKET NO. 35-0101-1102

001. TITLE AND SCOPE (RULE 001).

Section 63-3039, Idaho Code.

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01. Title. These rules shall be cited as IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.01, "Income Tax Administrative Rules."

()

02. Scope. ~~They shall~~ These rules will be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence.

~~(3-20-97)~~()

03. Effective Date. To the extent allowed by statute, rules in this chapter will be applied on their

effective date to all taxable years open for determining tax liability. ()

04. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. ()

05. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. ()

(BREAK IN CONTINUITY OF SECTIONS)

030. RESIDENT (RULE 030).

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

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

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

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

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

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

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

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

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

d. The safe harbor exception to being a resident of Idaho does not apply to a servicemember or a servicemember's spouse domiciled in Idaho if the Servicemembers Civil Relief Act applies to the individual. ()

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

(BREAK IN CONTINUITY OF SECTIONS)

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

01. 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. (4-7-11)

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: (4-7-11)

a. 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)

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

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

03. Idaho Residency Status. (4-7-11)

a. A servicemember ~~is not a~~ does not become an Idaho resident of or domiciled for income tax purposes by reason of being present in Idaho solely as a result of being stationed in Idaho compliance with military orders. (4-7-11)()

b. ~~The safe harbor exception to being a resident of Idaho set forth in Section 63-3013(2), Idaho Code, does not apply to a~~ A servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely in compliance with military orders. The safe harbor exception to being a resident as provided in Section 63-3013(2), Idaho Code, does not apply to a servicemember covered by the federal law. (4-7-11)()

c. ~~A If a servicemember is an Idaho resident only if he is domiciled in present in or absent from Idaho for the entire taxable year. The domicile of a servicemember is presumed to be that member's military home of record until the servicemember establishes a new domicile~~ reasons other than compliance with military orders, the standard analysis of residency under Sections 63-3013, 63-3013A, and 63-3014, Idaho Code, applies. (4-7-11)()

~~**d.** A servicemember who is domiciled in Idaho for less than the entire taxable year is a part year resident.~~ (4-7-11)

~~**e.** A servicemember who is not domiciled in Idaho anytime during the taxable year is a nonresident.~~ (4-7-11)

~~**f.** See Subsection 032.057 of this rule for information relating to a spouse of a servicemember.~~ (4-7-11)()

04. Military Service Compensation. (4-7-11)

a. Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the military service compensation of a servicemember who is not domiciled in Idaho is not considered income from Idaho sources. (4-7-11)

b. The military 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 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. (4-7-11)

05. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered military service compensation. Therefore, Subsection 032.04 of this rule does not apply. (4-7-11)

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)

06. Nonmilitary Income. All Idaho source income earned by a servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (4-7-11)

07. Spouses of Servicemembers. 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:~~ (4-7-11)(____)

a. ~~The Idaho residency status of the~~ If a spouse will not change as a result of residing in another state solely to be with the of a servicemember has the same domicile or state of residency for tax purposes as the servicemember, the spouse of the servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely to be with the servicemember who is stationed in Idaho. (4-7-11)(____)

b. ~~If the~~ a spouse is domiciled in of a servicemember and the servicemember are both Idaho, ~~all the spouse's~~ residents for income is subject to tax by tax purposes, the spouse of the servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely to be with the servicemember who is stationed outside of Idaho. (4-7-11)(____)

c. ~~If the spouse is not domiciled in~~ a resident of Idaho for income tax purposes because of the reason stated in Paragraph 032.07.a. of this rule, income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. (4-7-11)(____)

033. NATIVE AMERICANS INDIANS (RULE 033).

01. Definitions. For purposes of this rule: (____)

a. Enrolled member means an enrolled member of a federally recognized Indian tribe. (____)

b. Indian reservation means a federally recognized Indian reservation. (____)

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

03. Certain Income Exempt from Idaho Income Taxation. ~~An enrolled member of a federally recognized Indian tribe who lives on a federally recognized~~ the Indian reservation of which he is a member is not subject to ~~taxed~~ by Idaho on income derived within ~~the~~ at reservation. Rules 260 through 275 of these rules generally must be used to determine if income is derived within the reservation. (3-20-97)(____)

a. ~~Income derived outside a federally recognized Indian reservation is not exempt.~~ An enrolled member who lives on his tribe's reservation in Idaho must treat income earned as follows: (3-20-97)(____)

i. Income derived within his tribe's reservation is not taxable by Idaho. (____)

ii. Income derived off his tribe's reservation in Idaho is subject to Idaho tax unless otherwise exempt under Idaho or federal law. ()

iii. Income derived outside Idaho is not subject to Idaho tax. ()

b. An enrolled member who lives in Idaho off his tribe's reservation is subject to Idaho tax on all income earned regardless of whether it was earned on the Indian reservation, off the Indian reservation in Idaho, or outside of Idaho, unless such income is otherwise exempt under Idaho or federal law. ()

c. An enrolled member who lives off the Indian reservation outside of Idaho must treat income earned as follows: ()

i. Income derived within an Indian reservation in Idaho is not subject to tax by Idaho. ()

ii. Income derived off an Indian reservation in Idaho is subject to Idaho tax unless otherwise exempt under Idaho or federal law. ()

iii. Income derived outside Idaho is not subject to tax by Idaho. ()

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

04. Filing Requirements. An enrolled member must determine his Idaho filing requirement based on income earned from sources taxable by Idaho as identified in Subsection 033.03. If the enrolled member is an Idaho resident and the amount of income earned from sources taxable by Idaho meets the federal filing requirements, the individual is required to file an Idaho income tax return. If the enrolled member is a part-year resident or nonresident of Idaho, the member's Idaho filing requirement must be determined based on gross income amounts from income subject to Idaho tax. ()

05. Community Property Laws. ()

a. Income subject to the community property laws retains its character as taxable or tax-exempt by Idaho based on the tribal status, source or situs of performance of the services giving rise to the income, and residence of the individual who earned the income. Income does not become tax-exempt by Idaho solely because an enrolled member is attributed one-half (1/2) of the income earned by his spouse due to community property laws unless such income was tax-exempt to the spouse. ()

b. For example, a married couple lives and works on an Indian reservation. The wife is an enrolled member, the husband is not an enrolled member. The income earned by the husband on the reservation is subject to Idaho tax since he is not an enrolled member. The one-half (1/2) of his income attributed to his wife due to community property laws is also subject to Idaho tax since the income was earned by the husband who was not an enrolled member rather than by the wife who was an enrolled member. Any income earned by the wife on the reservation that is attributed to her husband under the community property laws will retain its character as tax-exempt by Idaho. ()

06. Gambling Winnings. ()

a. Amounts received from gambling on an Indian reservation by an enrolled member who lives on the Indian reservation are not subject to Idaho tax. ()

b. Amounts received from gambling on an Indian reservation by an enrolled member who lives off the Indian reservation in Idaho are subject to Idaho tax. ()

07. Per Capita Distributions. ()

a. Per capita distributions paid by an Indian tribe to an enrolled member who lives on the Indian reservation are tax-exempt by Idaho. ()

b. Per capita distributions paid by an Indian tribe to an enrolled member who resides off the reservation in Idaho are subject to Idaho tax. ()

(BREAK IN CONTINUITY OF SECTIONS)

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

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. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

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 is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

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

~~a.~~ For taxable years beginning in 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.~~

(4-7-11)

*b*_a. For taxable years beginning in 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.

(4-7-11)

*e*_b. For taxable years beginning in 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.

(4-7-11)

*d*_c. For taxable years beginning in 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 |

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | | |
|----------------------------|---------------|------------|------|----------------------------------|
| At least | But less than | Is | Plus | |
| \$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.

(4-7-11)

ed. 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 |
| \$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.

(4-7-11)

e. For taxable years beginning in 2011:

| IF IDAHO TAXABLE INCOME IS | | IDAHO TAX | | |
|----------------------------|---------------|-----------|------|----------------------------------|
| At least | But less than | Is | Plus | |
| \$1 | \$1,338 | \$0 | ± | 1.6% of taxable income |
| \$1,338 | \$2,676 | \$21.41 | ± | 3.6% of the amount over \$1,338 |
| \$2,676 | \$4,014 | \$69.58 | ± | 4.1% of the amount over \$2,676 |
| \$4,014 | \$5,352 | \$124.44 | ± | 5.1% of the amount over \$4,014 |
| \$5,352 | \$6,690 | \$192.68 | ± | 6.1% of the amount over \$5,352 |
| \$6,690 | \$10,035 | \$274.30 | ± | 7.1% of the amount over \$6,690 |
| \$10,035 | \$26,760 | \$511.80 | ± | 7.4% of the amount over \$10,035 |

| | | | |
|---|------------|---|----------------------------------|
| \$26,760 or more | \$1,749.45 | ± | 7.8% of the amount over \$26,760 |
| Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011. | | | |

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(BREAK IN CONTINUITY OF SECTIONS)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. ~~(3-20-97)~~()

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

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

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

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

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

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

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

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

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

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

05. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer ~~shall~~ must add interest expense on indebtedness incurred to purchase or carry certain

obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (7-1-99)(____)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ must be computed without regard to the special first-year depreciation allowance. ~~Add~~ The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes must be added. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (3-20-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. (3-20-97)(____)

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

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

03. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, ~~subtract the amount of~~ income that is exempt from Idaho income taxation; by a law of the state of Idaho or of the United States may be subtracted if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (7-1-99)(____)

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

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

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

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. ~~For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year.~~ See Rule 193 of these rules. (5-8-09)(____)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property ~~acquired before 2008 or after 2009~~ pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 ~~or before 2010.~~
(5-8-09)(_____)

a. Depreciation. ~~Subtract~~ The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (3-20-04)(_____)

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

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

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

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

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

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer ~~shall be~~ is allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction ~~shall be~~ is allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year.
(4-11-06)(_____)

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

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

by Idaho includes the following: (7-1-99)

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

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

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

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

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this proration shall be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000/\$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000/\$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (4-2-08)

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

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

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

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

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

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

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security

equivalent benefits, and the Tier II pension amounts; (4-6-05)

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

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

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

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

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the addition of insulation of an Idaho residence built before 1976. (~~3-20-97~~)(____)

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

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

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

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

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

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

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

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

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

17. Unused Net Operating Losses of Estates and Trusts. An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or

trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. The first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. ()

(BREAK IN CONTINUITY OF SECTIONS)

125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007, OR AFTER DECEMBER 31, 2009 (RULE 125).

Section 63-3022O, Idaho Code.

(4-2-08)

01. In General. *For taxable years beginning on and after January 1, 2001,* Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, ~~shall~~ or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer ~~shall~~ must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 or before 2010. ~~(5-8-09)~~()

02. Depreciation.

(4-2-08)

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

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

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

d. Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the

assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-7-11)

02. Real Property. ~~Idaho~~ ~~Real~~ property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, ~~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: (~~4-7-11~~)()

- a. Easements and rights of way, including agricultural, forest, historic, or open-space easements; (4-7-11)
- b. Grazing permits; (4-7-11)
- c. Leasehold interests; (4-7-11)
- d. Options; (4-7-11)
- e. Water, mineral, hunting and fishing, renewable energy, and land surface rights; (4-7-11)
- f. Conservation easements; (4-7-11)
- g. Scenic easements. (4-7-11)

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. (4-7-11)

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)

05. 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 Subparagraph 171.05.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. (4-7-11)

06. 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_a.** 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)~~

~~**b.** Property Distributed by an S Corporation or Partnership. ()~~

~~i. Liquidating Distributions. For purposes of this rule, the holding period of property received in a~~

distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation. ()

ii. Nonliquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership other than in liquidation of a partnership interest or from an S corporation other than in liquidation of stock includes the time the entity held the property. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).

Sections 63-3026A(1) and (2), Idaho Code. (3-20-97)

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

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

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

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

a. Interest and dividend income received from a source other than from a pass-through entity is considered to be earned or received by a part-year resident ratably during the taxable year. ()

b. If a transaction or activity gives rise to income that ~~must be~~ is reported in a subsequent year when the taxpayer is a part-year resident, the income ~~shall~~ must be treated as received ratably during that subsequent year. ~~This Subsection shall apply 250.04 also applies~~ to income that is not received during the year by the taxpayer, but which must be reported in taxable income. See Subsection 250.05 for the receipt of income from a pass-through entity. (~~3-30-01~~)()

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

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

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

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

the pass-through items are treated as received ratably during the ~~period~~ portion of the taxable year the taxpayer was a shareholder of the S corporation or partner of the partnership. (3-30-01)(____)

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

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

(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. (4-7-11)

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

a. Part-Year Residents. 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, interest received from obligations of the state of Idaho or any political subdivision of Idaho is exempt from Idaho income tax and is not added. (4-7-11)

b. Nonresidents. 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. (4-7-11)

02. Net Operating Loss Deduction. The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (4-7-11)

03. Capital Loss. 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. (4-7-11)

04. Lump Sum Distributions. Part-year residents must add the taxable amount of a lump sum distribution deducted 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. (4-7-11)

05. Idaho Medical Savings Account. An account holder must add the amount of any nonqualified withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. (4-7-11)

06. Idaho College Savings Program. (4-7-11)

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. (4-7-11)

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. (4-7-11)

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 acquired before 2008 or after 2009 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 or before 2010. (4-7-11)(____)

08. Certain Expenses of Eligible Educators. The amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. (4-7-11)

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. (3-20-07)(____)

01. Idaho Net Operating Loss—Carryover. ~~Subtract the~~ An Idaho net operating loss carryover deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules, may be subtracted to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (5-3-03)(____)

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

03. Income Not Taxable by Idaho. ~~Subtract~~ As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States, may be subtracted if that income is included in Idaho total income and has not been previously subtracted. Income ~~not taxable~~ exempt from taxation by Idaho includes the following: (3-15-02)(____)

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

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

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

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

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

(3-15-02)(____)

05. Social Security and Railroad Retirement Benefits. ~~Subtract~~ social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, may be subtracted to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules.

(3-15-02)(____)

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

(3-20-97)(____)

07. Insulation and Alternative Energy Device Expenses. ~~Subtract~~ Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted.

(3-20-97)(____)

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

(3-20-97)(____)

09. Adoption Expenses. ~~Subtract~~ The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage is calculated by dividing Idaho total income by total income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage.

(3-15-02)(____)

10. Capital Gains Deduction. ~~Subtract~~ The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted.

(3-20-97)(____)

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

a. ~~Subtract~~ The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted.

(7-1-98)(____)

b. ~~Subtract~~ Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income.

(3-15-02)(____)

12. Technological Equipment Donation. ~~Subtract donations~~ As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the fair market value of technological equipment ~~allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules~~ donated to qualifying institutions may be subtracted.

(3-20-97)(____)

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

(3-30-01)

14. Idaho College Savings Program. ~~Subtract~~ The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted.

(3-15-02)(____)

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

~~Multiply~~ The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, ~~is multiplied~~ by the percentage. ~~(3-30-01)~~(____)

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

17. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, ~~calculate~~ a percentage ~~is calculated~~ by dividing Idaho total income by total income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022Q, Idaho Code, ~~is multiplied~~ by the percentage. See Rule 193 of these rules. ~~(5-8-09)~~(____)

18. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property ~~acquired before 2008 or after 2009~~ pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 ~~or before 2010~~. ~~(5-8-09)~~(____)

a. Depreciation. ~~Subtract~~ The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes ~~may be subtracted~~. ~~(3-20-04)~~(____)

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

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

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

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

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

subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code. (3-20-97)

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

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

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

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments. The amount of guaranteed payments received by a partner that is from Idaho sources is determined by multiplying the taxable amount of guaranteed payments pursuant to Section 707, Internal Revenue Code, by the Idaho apportionment factor of the partnership. No effect is given to a provision in the partnership agreement that characterizes payments to a partner as being for services or for the use of capital. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ()

05. Distributions. ()

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. ()

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is

determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. ()

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

266. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME FROM INTANGIBLE PROPERTY (RULE 266).
Section 63-3026A(3), Idaho Code. (7-1-99)

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. (4-11-06)

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

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

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

d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. However, a gain or loss from the sale of an interest in a publicly traded partnership transacting business in Idaho is Idaho source income to the extent of the gain or loss determined under Section 751, Internal Revenue Code, multiplied by the Idaho apportionment factor of the partnership for the year in which the sale occurred. (~~4-11-06~~)()

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

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

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

03. Payment of Penalties. Payment of penalties ~~shall be~~ is sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalties ~~paid shall be~~ is Idaho source income. (~~5-8-09~~)()

04. Covenant Not to Compete. Income from a covenant not to compete is sourced to ~~the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a. of this rule~~ Idaho based on the Idaho apportionment factor of the entity sold for the taxable year immediately preceding the year of the sale. (~~4-11-06~~)()

05. Goodwill. Gain or loss from the sale of goodwill from a business transacting business in Idaho is sourced to Idaho based on the Idaho apportionment factor of the business sold for the taxable year immediately preceding the year of the sale. ()

056. Timing of Sourcing Determination for Intangible Personal Property. The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments ~~shall be~~ is Idaho source income. (5-8-09)()

267.--269. (RESERVED) IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PASSIVE ACTIVITY LOSSES (RULE 267).
Section 63-3026A(6), Idaho Code. ()

01. In General. Losses from a passive activity incurred while an individual is a nonresident are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

02. Idaho Activity. An activity is an Idaho activity only to the extent the income from that activity would be included in the Idaho taxable income of a nonresident pursuant to Section 63-3026A, Idaho Code. If a passive activity is engaged in both within and without Idaho, the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules must be applied to determine the extent of Idaho activity. ()

03. Prior Year Losses. Suspended passive activity losses from prior years included in federal taxable income for the current year are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

04. Current Year Losses. Non-Idaho passive activity losses incurred in the current taxable year are included in Idaho taxable income only to the extent the losses were incurred while the individual was an Idaho resident. The portion of the losses incurred while an Idaho resident is determined by prorating the losses based on the proportion of the year the individual resided in Idaho. ()

268. -- 269. (RESERVED)

270. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- IDAHO COMPENSATION -- IN GENERAL (RULE 270).
Section 63-3026A(3). (4-5-00)

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

02. Definitions. (3-20-97)

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

b. The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation. (3-20-97)()

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

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

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code. (4-11-06)

01. **In General.** (4-11-06)

a. For taxable years beginning on or after January 1, 2007, ~~an Idaho~~ the Idaho taxable income of a nonresident individual ~~will not be taxed on~~ does not include the distributive share of investment income from of a qualified investment partnership. The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. (4-2-08)(____)

b. The exemption from tax on investment income from a qualified investment partnership ~~shall~~ does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is ~~to be~~ governed by Section 63-3026A(3)(a)(vii), Idaho Code, and ~~as discussed in~~ Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership ~~shall be~~ is determined as provided in Rule 263 of these rules. (4-2-08)(____)

02. **Qualified Investment Partnership.** An entity ~~shall be~~ is a qualified investment partnership only if it meets both of the following criteria: (4-2-08)(____)

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. (4-2-08)

b. The gross income from investments of the entity ~~must be~~ is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. (~~4-2-08~~)()

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly. ()

04. Examples. ()

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars (\$90,000) of dividend income and ten thousand dollars (\$10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. ()

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars (\$10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. ()

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of eighty thousand dollars (\$80,000) of dividend income and twenty thousand dollars (\$20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

290. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, 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, owner, or beneficiary. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-7-11)

b. The election is not available to: (4-7-11)

i. Corporations; (4-7-11)

- ii. Partnerships; (4-7-11)
- iii. Electing small business trusts; (4-7-11)
- iv. Any other person who is not an individual; ~~or~~ (~~4-7-11~~)(____)
- v. A nonresident individual owner or beneficiary who has Idaho taxable income in addition to income for which the individual has made the election under Section 63-3022L, Idaho Code. If a nonresident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. (____)
- v. Idaho resident individuals; ~~or~~ (~~4-7-11~~)(____)
- vii. An Idaho part-year resident individual who has Idaho taxable income in addition to income from a pass-through entity. If a part-year resident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. (____)

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. (4-7-11)

- a. The election must be made for each taxable year to which it will apply. (4-7-11)
- 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. (4-7-11)
- c. The election must be provided to the pass-through entity by January 31 following the end of the taxable year for which it is to apply. (~~4-7-11~~)(____)
- d. Once the election is made, it is irrevocable for that taxable year. (~~4-7-11~~)(____)

03. Failure to Make Election. If the individual fails to make the election to have the pass-through entity pay the tax, the pass-through entity must remit ~~the tax withheld~~ back-up withholding on any cash distributions paid to the individual the individual's share of the pass-through entity's income, including guaranteed payments, and wages, salary, and other compensation paid by the pass-through entity that is required to be included on the owner's Idaho return as required in Section 63-3036B, Idaho Code, and Rule 877 of these rules. (~~4-7-11~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES: SALES FACTOR (RULE 570). Section 63-3027(s), Idaho Code. (3-20-97)

~~**01. De Minimis Gross Receipts.** Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho.~~ (3-20-97)

021. Gross Receipts from Intangibles. (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the gross receipts ~~shall be~~ are included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. (~~4-11-06~~)(____)

b. Notwithstanding Rule 550 of these rules, gross receipts from the sale of an ownership interest in another entity are included in the sales factor numerator based on the proportion of the entity's operational assets located in Idaho. The amount included is determined by multiplying the gross receipts received by the percentage of the entity's total real and tangible personal property located in Idaho at the time of the sale. (____)

b.c. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the gross receipts ~~shall be~~ are excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest ~~shall be~~ are excluded from the denominator and numerator of the sales factor. (4-11-06)(____)

ed. ~~Subsection 570.02 of~~ This rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. (4-11-06)(____)

032. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses ~~shall be~~ are treated as provided in Subsection 570.032 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.032 of this rule, each treasury function ~~shall be~~ is considered separately. (4-11-06)(____)

a. For purposes of Subsection 570.032 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer and has a substantial business relationship with the taxpayer is not considered marketable stock. (4-11-06)(____)

b. For purposes of Subsection 570.032 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-11-06)(____)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.032 of this rule does not operate to classify those sales as attributable to a treasury function. (4-11-06)(____)

043. Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property.

Notwithstanding the provisions of Rule 550 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property ~~shall be~~ are sourced to the state where the real property is located. ~~(3-29-10)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

582. SPECIAL RULES: FINANCIAL INSTITUTIONS (RULE 582).

Section 63-3027(s), Idaho Code.

(7-1-98)

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted in Subsection 006.02 of these rules. A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. (5-3-03)

02. Definition of Financial Institution. ~~For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" the term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply:~~ (7-1-98)

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

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

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

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

~~**03. Entities Presumed to Be Financial Institutions.** The following entities are presumed to be financial institutions as defined in Subsection 582.02 "Financial institution" means:~~ (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. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired; ()

h. Any corporation ~~whose voting stock or other business entity that~~ is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in ~~Subsections Paragraphs 582.032.a. through 582.032.fg. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and~~ (7-1-98)()

i. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease ~~shall~~ 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 shall~~ This 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)()

j. Any corporation or business entity that derives more than fifty percent (50%) of its gross income from activities that a person described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. of this rule is authorized to transact. For purposes of this subsection, the computation of gross income does not include income from non-recurring, extraordinary items. ()

043. Exclusion from ~~Rule Paragraph 582.02.j.~~ The Tax Commission is authorized to exclude any person from the application of ~~Subsection Paragraph 582.042.j.~~ 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 582.032.a. through 582.032.fg. and 582.032.hj.~~ (7-1-98)()

054. 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)

065. 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~~ are 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)()

(BREAK IN CONTINUITY OF SECTIONS)

705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS FOR TAXABLE YEARS BEGINNING AFTER 2010 (RULE 705).

Section 63-3029A, Idaho Code.

(3-20-97)

01. Qualified Contributions. Contributions must be made in cash or in ~~kind~~ another monetary form during the taxable year the credit is claimed. Unpaid pledges, goods, or services provided do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. ~~(3-20-97)~~(____)

02. Limitations: Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. ~~Twenty~~ Fifty percent (~~25~~50%) of ~~his~~ the individual's total income tax liability; or ~~(3-20-97)~~(____)

b. ~~One~~ Five hundred dollars (~~\$1~~500) if filing a return other than a joint return or ~~two hundred one~~ thousand dollars (~~\$21,000~~) if filing a joint return. ~~(3-15-02)~~(____)

03. Limitations: Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. Ten percent (10%) of the corporation's total income tax liability; or ~~(3-20-97)~~(____)

b. ~~One~~ Five thousand dollars (~~\$1~~5,000). ~~(3-15-02)~~(____)

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

05. Other Limitations. (3-15-02)

a. This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)

b. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

07. Nonprofit Public and Private Museums. To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

711. IDAHO INVESTMENT TAX CREDIT: TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).

Section 63-3029B, Idaho Code.

(3-20-97)

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. (____)

a. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ~~(3-15-02)~~(____)

b. In the taxable year when a corporation that earned the investment tax credit is acquired or disposed of, only a portion of the tax of the other members of the unitary group may be offset with shared investment tax credit from that corporation. To determine the allowable portion of the tax, a percentage is calculated by dividing the number of days that the corporation that earned the investment tax credit is included in the unitary group's taxable year by the total number of days in the taxable year. The tax for each member with an Idaho filing requirement is multiplied by the percentage. The result is the amount of tax that can be offset with a share of the credit, subject to other limitations imposed by law or related rules. ()

02. Conversion of C Corporation to S Corporation. (3-20-97)

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains and excess net passive income. The credit is allowed against this tax until the carryover period has expired. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. (3-29-10)()

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

a. The distribution to members is made as provided in Rule 785 of these rules. (3-15-02)

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. (3-29-10)

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

~~**712. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON MOVABLE PROPERTY IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1992 (RULE 712).**
Section 63-3029B, Idaho Code.~~ (3-20-97)

~~**01. In General.** The qualified investment for movable property is computed by multiplying the investment in that property by the Idaho apportionment factor, provided it otherwise qualifies for the investment tax credit. For example, a taxpayer determines the qualified investment for a fleet of new trucks based on the investment in the new trucks multiplied by the Idaho apportionment factor. The apportionment factor must be used to compute the credit for movable property unless the taxpayer can prove, pursuant to Section 63-3027(s), Idaho Code, the apportionment factor distorts the measure of Idaho business activity.~~ (3-20-97)

~~**02. Unitary Taxpayers.** A corporation that is a member of a combined group must use its measure of business activity in Idaho to compute the qualified investment in movable property. The measure of business activity in Idaho must be computed using the denominators of the combined group.~~ (3-20-97)

~~03. **Recomputation of Carryover.** If investment tax credit earned in taxable years beginning prior to January 1, 1992, is available to be carried over to taxable years beginning on or after January 1, 1992, the carryover must be recomputed if the credit earned included credit on movable property. Only the credit earned on property used in Idaho qualifies for the carryover as provided in Section 63-3029B, Idaho Code, and Rule 713 of these rules. This recomputation is made only for purposes of determining the allowable carryover. (3-20-97)~~

~~713. **IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (RULE 713).** Section 63-3029B, Idaho Code. (3-20-97)~~

~~01. **In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. Carryovers of investment tax credit earned on property that first qualified for the credit in taxable years beginning prior to January 1, 1992, are subject to the provisions of this rule. (3-20-97)~~

~~02. **Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the Idaho property factor method. The credit for all property used both in and outside Idaho must be computed using the method elected. (3-20-97)~~

~~a. If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. (7-1-98)~~

~~b. If the Idaho property factor method is elected, the total basis of all assets used in and outside Idaho that otherwise qualify for the credit is multiplied by the Idaho property factor of the taxpayer. (3-20-97)~~

~~03. **Unitary Taxpayers.** The property factor of a corporation that is a member of a combined group is computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator. (3-20-97)~~

~~04. **Examples.** (3-20-97)~~

~~a. **Idaho Percentage of Use Method.** In January 1992 a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage-of-use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450). (3-20-97)~~

~~b. **Idaho Property Factor Method.** Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars (\$50,000), the dump truck cost seventy five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992. (3-20-97)~~

712. -- 713. (RESERVED)

(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 ~~or after~~ 2010.

(4-7-11)(____)

01. In General. A revenue-producing enterprise is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules. (3-6-11)

02. 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)

03. 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)

04. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise are determined separately for each corporation that is a member of the unitary group. (4-7-11)

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 after 2004 and before 2011.

(4-7-11)(____)

01. In General. 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. (4-7-11)

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. 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 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 taxable year in which the credit is earned. (4-7-11)

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. (4-7-11)

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. (4-7-11)

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 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. (4-7-11)

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. ()

a. 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~~)()

b. The credit may be carried forward only to taxable years beginning prior to January 1, 2011. If there is any credit remaining after application to taxable years beginning prior to January 1, 2011, any further benefit from the credit is lost. ()

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

10. Unitary Taxpayers. (3-30-01)

a. A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)

b. Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

747. CREDIT FOR QUALIFYING NEW EMPLOYEES: NET INCOME OF A TRADE OR BUSINESS (RULE 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~on and after January 1, 2005~~ and before 2011. (~~3-30-07~~)()

01. Net Income From the Taxpayer's Trade or Business. If a taxpayer is claiming the credit under Section 63-3029F, Idaho Code, the net income of the taxpayer's trade or business shall be calculated as follows: (3-30-07)

a. Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

b. C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

c. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified as follows: the deduction for income reported by shareholders on their Idaho income tax returns shall be added back, the addition for compensation or income attributable to individual shareholders who do not report this income on Idaho

income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-07)

d. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified as follows: the deduction for income reported by partners on their Idaho income tax returns shall be added back, the addition for compensation or income attributable to individual partners who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-07)

02. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

748. CREDIT FOR QUALIFYING NEW EMPLOYEES: RECORD-KEEPING REQUIREMENTS (RULE 748).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2000 and~~ after 2001 and before 2011. (~~5-3-03~~)()

01. Information Required. Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following: (5-3-03)

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor; (5-3-03)

b. Payroll records and reports documenting length of employment and hours worked; (5-3-03)

c. The computation of the number of qualifying new employees; (3-30-01)

d. The qualification as a revenue-producing enterprise; (3-30-01)

e. The computation of the credit; (3-30-01)

f. The computation of net income; (3-30-01)

g. The continued maintenance of adequate employment levels into carryover years; and (3-30-01)

h. The computation of any carryovers. (3-30-01)

02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~754.—755.~~ (RESERVED)

755. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- IN GENERAL (RULE 755).
Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. In General. For taxable years beginning on and after January 1, 2011, and before 2014, the Hire One Act allows an employer who is subject to the Idaho income tax to earn a credit for a qualifying new employee. Because an employee must be hired on or after April 15, 2011, to qualify, the credit generally cannot be earned in a taxable year that begins prior to January 15, 2011. ()

02. Qualifying Employer. A qualifying employer is a rated employer under the Idaho Employment Security Law, but does not include a governmental agency or nonprofit entity. For purposes of Section 63-3029F,

Idaho Code, and Rules 755 through 759 of these rules, a nonprofit entity includes any entity that is exempt from the Idaho income tax under Section 63-3025B, Idaho Code, including those entities that are exempt except for paying income tax on unrelated business income. ()

03. Pass-Through Entities. The credit earned by a pass-through entity is refunded to the pass-through entity, rather than passed through to the owner. ()

04. Unitary Corporations. Each corporation in a unitary group must separately calculate the amount of the Hire One Act credit based on its own employees and may not include the employees of other corporations included in the combined group. ()

05. Employer-Provided Health Care Benefits. For purposes of administering the Hire One Act and Rules 755 through 759 of these rules, “employer-provided” and “health care benefits” are defined as provided in Rule 756 of these rules. ()

06. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation for less than nine (9) consecutive months cannot qualify as a new employee. ()

07. Carryover. Because the credit is a refundable credit, no carryover is allowed. Credit not claimed within the time allowed under Section 63-3072, Idaho Code, for claiming a refund is lost. ()

~~756.—759. (RESERVED)~~

756. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- EMPLOYER-PROVIDED HEALTH CARE BENEFITS (RULE 756).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Employer-Provided. “Employer-provided” means an individual’s employer must pay the following percentages of the cost of an employee’s premium for health care benefits as defined in Subsection 756.02 of this rule: ()

a. At least eighty percent (80%) of the cost of the employee’s premium if such employee had single coverage. ()

b. At least seventy percent (70%) of the cost of the employee’s premium if such employee had family coverage. ()

02. Health Care Benefits. “Health care benefits” means coverage offered through a group health plan for employees that includes hospital, medical and surgical expense coverage set forth as follows: ()

a. An accident and sickness insurance policy that provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than five hundred thousand dollars (\$500,000); ()

b. Coinsurance percentage per year per covered person not to exceed fifty percent (50%) of covered charges, provided that the coinsurance out-of-pocket maximum combined with any deductibles does not exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person; ()

c. A deductible stated on a per person, per family, per illness, per benefit period, per year basis, or a combination of these bases not to exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person for at least: ()

i. Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides; ()

ii. Miscellaneous hospital services; ()

iii. Surgical services; ()

- iv. Anesthesia services; ()
- v. In-hospital medical services; and ()
- vi. Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician. ()

d. Additional benefits. Health care benefits must also provide not fewer than three (3) of the following additional benefits: ()

- i. In-hospital private duty registered nurse services; ()
- ii. Convalescent nursing home care; ()
- iii. Diagnosis and treatment by a radiologist or physiotherapist; ()
- iv. Rental of special medical equipment, as defined by the insurer in the policy; ()
- v. Artificial limbs or eyes, casts, splints, trusses or braces; ()
- vi. Treatment for functional nervous disorders, and mental and emotional disorders; or ()
- vii. Out-of-hospital prescription drugs and medications. ()

03. Non-Qualifying Health Care Benefits. Health care benefits do not include limited benefit policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less. ()

04. Waiting Period. To qualify as employer-provided health care benefits, the health care benefits plan may not have a waiting period of more than two (2) months from the date of an employee's first day of employment. The Hire One Act credit cannot be earned on a new employee who is covered by a plan with a waiting period longer than two (2) months from the employee's first day of employment. ()

757. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- DETERMINATION OF QUALIFYING NEW EMPLOYEES (RULE 757.)

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Calculating Average Employment for a Taxable Year. ()

a. Number of Qualifying Employees. Only employees who meet the qualifications set forth in Section 63-3029F(2)(a), Idaho Code, are included when computing the average employment for a taxable year. Such requirements include the following: ()

- i. The employee must have been subject to Idaho income tax withholding. ()
- ii. The employee must have been covered for Idaho unemployment insurance purposes. ()
- iii. 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. ()
- iv. The employee must have been performing such duties for the employer for a minimum of nine (9)

consecutive months, with at least part of that time performed in the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) consecutive months does not qualify. ()

v. The employee must not have been transferred from a related taxpayer. ()

b. Idaho Department of Labor Reports. The employer must begin with its Idaho Department of Labor reports to determine the number of employees for each month of the taxable year. However, an employee listed in these reports does not automatically qualify to be included in the calculation of the number of employees. The employer must determine how many employees included in these reports meet the qualifications under Section 63-3029F, Idaho Code, and paragraph 757.01.a. of this rule. Only those qualifying employees are included in the monthly total. ()

c. Calculation. The number of qualifying employees for each month are added together and the total is divided by the number of months of operation for the taxable year. This is the employer's average employment for the taxable year. ()

02. Calculating the Number of Qualifying New Employees. ()

a. The number of qualifying new employees is the increase in the employer's average employment of qualifying employees for the taxable year over the greater number of the following: ()

i. The employer's average employment of qualifying employees for the prior taxable year; or ()

ii. The employer's average employment of qualifying employees for the three (3) prior taxable years. ()

b. The number of qualifying new employees must be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

03. Identification of New Employees. The employer must identify the specific new employees. The new employees are those qualifying employees who were last hired by the employer based on the date the employee first performed services for the employer. ()

04. Eligible New Employee. The new employee must meet the qualifications listed in Paragraphs 757.04.a. through 757.04.c. of this rule in order to be an eligible new employee. ()

a. Average Annual Earnings. The new employee must have earned annual wages at a rate averaging at least: ()

i. Twelve dollars (\$12) per hour worked if the employee was employed in a county with an unemployment rate of ten percent (10%) or more as of the date the new employee was hired; or ()

ii. Fifteen dollars (\$15) per hour worked if the employee was employed in a county with an unemployment rate below ten percent (10%) as of the date the new employee was hired. ()

b. The new employee must have been hired on or after April 15, 2011. ()

c. The new employee must have received employer-provided health care benefits as defined in Rule 756 of these rules. ()

05. Computation of Average Annual Earnings. Average annual earnings is computed as follows: ()

a. For hourly employees, the gross wages paid by the employer is divided by the number of hours worked for the taxable year. ()

b. For salaried employees, the gross wages paid is divided by two thousand eighty (2,080) hours if

employed on a full time basis for the entire taxable year. If a salaried employee is regularly scheduled to work more or less than forty (40) hours per week, the computation must be adjusted accordingly to determine the hourly rate. For example, if an employee is regularly assigned to work a thirty-two (32) hour week and worked for the employer the entire taxable year, the gross wages actually paid must be divided by sixteen hundred sixty-four (1,664). The total hours must not be reduced for days taken off, such as for vacation, sick leave, or personal days, if such days off were paid. If the employee's annual salary is adjusted for days taken off that are not paid, the number of hours should be adjusted in a consistent manner. ()

c. If the new employee is determined to be eligible for the credit, the credit is computed as provided in Rule 758 of these rules. ()

758. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATION OF CREDIT (RULE 758).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Computation of Credit. The credit for an eligible new employee is calculated by multiplying the gross salary paid to the eligible new employee for the initial twelve (12) months of employment by the applicable credit rate. The credit is not allowed for new employees who were part of a trade or business the employer acquired from another taxpayer, or of an employer who operates in a place of business the same or a substantially identical trade or business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer in either situation would have qualified. ()

02. Gross Salary. Gross salary does not include: ()

a. Nontaxable fringe benefits; ()

b. Tips paid by customers of the employer. ()

c. Wages that are subsidized through another taxpayer or program, including any federal or state grant. ()

03. Credit Rate. The applicable credit rate is determined based on the employer's rating from the Idaho Department of Labor for unemployment purposes that applies to the calendar year in which the taxable year begins. For example, the rating received by an employer in December 2011 will apply to taxable years beginning in 2012. The credit rate is six percent (6%) for a positive-rated employer, four percent (4%) for a standard-rated employer, and two percent (2%) for a deficit-rated employer. ()

04. Employed in a County. To be employed in a county, at least some of the employee's service must be performed in that county. An employee is employed in a county if: ()

a. The employee's service is performed entirely within the county; ()

b. The employee's service is performed both in and outside the county, but the service performed outside the county is incidental to the employee's service in the county; or ()

c. Some of the service is performed in the county and: ()

i. The base of operations is located in the county or, ()

ii. If there is no base of operations, the place from which the service is directed or controlled is in the county, or ()

iii. The base of operations or the place from which the service is directed or controlled is not in any county in which some part of the service is performed, but the individual's residence is in the county. ()

759. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- RECORD-KEEPING REQUIREMENTS (RULE 759).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Information Required to be Included With Idaho Return. An employer must include with the Idaho income tax return on which the Hire One Act credit is claimed a copy of the taxable wage rate notice issued by the Department of Labor for that income tax year. Notices that cannot be included with an electronically filed return must be separately mailed to the Tax Commission. No credit may be allowed if this notice is not included with the Idaho income tax return or mailed separately to the Tax Commission. ()

02. Information Required to be Retained By Employer. An employer claiming the Hire One Act credit must retain and make available, on request, records to document the credit claimed. The records must include all of the following: ()

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor; ()

b. Payroll records and reports documenting start and end of employment dates, if applicable, and hours worked by employee; ()

c. The computation of the number of qualifying employees including a listing of all such employees by name and social security number; ()

d. Records verifying gross salary paid and county employed in for the employees identified as the new employees; ()

e. Records documenting a new employee's coverage under the employer-provided health care benefits; and ()

f. Documentation from the Department of Labor verifying the employer's tax rate. ()

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. ()

(BREAK IN CONTINUITY OF SECTIONS)

~~761. IDAHO INCENTIVE INVESTMENT TAX CREDIT: MOBILE PROPERTY (RULE 761).
Section 63-3029J, Idaho Code. (3-15-02)~~

~~**01. In General.** The Idaho incentive investment tax credit is computed using the percentage rate for the Idaho county in which the property is primarily based. (3-15-02)~~

~~**a.** Mobile property is considered primarily based in the Idaho county in which it has more than fifty percent (50%) of its use for that taxable year. If the property is not used in any Idaho county more than fifty percent (50%), it shall be deemed to be primarily based in the Idaho county in which it has most of its use for that taxable year. (3-15-02)~~

~~**b.** Use shall be determined based on time, miles, or other measure that accurately reflects the use of the property. The use of aircraft in a county shall be determined by the ratio of departures from locations within a county to total departures everywhere. (3-15-02)~~

~~**c.** If property is used one hundred percent (100%) in Idaho but in more than one (1) county, one hundred percent (100%) of the cost of the property will qualify if the property is primarily based in a qualifying county. If the property is primarily based in a county that does not qualify, the property will not qualify. (3-15-02)~~

~~**d.** If property is used in and outside Idaho, only the percent of the property used inside Idaho is~~

eligible for the credit. (3-15-02)

02. Examples. (3-15-02)

a. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)

b. A loader is used in Idaho county A twenty five percent (25%), in Idaho county B thirty percent (30%), and in Idaho county C forty five percent (45%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)

c. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C has a credit percentage rate of zero (0), the credit is zero (0). (3-15-02)

d. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Oregon fifty five percent (55%). The loader is deemed to be primarily based in Idaho county B, the Idaho county with the most usage. Only forty five percent (45%) of the property will qualify for the credit at the credit percentage rate for Idaho county B, since the percent of the loader used outside Idaho is not eligible for the credit. (3-15-02)

762. IDAHO INCENTIVE INVESTMENT TAX CREDIT: RECAPTURE (RULE 762).
Section 63-3029J, Idaho Code. (3-15-02)

01. In General. If a taxpayer is claiming or has claimed the incentive investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. See Rule 715 of these rules. (3-15-02)

02. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

03. Transferred Credit. The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)

761. -- 762. (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. The maximum credit allowed per qualifying exemption is as follows:

| TAX YEAR | IDAHO TAXABLE INCOME \$1,000 OR LESS | IDAHO TAXABLE INCOME MORE THAN \$1,000 |
|----------|---|---|
| 2011 | \$80 | \$60 |
| 2010 | \$70 | \$50 |

| TAX YEAR | IDAHO TAXABLE INCOME \$1,000 OR LESS | IDAHO TAXABLE INCOME MORE THAN \$1,000 |
|----------|---|---|
| 2009 | \$60 | \$40 |
| 2008 | \$50 | \$30 |

(4-7-11)(____)

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 Uniformed Services. A member of the uniformed services who is: (4-7-11)

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. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho 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. (4-7-11)

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

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

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. (4-7-11)

c. No credit 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. (4-7-11)

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)

815. EXTENSIONS OF TIME (RULE 815).

Section 63-3033, Idaho Code.

(3-20-97)

01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. (7-1-99)

02. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. For individuals entitled to this extension of time, interest accrues on the portion of the tax not paid from the extended due date. (3-20-97)(____)

03. Interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. See Rule 817 of these rules for the exception when extensions are Exceptions only apply in the case of an individual in a combat zone as allowed by Section 63-3033(g), Idaho Code, and Subsection 815.02 of this rule, and when disaster relief is granted to a taxpayer as allowed under Section 63-114, Idaho Code, and Rule 817 of these rules. A taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES. (RULE 877).

Sections 63-3022L and 63-3036B, Idaho Code.

(4-7-11)

01. In General. A pass-through entity that ~~makes a cash distribution to an individual owner or beneficiary~~ is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from ~~such distribution~~ the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity and from wages, salary, or other compensation paid by the pass-through entity to the individual that is required to be included in the individual's Idaho taxable income unless exempt from backup 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. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. (4-7-11)(____)

02. Exceptions to Backup Withholding. Backup ~~withholding~~ by a pass-through entity is not required on ~~distributions paid to~~ the income of the following pass-through owners and beneficiaries: (4-7-11)(____)

a. Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. (4-7-11)

b. Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: (4-7-11)

- i. Is treated as a partnership for purposes of the Internal Revenue Code; and (4-7-11)
- ii. Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income 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. ~~(4-7-11)(____)~~
- c. Resident individuals and part-year resident individuals who have income other than from a pass-through entity. ~~(4-7-11)(____)~~
- d. Nonresident individuals if: (4-7-11)
 - i. Such individual elects to have his Idaho tax on income from the pass-through entity reported and paid by the pass-through entity. Such election must be made on a form as required by the Tax Commission and is required for each taxable year by the last day of the month following the end of the taxable year. Such election is irrevocable. ~~(4-7-11)(____)~~
 - ii. Such individual's share of income, guaranteed payments, and compensation 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 ~~income is subject to tax;~~ or ~~(4-7-11)(____)~~
 - iii. The distribution income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code. ~~(4-7-11)(____)~~

03. Certification of Residency. Backup ~~W~~withholding is not required on distributions made to income from a pass-through entity of an individual owner or beneficiary who certifies to the pass-through entity that he is an Idaho resident or an Idaho part-year resident with Idaho taxable income from sources other than another pass-through entity. 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 the income from the pass-through entity of such individual are ~~is~~ exempt from withholding unless the pass-through entity knowingly accepts a false certificate. ~~(4-7-11)(____)~~

04. Payment of Backup Withholding. (4-7-11)

a. The pass-through entity must withhold amounts from distributions to the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld during a calendar for a taxable year must be remitted to the Tax Commission annually on or before January 31 the fifteen day of the fourth month following the end of the following taxable 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. ~~(4-7-11)(____)~~

b. Amounts remitted as backup withholding for a calendar taxable 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 taxable year in which begins within such calendar the pass-through entity's taxable year ends. 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. ~~(4-7-11)(____)~~

05. Backup Withholding Returns. A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ~~(4-7-11)(____)~~

- a. The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; ~~(4-7-11)(____)~~
- b. The amount of tax withheld; (4-7-11)
- c. Name, address, and social security number of each owner or beneficiary; (4-7-11)

- d. The pass-through entity's name, and federal employer identification number, ~~and signature.~~
(4-7-11)(____)

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 backup withholding by the due date may cause interest and penalties to be imposed.
(4-7-11)(____)

878. -- 879. (RESERVED)

880. CREDITS AND REFUNDS (RULE 880).

Section 63-3072, Idaho Code. (3-20-97)

- 01. Overpayment.** The term overpayment includes: (3-20-97)

- a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
- b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
- c. All amounts erroneously or illegally assessed or collected. (3-20-97)
- d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

02. Requirements of a Valid Refund Claim. Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: (4-2-08)

- a. The basis for the credit or refund claim, and (4-2-08)
- b. The amount of the overpayment. (4-2-08)

- 03. Timely Claim Required for Refund.** (3-20-97)

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)

b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (4-2-08)

04. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (4-6-05)

05. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)

06. Limitations on Refunds of Withholding and Estimated Payments. As provided by Section 63-3072(c), Idaho Code, ~~The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3072(c), Idaho Code.~~ The Tax Commission may not

refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. (3-15-02)(____)

07. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)

08. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)

09. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

10. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. (4-6-05)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1101

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(s) 63-105, 63-3624, 63-3635, and 63-3039.

AUTHORITY: 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 19, 2011.

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 043 is being amended to comply with House Bill 213 exempting from sales and use tax all gratuities, whether voluntary or mandatory, if the gratuity is given for services provided as a supplement to the income of the service provider.

Rule 073 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in the state of Idaho.

Rule 085 is being amended to clarify that the Red Cross's sales and use tax responsibility should be addressed in the federal government section of Rule 094 rather than its current location in Rule 085 about nonprofits.

Rule 094 is being amended to explain that the state of Idaho cannot require the federal government or its instrumentalities to collect sales tax on any sales and that the Red Cross is an instrumentality of the federal government for purposes of sales and use tax.

Rule 098 is being amended to reflect the altered appearance of the diplomatic exemption card system by eliminating the specific language describing the previous appearance of the cards and would contain a more generic description of the new cards.

Rule 107 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in Idaho, Senate Bill 1052 that exempts from use tax all purchases made by temporarily assigned military personnel more than 90 days prior to moving to Idaho, and to amend the definition of a nonresident company to say that it is not required to be registered with the Idaho Secretary of State.

Rule 109 is being amended to change the definition of currency operated amusement devices to included credit and debit card machines, to change the requirement from a specific location on the device to any easily visible place on the device, and to include a new section that requires another permit to be affixed to a device in the event of a lost, stolen, or destroyed permit.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, 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 McLean Russell (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 26, 2011.

DATED this 31st day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1101

043. SALES PRICE OR PURCHASE PRICE DEFINED (RULE 043).

01. Sales Price and Purchase Price. The term sales price and purchase price may be used interchangeably. Both mean the price paid by the customer or user to the seller including: (7-1-93)

- a.** The cost of transporting goods to the seller. See Rule 061 of these rules. (3-20-04)
- b.** Manufacturer's or importer's excise tax. See Rule 060 of these rules. (3-20-04)
- c.** Services agreed to be rendered as part of the sale. (7-1-97)
- d.** Separately stated labor charges to produce or fabricate made to order goods. See Rule 029 of these rules. (3-20-04)

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items: (3-20-04)

- a.** Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation. (3-20-04)
- b.** Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. (3-20-04)
- c.** Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. (3-20-04)
- d.** Any charges for warranties, service agreements, insurance coverage, or other services required by the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these

charges, the charges are not part of the sales price if separately stated. Also see Rule 049 of these rules. (3-20-04)

03. Charges Not Included. Sales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price. (3-20-04)

04. Gratuities. ~~A gratuity is defined as something given voluntarily or beyond obligation. Gratuities may sometimes be referred to as tips.~~ When a gratuity is paid in addition to the price of a meal, no sales tax applies to the gratuity. A gratuity can be paid voluntarily by the customer or be required by the seller. A gratuity is also commonly known as a tip. (7-1-93)()

a. ~~When a gratuity is given directly to employees by the purchaser in the form of cash or the purchaser adds a nonsolicited gratuity to his bill, charge card voucher form, or house account form, no sales tax applies to the gratuity.~~ If a gratuity does not meet all of the following requirements, the gratuity will be subject to sales tax: (7-1-93)()

i. A gratuity must be paid to the service provider of the meal as additional income to the base wages of the service provider; ()

ii. A gratuity must be separately stated on the receipt or be voluntarily paid by the customer; and ()

iii. A gratuity must not be used to avoid sales tax on the actual price of the meal. ()

b. ~~When an amount is added to a customer's bill by the retailer and the customer is advised in writing on the face of the bill that he may decline to pay all or part of the amount, that amount is a gratuity. Sales tax will not apply to the gratuity.~~ For the purposes of Subsection 043.04 of this rule, the following definitions apply: (7-1-93)()

i. Meal. Food or drink prepared for or provided to a customer. ()

ii. Service provider. An individual directly involved in preparing or providing a meal to a customer. This includes, but is not limited to, the server, the busser, the cook and the bartender. This does not include individuals who manage or own the company if they are not directly involved in preparing and providing a meal. ()

e. ~~When an amount is added to a customer's bill by the retailer, and the customer is not advised in writing on the face of the bill that he may decline to pay all or part of the amount, it is not a gratuity and the fee so added is subject to the sales tax.~~ (7-1-93)

d. ~~When a gratuity is negotiated before the sale, such as in the case of a banquet, tax must be charged on the entire fee so negotiated. Because of the negotiation, the fee loses its identity as a gratuity and becomes a service charge and part of the purchase price of the meal. See Subsection 043.04 of this rule.~~ (7-1-93)

05. Service Charges. Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax, even though such service charges are made in lieu of tips and paid over by the retailer to his employees. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (RULE 073).

01. Equipment Brought into Idaho. Equipment or other tangible personal property brought or

shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03 of this rule. For property a contractor fabricates to install into Idaho real property, see Rule 012 of these rules. (4-11-06)

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. (3-20-04)

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

a. A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (3-20-04)

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, assuming a rate of six percent (6%), totals nine hundred dollars (\$900). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (4-2-08)

e. Example: The same contractor in the previous example returns to Idaho within the same twelve (12) months with the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000). As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's six percent (6%) use tax on its present value of ninety-five thousand dollars (\$95,000) x six percent (6%) = five thousand seven hundred dollars (\$5,700). Credit of two thousand six hundred dollars (\$2,600) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the nine hundred dollar (\$900) credit already used on rentals. The contractor owes three thousand one hundred dollars (\$3,100) of use tax to Idaho. (4-2-08)

04. Licensed Motor Vehicles. A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents, ~~of nonresident college students, and temporarily assigned military personnel in~~ Idaho. See Rule 107 of these rules. (~~3-20-04~~)()

(BREAK IN CONTINUITY OF SECTIONS)

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (RULE 085).

01. In General. The Sales Tax Act does not provide any general exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See Rule 086 of these rules. (3-6-00)

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. (3-6-00)

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. (3-6-00)

04. Hospitals. In addition to the health related entities listed in Section 63-3622O, Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital must be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in Chapter 13, Title 39, Idaho Code, or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities unless the organization qualifies for an exemption under Section 63-3622O, Idaho Code. (3-6-00)

05. Idaho Foodbank Warehouse, Inc. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. (3-6-00)

a. Example 1: The XYZ Corporation purchases food from a grocer to donate to the Idaho Foodbank Warehouse, Inc. The XYZ Corporation must pay sales tax on the purchase since they are not purchasing the food for resale and no other exemption applies. (3-6-00)

b. Example 2: The Idaho Food Bank Warehouse, Inc. purchases office supplies. No tax is due on the purchase. (3-6-00)

06. Food Banks and Soup Kitchens. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to grow, store, prepare, or serve food are exempt from sales and use taxes. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. This exemption does not extend to the sale, purchase, or use of licensed motor vehicles by food banks or soup kitchens. (3-6-00)

a. Example 1: A grocer removes food from his inventory of goods held for resale to donate to a food bank or soup kitchen. The grocer is exempt from the use tax on his cost of the inventory donated. (3-6-00)

b. Example 2: The XYZ Corporation purchases food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax must be paid on the purchase. (7-1-93)

c. Example 3: A food bank purchases a licensed motor vehicle. The purchase is subject to sales tax because the motor vehicle is not used to grow, prepare, or serve food. (3-6-00)

07. Red Cross. ~~Sales to the American Red Cross are exempted from state sales tax by federal law~~ See Rule 094 of these rules. (7-1-93)()

08. Nonsale Clothiers. Nonprofit organizations, one of whose primary functions is to provide clothing to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be removed from a resale inventory and donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (3-6-00)

a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. (7-1-93)

b. Example 2: A nonprofit, nonsale clothier purchases clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store must charge the organization sales tax on the bed sheets. (7-1-93)

09. Exemption Certificate. The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Rule 128 of these rules. (3-6-00)

10. Literature. The sale, purchase, use, or other consumption of literature, pamphlets, periodicals, tracts, books, tapes, audio CDs, and other literature which is produced in a machine readable format that are both published and sold by an entity qualified under Section 501(c)(3) of the Internal Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder. (3-6-00)

11. Sales by Nonprofit Organizations. An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to purchasers not exempt from tax. When an exempt organization qualifies as a retailer the organization must register with the State Tax Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There are two (2) exceptions to this rule. (3-6-00)

a. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes. (3-6-00)

b. Sales of admissions by an entity qualified under Section 501(c)(3) of the Internal Revenue Code, or by an organization conducting an exempt function defined in Section 527 of the Internal Revenue Code when: (3-6-00)

i. The event is not predominately recreational or commercial; and (3-6-00)

ii. Any entertainment value included in the admission charge is minimal when compared to the charge for admission; and (3-6-00)

iii. Such entity has paid a sales or use tax on taxable purchases or tangible personal property or services consumed during the event. (3-6-00)

12. Senior Citizen Centers. Sales to certain senior citizen centers are exempt from sales tax. The definition of "senior citizen center" in Section 63-3622O, Idaho Code, is the same as the definition of a "multipurpose senior center" as defined in the Older Americans Act, Title 42, Section 3002, United States Code. To qualify for the exemption the center must have been granted exempt status pursuant to Section 501(c) (3) of the Internal Revenue Code. Long-term care facilities do not qualify for this exemption. (4-2-08)

13. Free Dental Clinics. Sales to and purchases by organizations providing free dental care to children are exempt from sales and use tax. For the purposes of this exemption "children" shall mean persons under the age of eighteen (18). To qualify for the exemption property or services must be: (4-2-08)

a. Purchased by an organization whose primary purpose is providing free dental care to children; and (4-2-08)

- b. Primarily used by an organization whose primary purpose is providing free dental care to children. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (RULE 094).

01. In General. This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. (7-1-93)

02. Extent of Exemptions. The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. (7-1-93)

03. Political Subdivisions. Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. (7-1-93)

04. Purchases by Contractors. Contractors are consumers under Idaho tax law. Purchases made by contractors are subject to tax even though they are to be applied to use on a state or political subdivision construction project. (7-1-93)

05. Sales by Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. (7-1-93)

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See ISTC Rule 058. (7-1-93)

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, and fund raising events. (3-4-10)

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these

facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See ISTC Rule 030. (7-1-93)

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. (7-1-93)

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. (7-1-93)

f. The examples cited above are not inclusive. (7-1-93)

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. Federal law also prevents the state of Idaho from imposing sales tax on any sales by the federal government or its instrumentalities. For purposes of Idaho sales and use tax, the American Red Cross is an instrumentality of the federal government. (7-1-93)()

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are subject to the tax if delivery occurs in this state. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

098. FOREIGN DIPLOMATS (RULE 098).

01. In General. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The cards are nontransferable and bear a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. (5-3-03)

02. Federal Tax Exemption Cards. Federal tax exemption cards ~~are coded with colored stripes. Cards with a blue stripe exempt the bearer from all sales taxes, including taxes on hotel rooms. Cards with a yellow stripe~~ list all restrictions on tax exemptions on the face of the card, including whether or not the card privileges extend to both official and personal purchases. ~~Cards with stripes colored red or green are no longer issued but some may still be in use and have limitations that are printed on the face of the card.~~ (5-3-03)()

~~**03. Mission Card.** Some foreign diplomats are issued mission cards that may only be used by the bearer for official foreign mission purchases, and may not, under any circumstances, be used for personal purchases. "Mission cards" are so designated on the card's face.~~ (5-3-03)

043. Documentation. Retailers must document an exempt sale to a foreign diplomat by: (7-1-93)

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

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

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

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

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

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

ii. The title may be marked as a gift and signed by the donor. (3-4-10)

03. Nonresidents. (3-30-07)

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

b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not 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. (~~3-30-07~~)()

c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. ()

04. New Residents. A new resident of Idaho or military personnel temporarily assigned to Idaho and their spouses does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and he acquired them while he resideding in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents

entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (3-4-10)(____)

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

b. Exclusion from the tax applies only to vehicles and aircraft owned by an individual. A privately owned vehicle or aircraft is one that is owned by, and titled to, a private individual or individuals. (3-4-10)

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

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

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

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

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

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

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

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

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

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of

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

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

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

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

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

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

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

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

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

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

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

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

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator. (3-4-10)

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

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

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

109. AMUSEMENT DEVICES (RULE 109).

01. Currency Operated Amusement Devices. “Amusement device” means all currency or token operated machines and devices used for amusement or entertainment. For purposes of Section 109 of this rule, “currency” includes debit or credit cards. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (~~6-30-95~~)(____)

02. Requirement to Obtain Permit. The owner or operator of amusement devices is required to obtain a seller’s permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller’s permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. Owners and operators of coin or currency operated amusement devices are required to pay a permit fee for every such device in operation. ~~At a tax rate of 5% this fee is thirty-five dollars (\$35).~~ Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate. The formula to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For example, at a tax rate of five percent (5%) the amount of the permit fee is seven hundred dollars (\$700) x five percent (5%) = thirty-five dollars (\$35). If the tax rate is six percent (6%), the permit fee will be forty-two dollars (\$42). If any change in the tax rate becomes effective on July 1 of a given year, the charge for the permit fee will change proportionately on that date also. If a change in the

tax rate occurs on a day other than July 1, the permit fee will be changed on the next July 1 following the change in the tax rate. ~~(4-2-08)~~(____)

b. Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one (1) or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed ~~near the currency slot of~~ to the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. ~~(3-16-04)~~(____)

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

d. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. (3-16-04)

e. If an amusement device permit is lost, stolen, or destroyed, an amusement device permit for the current year must still be affixed to every operating amusement device. This may require the purchase of a new permit. The Tax Commission will not issue free replacement amusement device permits regardless of the reason for the loss of the permit. (____)

03. Noncoin Operated Amusement Machines or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-Reference. See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. (3-16-04)

IDAPA 35 - STATE TAX COMMISSION
35.01.07 - KILOWATT HOUR TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0107-1101
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 19, 2011.

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 030 is being amended to make the change from monthly to quarterly filing of the kilowatt hour tax return discretionary, subject to Tax Commission approval.

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

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

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

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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. 35-0107-1101

030. KILOWATT HOUR TAX RETURNS (RULE 030).

01. Required Statement. The statement required by Section 63-2701, Idaho Code, and by these rules shall be made on the kilowatt hour tax return, Form 48, 48C, or 48CM, provided by the Tax Commission. All information requested on the return must be provided and the return must be signed. (7-1-97)

02. Monthly Returns. All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Tax Commission no later than the last day of the month following the month to which the return relates. (7-1-97)

03. Quarterly Returns. ~~All~~ Producers whose previous year's annual tax liability was equal to or less than fifteen thousand dollars (\$15,000) ~~must~~ may, at the discretion of the Tax Commission, be allowed to file a quarterly return with the Tax Commission no later than the last day of the month following the end of the calendar quarter to which the return relates. When a filing cycle is changed, the change will take effect on January 1 of the following year. (7-1-97)()

04. Previous Year's Annual Tax Liability. If the previous year's annual tax liability is not available, the estimated current year's liability may be used. (7-1-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.08 - MINE LICENSE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0108-1101
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 19, 2011.

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 010 is being amended to include additional examples of what constitutes a valuable mineral typically found in Idaho subject to the mine license tax.

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

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

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

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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. 35-0108-1101

010. DEFINITIONS (RULE 010).

01. These Rules. The term these rules refers to IDAPA 35.01.08, relating to Idaho mine license tax.
(7-1-97)()

02. Valuable Mineral. The term “valuable mineral,” for purposes of the Idaho Mine License Tax, is defined to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to Section 613 of the Internal Revenue Code. This includes, but is not limited to, calcium carbonates, garnet, granite, pumice, quartzite, scoria, shale, slate, and stone (including dimension and ornamental stone). However, sand and gravel are not included in this definition.
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IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1101

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 19, 2011.

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 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2012 to the table that identifies this information by year.

Rule 704 is being amended consistent to House Bill 680, which was passed by the 2011 Idaho Legislature. The bill provides an exchange of information agreement between the State Tax Commission and the State Treasurer. Rule 704 is modified to add the applicable code section to the title of the rule and the information that may be exchanged with the State Treasurer's office in the applicable subsection.

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

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

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

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August 2011.

Cynthia Adrian
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. 35-0201-1101

310. INTEREST RATES (RULE 310).

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

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

(4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

| PERIOD | RATE OF INTEREST | INTERNAL REVENUE SERVICE REVENUE RULING |
|---|---------------------------|---|
| July 1, 1981, through December 31, 1993 | 12% simple interest | Not Applicable |
| Calendar Year 1994 | 7% simple interest | Revenue Ruling 93-64 |
| Calendar Year 1995 | 9% simple interest | Revenue Ruling 94-61 |
| Calendar Year 1996 | 8% simple interest | Revenue Ruling 95-67 |
| Calendar Year 1997 | 9% simple interest | Revenue Ruling 96-49 |
| Calendar Year 1998 | 8% simple interest | Revenue Ruling 97-41 |
| Calendar Year 1999 | 7% simple interest | Revenue Ruling 98-50 |
| Calendar Year 2000 | 8% simple interest | Revenue Ruling 99-41 |
| Calendar Year 2001 | 8% simple interest | Revenue Ruling 2000-45 |
| Calendar Year 2002 | 7% simple interest | Revenue Ruling 2001-49 |
| Calendar Year 2003 | 5% simple interest | Revenue Ruling 2002-61 |
| Calendar Year 2004 | 6% simple interest | Revenue Ruling 2003-107 |
| Calendar Year 2005 | 6% simple interest | Revenue Ruling 2004-69 |
| Calendar Year 2006 | 6% simple interest | Revenue Ruling 2005-57 |
| Calendar Year 2007 | 7% simple interest | Revenue Ruling 2006-44 |
| Calendar Year 2008 | 7% simple interest | Revenue Ruling 2007-57 |
| 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 |
| <u>Calendar Year 2012</u> | <u>4% simple interest</u> | <u>Revenue Ruling 2011-20</u> |

(4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).
Sections 23-907, 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3634A, and 67-4917C, Idaho Code. ~~(3-29-10)~~()

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

- a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
- c.** County assessors, limited to: (3-20-04)
 - i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
 - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
- d.** Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
- e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
- g.** Idaho Transportation Department, relating to: (3-20-04)
 - i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
 - ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, as allowed by Section 63-3077C, Idaho Code; ~~(5-3-03)~~()
- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)

- l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
- n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
- o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
- p.** The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. (3-29-10)
- q.** The State Treasurer, as provided in Section 63-3077E, Idaho Code, limited to: ()
- i.** The names and current addresses of businesses in Idaho; and ()
- ii.** The names and current addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the State Treasurer. ()