

Dear Senators CORDER, Werk, Johnson, 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 - Rules 600/700/130/140/171/290/291/877/714  
(Docket No. 35-0101-1201);

IDAPA 35.01.01 - Rules Pertaining To The Income Tax - Rules  
075/105/108/253/121/285/286/710/719/745/746/747/748/771/810 (Docket No.  
35-0101-1202);

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No.  
35-0102-1201);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 605 and 620 (Docket No.  
35-0103-1202);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 714/131/608/630/995 (Docket  
No. 35-0103-1203);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 600 and 803 (Docket No.  
35-0103-1204);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rule 218 (Docket No. 35-0103-1205);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules  
000/003/006/225/313/404/509/510/511/612/619/802 (Docket No. 35-0103-1207);

IDAPA 35.01.09 - Rules Pertaining To The Table and Kitchen Wine Tax Administrative Rules  
(Docket No. 35-0109-1201);

IDAPA 35.01.10 - Rules Pertaining To The Idaho Cigarette and Tobacco Products Tax Administrative  
Rules (Docket No. 35-0110-1201);

IDAPA 35.01.12 - Rules Pertaining To The Idaho Beer Tax Administrative Rules (Docket No.  
35-0112-1201);

IDAPA 35.02.01 - Rules Pertaining To The Administration and Enforcement Rules (Docket No.  
35-0201-1201).

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 10/23/2012. 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 11/21/2012.

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 on the memorandum attached below.



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:** October 03, 2012  
**SUBJECT:** State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax - Rules 600/700/130/140/171/290/291/877/714 (Docket No. 35-0101-1201)

IDAPA 35.01.01 - Rules Pertaining To The Income Tax - Rules 075/105/108/253/121/285/286/710/719/745/746/747/748/771/810 (Docket No. 35-0101-1202)

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No. 35-0102-1201)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 605 & 620 (Docket No. 35-0103-1202)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 714/131/608/630/995 (Docket No. 35-0103-1203)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 600 & 803 (Docket No. 35-0103-1204)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rule 218 (Docket No. 35-0103-1205)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax - Rules 000/003/006/225/313/404/509/510/511/612/619/802 (Docket No. 35-0103-1207)

IDAPA 35.01.09 - Rules Pertaining To The Table & Kitchen Wine Tax Administrative Rules (Docket No. 35-0109-1201)

IDAPA 35.01.10 - Rules Pertaining To The Idaho Cigarette & Tobacco Products Tax Administrative Rules (Docket No. 35-0110-1201)

IDAPA 35.01.12 - Rules Pertaining To The Idaho Beer Tax Administrative Rules (Docket No. 35-0112-1201)

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No. 35-0201-1201)

Enclosed with this memorandum are twelve sets of proposed rules relating to the income tax, to the sales tax, to the property tax, to the tax on wine, to the tax on beer, to the tax on cigarettes and tobacco products tax and to administration and enforcement rules of the Commission.

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Docket No. 34-0101-1201 Income Tax Rules. These proposed rules are being promulgated to implement House Bills No. 364, 485 and 582. HB364 clarified the income tax deduction for retirement benefits paid to certain retired police officers and revised the definition of "disabled." It was brought by the State Tax Commission. HB485 revised the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences to qualify for a state income tax deduction. It was brought by Representatives Vander Woude and Jaquet. HB 582 revised provisions relating to taxation of income of owners of an interest in a pass-through entity; and revised provisions regarding backup withholding for pass-through entities and was brought by Robert Aldridge.

Docket No. 35-0101-1202 makes numerous changes to Income Tax Rules. These rules clean up or revise changes made to Chapter 30, Title 63, Idaho Code, (the State Income Tax Act) over the years by the Legislature and take into account sunset dates such as was included in the Hire One Act of 2011 and also HB485 of 2012 mentioned above.

Docket No. 35-0102-1201 is the product of negotiated rulemaking which commenced on June 6, 2012, and amends rules relating to the sales and use tax. Terms added or modified include the definition of "trade down," provide the taxability of tangible personal property removed from inventory held for resale, further define "money operated dispensing equipment," "amusement device," and implement to the provisions of HB361 of 2012 which revised provisions relating to the application of exemption for vehicles registered under the International Registration Plan.

Docket No. 35-0103-1202 makes changes to the property tax administrative rules. Rule 605 is proposed to be amended to determine what leased property is exempt from property tax purposes when it is used for both educational and non-educational purposes. These proposed rules also implement HB519 of 2012 which provided that certain site improvements that are associated with land are exempt from property tax. This bill was brought by Representative Hartgen.

Docket No. 35-0103-1203 also makes changes to property tax administrative rules. A rule is being amended to give guidance to county assessors on how to handle foreclosure sales by adopting the International Association of Assessing Officers "Standard on Verification and Adjustment of Sales." These rules also implement HB356 and HB584 of 2012. HB356 revised the approval process for applications for property tax exemptions provided for approval or disapproval and a procedure for appeal. HB584 provided for continuation of the homestead exemption for a time certain upon the owner's, beneficiary's, partner's, member's or shareholder's death.

Docket No. 35-0103-1204 also amends property tax administrative rules and implements HB356 and HB697 of 2012. HB356 revised the approval process for applications for property tax exemptions and to provide for approval or disapproval and a procedure for appeal and was mentioned above. HB697 provided that any non-school taxing district facing a judgement by a court of law, including interest, costs, and attorney's fees in excess of one-third of the total property tax revenues, a means to levy beyond the three percent budget growth limitation in order to pay the judgement over an extended period utilizing redeemable warrants, bonds or other lawful forms of payments, only after a majority of voters approve such action. The legislation also granted authority to the State Tax Commission to certify a levy up to 0.1% of assessed valuation for the purpose of paying such judgements.

Docket No. 35-0103-1205 also amends the property tax administrative rules. The Commission indicates that this rule change is being implemented to assist county assessors in preparation of maps. A couple of updated cites are provided in the rules.

Docket No. 35-0103-1207 also deals with property tax administrative rules and amends a host of myriad property tax rules ranging from the definition of pipelines to property tax paid on recreational vehicles. These

rules also implement the provisions of HB519 which was Representative Hartgen's bill that provided that certain site improvements that are associated with land are exempt from property tax.

Docket No. 35-0109-1201 relates to rules implementing the table and kitchen wine tax administrative rules. The Commission indicates that these rules are being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond and to delete outdated language requiring reports of out-of state wholesalers and distributors.

Docket No. 35-0110-1201 relates to the cigarette and tobacco products tax rules. The Tax Commission indicates that these rules are being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

Docket No. 35-0112-1201 is amending beer tax rules. The Commission indicates that these rules are being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond and to delete outdated language requiring reports of out-of state wholesalers and distributors like the wine tax rules.

Docket No. 35-0201-1201 is amending the Commission administration and enforcement rules. The rule changes include adding the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be located, implementing the provisions of section 63-3047, Idaho Code, which provides that "The state tax commission or its delegate may compromise any taxes, penalties or interest arising under the provisions of this chapter instead of commencing suit thereon and may settle any such case with the consent of the attorney general after suit thereon has been commenced." The rules also conform themselves to an unclaimed property statute allowing the exchange of information to the Treasurer's Office and the Transportation Department.

It appears to us that all of the above administrative rules are promulgated within the scope of statutory authority granted to the Tax Commission. One editorial comment we might make is the Commission ought to consider combining some of the rulemakings, particularly when they are implementing the same bill and deal in the same subject matter area. It might save the Commission some cost and also might spare some trees.

cc: State Tax Commission

Alan Dornfest, Tax Policy Supervisor

Cynthia Adrian, Tax Policy Specialist

McLean Russell, Tax Policy Specialist

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1201

#### 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 17, 2012.

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:

Rules 600 and 700, as stated in the Notice Of Intent To Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time restraints and will remain as codified.

Rule 130 is being amended consistent with House Bill 364 to clarify the treatment of pensions received by certain retired police officers and firefighters. The definition of disability is changed to a more clear definition as found in Idaho Code section 49-117(7)(b)(iv).

Rule 140 is being amended consistent with House Bill 485 to revise the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 171 is being changed to clarify what constitutes non-qualifying property for the Idaho capital gains deduction.

Rules 290, 291 & 877 are being amended consistent with House Bill 582 to revise the options of pass-through entities. The pass-through entity may file a composite return for non-residents and pay the tax due or the entity can do backup withholding under Idaho Code section 63-3036B.

Rule 714 is being changed to clarify the current practice of applying Idaho investment tax credit limitations first to mobile property and then to used property.

**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:

Rule 140 may have a reduction of revenue of \$925,000 for FY13 increasing to \$1 million by FY15.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Vol. 12-6, page 35](#).

**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) 334-7670.

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 close of business Wednesday, October 24, 2012.

DATED this 31st day of August 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1201**

**130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (RULE 130).**

Section 63-3022A, Idaho Code.

(3-20-97)

**01. Qualified Benefits.** Subject to limitations, the following benefits qualify for the deduction:

(3-20-97)

**a.** Retirement annuities paid to a retired civil service employee. For purposes of this deduction a retired civil service employee is an individual who is receiving retirement annuities paid under the Civil Service Retirement System by the United States Government. An individual is entitled to benefits from this retirement system only if he established eligibility prior to 1984. Retirement annuities paid to a retired federal employee under the Federal Employees Retirement System generally do not qualify for the deduction. Retirement annuities received under the Federal Employees Retirement System by a retiree previously covered under the Civil Service Retirement System qualify to the extent the retiree establishes the portion of the annuity attributable to coverage under the Civil Service Retirement System. (5-8-09)( )

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

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

**i.** By a city or its agent in regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by a city in this state; or ( )

**ii.** In regard to a policeman's retirement fund that no longer admits new members and on January 1, 2012, was administered by the public employee retirement system of Idaho; or ( )

**iii.** By the public employee retirement system of Idaho to a retired police officer in regard to Idaho employment not included in the federal social security retirement system; or ( )

**iv.** An unmarried widow or widower of a person described in Subparagraph 130.01.c.i., ii., or iii. of this rule. ( )

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

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

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

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

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

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

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

**05. Disabled Individual.** For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code, or an individual who qualifies as a person with a "permanent disability" under section 49-117 (7) (b) (iv), Idaho Code. This includes: (4-6-05)( )

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

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

**131. -- 139. (RESERVED)**

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

**01- ~~Additional Insulation.~~ The deduction may be taken for additional insulation installed in a residence, or existing addition to a residence but may not be taken for insulation to replace existing insulation.**



(3-20-97)

**021. Qualifying Date.** The ~~insulation~~ energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, ~~1976~~ 2002. A residence, or addition to a residence, constructed after January 1, ~~1976~~ 2002, does not qualify. (3-20-97)(    )

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

~~a. Rockwool;~~ (3-20-97)

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

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

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

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

**02. Energy Efficiency Upgrade Measure Definition.** “Energy efficiency upgrade measure” means an energy efficiency improvement to the building envelope or duct system that meets or exceeds the minimum value for the improved component established by the version of the international energy conservation code (IECC) in effect in Idaho during the taxable year in which the improvement is made or accrued. The IECC in effect in Idaho refers to the version most recently adopted by the Idaho Building Code Board, including amendments made by the Board. See the Board’s administrative rules at IDAPA 07.03.01.004. (    )

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

**(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:~~ See Subsection 171.05 of this rule for examples of nonqualifying property. (2-27-12)(    )

~~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. Nonqualifying Property.** Nonqualifying property includes: ( )

**a.** Real or tangible personal property not having an Idaho situs. ( )

**b.** Tangible personal property not used by a revenue-producing enterprise. ( )

**c.** Intangible property. Some examples of intangible property include, but are not limited to: ( )

**i.** Stocks & bonds; ( )

**ii.** Easements and rights of way, including agricultural, forest, historic, or open-space easements; ( )

**iii.** Grazing permits; ( )

**iv.** Leasehold interests, regardless of term; ( )

**v.** Options; ( )

**vi.** Water, mineral, hunting and fishing, renewable energy, and land surface rights; ( )

**vii.** Conservation easements; ( )

**viii.** Scenic easements; ( )

**ix.** Interests in a partnership, LLC or S corporation. ( )

**056. 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)

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

**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. (2-27-12)

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. (2-27-12)

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. (2-27-12)

**(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, AND BEFORE JANUARY 1, 2012 (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; (2-27-12)

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. (2-27-12)

v. Idaho resident individuals, or (2-27-12)

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. (2-27-12)

**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. (2-27-12)

**d.** Once the election is made, it is irrevocable for that taxable year. (2-27-12)

**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 back-up withholding on 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. (2-27-12)

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR ~~OFFICERS, DIRECTORS,~~ OWNERS, OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 201~~1~~<sup>2</sup> (RULE 291).**

Sections 63-3022L and 63-3026A, Idaho Code.

(4-7-11)

**01. In General.** A pass-through entity is responsible for reporting and paying the tax for nonresident individuals ~~s officers, directors, owners, or beneficiaries who make the election allowed by Section 63-3022L, Idaho Code or withholding tax on the individual's share of income from the pass-through entity required to be included in Idaho taxable income as prescribed in Section 63-3036B, Idaho Code.~~ For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-7-11)( )

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an ~~electing~~ individual: (4-7-11)( )

**a.** Compensation paid by the pass-through entity to the ~~officer, director,~~ owner, or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (4-7-11)( )

**b.** Pass-through items that are income from Idaho sources of an owner as determined pursuant to Rule 263 of these rules. (4-7-11)

**c.** Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (4-7-11)

**03. Deductions.** Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (4-7-11)

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

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

**c.** Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (4-7-11)

**d.** Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. (4-7-11)

**e.** Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. (4-7-11)

**f.** Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: (4-7-11)

i. The standard deduction; (4-7-11)

ii. Personal exemptions; (4-7-11)

iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-through owner's share of charitable contributions made by the pass-through entity. (4-7-11)

**04. Double Deductions Disallowed.** A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**714. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995 (RULE 714).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. (3-20-97)

**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage-of-use method or the amount of that property correctly included in the Idaho property factor numerator. The credit for all property used both in and outside Idaho must be computed using the method elected. (4-2-08)

**a. Percentage-of-Use Method.** If the percentage-of-use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures. ~~See Subsection 713.04.a. of these rules for an example of the percentage-of-use method.~~ (7-1-98)( )

**b. Property Factor Method.** If the property factor numerator option is elected, the qualified investment is the basis of the asset correctly included in the numerator of the Idaho property factor for the year the credit is earned. (4-2-08)( )

**i.** The amounts of investment tax credit computed under the percentage-of-use method and the property factor numerator option are generally the same. Differences may result when a taxpayer uses certain MTC special industry regulations that allow the taxpayer to vary from using the percentage-of-use method for determining the Idaho numerator for each item of mobile property, and instead allow another method, such as the ratio of mobile property miles in the state compared to total mobile property miles or the ratio of departures of aircraft from locations in the state compared to total departures. These special industry regulations include the regulations for airlines, railroads, and trucking companies. See Rule 580 of these rules for a list of the special industries. (4-2-08)

**ii.** “Correctly included in the numerator of the Idaho property factor” means that the amount included in the Idaho property factor numerator was correctly computed using Section 63-3027, Idaho Code, and related rules including any MTC special industry regulations that apply to the taxpayer. If the amount included in the Idaho property factor numerator exceeds the amount that should have been included using Section 63-3027, Idaho Code and related rules, the investment tax credit shall be allowed only on the amount that reflects the correct calculation for purposes of computing the Idaho property factor numerator. For example, a taxpayer includes one hundred percent (100%) of the basis of an asset in the Idaho property factor numerator, but the amount correctly computed under Section 63-3027, Idaho Code, should have been fifty percent (50%) of the basis of the asset. The investment tax credit shall be allowed only on the fifty percent (50%) of the basis of the asset. (4-2-08)

**03. Order of Limitations.** The qualified investment in property used both in and outside Idaho is determined by first applying the rules of this section and then the used property limitations outlined in Rule 710. ( )

**04. Examples.** ( )

**a.** Idaho Percentage-of-Use Method. In January 2009, 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 2009. 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). ( )

**b.** Idaho Percentage-of-Use Method -- Assets placed in service within ninety (90) days of year end. A calendar year taxpayer elects the percentage-of-use method for a road grader placed in service on March 1, 2011, with a basis of seventy-five thousand dollars (\$75,000). If eighty percent (80%) of the road grader's hours were logged in Idaho measured between March 1 and December 31, 2011, the qualifying investment in the road grader is sixty thousand dollars (\$60,000) computed at eighty percent (80%) of the asset's basis. If the road grader was placed in service by the same calendar year taxpayer on November 1, 2011, the Idaho qualifying property is measured during the first ninety (90) days of use of the asset. If the percentage of hours logged in Idaho between November 1, 2011, and January 31, 2012, is seventy percent (70%), the qualifying investment in the road grader is fifty-two thousand five hundred dollars (\$52,500) computed at seventy percent (70%) of the asset's basis. ( )

**c.** Idaho Property Factor Method. In January, 2011, a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Twenty percent (20%) of its hours were logged in Idaho during the year. In addition to the road grader, the taxpayer also purchased an asphalt layer and a dump truck in January, 2011. Twenty percent (20%) of the dump truck's hours were logged in Idaho during the year. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is thirty percent (30%). 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 taxpayer would include twenty-five thousand dollars (\$25,000) in the Idaho property factor numerator. The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 2011. ( )

**d.** Order of Limitations. Assume the taxpayer has two (2) asphalt layers costing two hundred thousand dollars (\$200,000) each that are both mobile and used property. Fifty percent (50%) of the hours of both asphalt layers was logged in Idaho during the year. The taxpayer has a two hundred thousand dollar (\$200,000) qualified investment computed by multiplying fifty percent (50%) by four hundred thousand dollars (\$400,000). The used property limitation of one hundred fifty thousand dollars (\$150,000) is applied to the two hundred thousand dollar (\$200,000) qualified investment and the investment tax credit allowed is computed at three percent (3%) of the one hundred fifty thousand dollars (\$150,000). ( )

**(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 is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from 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. (2-27-12)( )

**02. Exceptions to Backup Withholding.** Backup withholding by a pass-through entity is not required

on the income of the following pass-through owners and beneficiaries: (2-27-12)

**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. (2-27-12)

**c.** Resident individuals and part-year resident individuals who have income other than from a pass-through entity. (2-27-12)

**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. The pass-through entity has reported and paid the tax relating to the individual on a composite return pursuant to Section 63-3022L, Idaho Code.~~ (2-27-12)( )

ii. Such individual's share of income, and 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 income is subject to tax; ~~or~~ (2-27-12)( )

iii. The income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code; ~~or~~ (2-27-12)( )

iv. The individual has signed and the pass-through entity has approved an Idaho nonresident owner agreement. ( )

**03.** ~~**Certification of Residency.** Backup withholding is not required on 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 the income from the pass-through entity of such individual is exempt from withholding unless the pass-through entity knowingly accepts a false certificate.~~ **Idaho Nonresident Owner Agreement.** When an individual signs an Idaho nonresident owner agreement, he agrees to file and pay tax on his share of Idaho income from a pass-through entity. The signed agreement must be the proper form prescribed by the Tax Commission and must be submitted to the pass-through entity each year. The pass-through entity must sign and approve the nonresident owner agreement for it to be valid. Their approval will signify their acknowledgment that they are liable for any tax due at the corporate rate if the individual fails to file a return as agreed. If the pass-through entity does not approve the nonresident owner agreement, the pass-through entity must withhold or include the individual in the composite return. The pass-through entity must retain the forms for three years following the end of the taxable year for which it is to apply. (2-27-12)( )

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

**a.** The pass-through entity must withhold amounts from 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 for a taxable year must be remitted to the Tax Commission annually on or before the fifteenth day of the fourth month following the end of the 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. (2-27-12)

**b.** Amounts remitted as backup withholding for a 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 the pass-through entity's taxable year ends. (2-27-12)

**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: (2-27-12)

**a.** The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; (2-27-12)

**b.** The amount of tax withheld; (4-7-11)

**c.** Name, address, filing option, and social security number of each owner or beneficiary; (~~4-7-11~~)( )

**d.** The pass-through entity's name, and federal employer identification number. (2-27-12)

**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. (2-27-12)

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

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

### **DOCKET NO. 35-0101-1202**

#### **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 17, 2012.

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

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

Rule 075 is being amended to conform to Idaho Code section 63-3024 and adds tax brackets for calendar year 2012 and removes the information for calendar year 2007 so only five years of historical data is retained in the rule.

Rule 105 conforms to Idaho Code section 63-3022(i) to provide that passive losses incurred in years during which a taxpayer had no activity in Idaho are not deductible. This change treats passive losses in a manner identical to the treatment of net operating losses and capital losses.

Rules 108 and 253 conforms to Idaho Code section 63-3022O which removes the prohibition allowing the deduction of classroom supplies and other expenses not to exceed \$250 of elementary and secondary teachers otherwise allowable under Section 62(a)(2)(D) of the Internal Revenue Code.

Rule 121 conforms to Idaho Code section 63-3022B by revising the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 285 conforms to Idaho Code sections 63-3022L & 63-3036B by revising the provisions relating to the taxation of income of owners of an interest in a pass-through entity and regarding backup withholding for pass-through entities.

Rule 286 is being amended to clarify the allocation and apportionment procedures used when an S corporation and its qualified subchapter S subsidiaries (QSSS) are carrying on more than one unitary business.

Rules 710 and 719 are being amended to clarify the order of limitations for the Idaho investment tax credit. When a taxpayer has both mobile and used property that qualifies for the Idaho investment tax credit, the eligible amount is first determined under the mobile property rules and then the used property limitation is applied.

Rules 745,746,747,748 conform to Idaho Code sections 63-3029E & 63-3029EE which corrects an oversight from the Hire One Act of 2011 by allowing companies to continue to receive the new jobs tax credit up until the start of the Hire One Act and has a sunset date of January 1, 2017.

Rule 771 conforms to Idaho Code section 63-3024A which sets the amounts of the grocery credit for 2008 and provides for an increase in the amounts for subsequent years. These increases are automatic unless certain actions as provided in Idaho Code are taken by the Legislature or the Governor.

Rule 810 conforms to Idaho Code section 63-217 by providing that if the date for filing any report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday, legal holiday or a holiday recognized by the Internal Revenue Service, such acts shall be considered timely if performed on the next business day.

**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:

Rules 108 and 253 will have a \$275,000 reduction of revenue.  
Rule 121 will have a \$925,000 reduction of revenue for FY13 increasing to \$1 million by FY15.  
Rules 745, 746, 747, and 748 will have a \$125,000 reduction of revenue.

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

**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) 334-7670.

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 close of business Wednesday, October 24, 2012.

DATED this 31st day of August, 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1202**

**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 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    | \$10.79    | + 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)

*b.a. 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)

*b.b. 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  |
| \$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)

**dc.** 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)

**ed.** 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. |          |            |   |                                  |

(2-27-12)

**e. For taxable years beginning in 2012:**

| <b>IF IDAHO TAXABLE INCOME IS</b>   |                      | <b>IDAHO TAX</b> |             |                                  |
|---|----------------------|------------------|-------------|----------------------------------|
| <b>At least</b>   | <b>But less than</b> | <b>Is</b>        | <b>Plus</b> |                                  |
| \$1   | \$1,380              | \$0              | ±           | 1.6% of taxable income           |
| \$1,380   | \$2,760              | \$22.08          | ±           | 3.6% of the amount over \$1,380  |
| \$2,760   | \$4,140              | \$71.76          | ±           | 4.1% of the amount over \$2,760  |
| \$4,140   | \$5,520              | \$128.34         | ±           | 5.1% of the amount over \$4,140  |
| \$5,520   | \$6,900              | \$198.72         | ±           | 6.1% of the amount over \$5,520  |
| \$6,900   | \$10,350             | \$282.90         | ±           | 7.1% of the amount over \$6,900  |
| \$10,350 or more  |                      | \$527.85         | ±           | 7.4% of the amount over \$10,350 |
| Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012. |                      |                  |             |                                  |

( )

**(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. (2-27-12)

**01. State and Local Income Taxes.** As provided in Section 63-3022(a), Idaho Code, 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. (2-27-12)

**02. Net Operating Loss Deduction.** As provided in Section 63-3022(b), Idaho Code, the amount of the net operating loss deduction included in taxable income must be added. (2-27-12)

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

**a.** A corporation must add a capital loss or passive 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. (2-27-12)( )

**b.** An individual must add a capital loss or passive 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. (2-27-12)( )

**04. Interest and Dividend Income Exempt From Federal Taxation.** As provided in Section 63-3022M, Idaho Code, certain interest and dividend income that is exempt from federal income tax must be added. For example, interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. (2-27-12)

**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, 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 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 must be attached to the return. (2-27-12)

**i.** Expenses prorated to Idaho state and municipal interest income are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**ii.** Expenses prorated to non-Idaho state and municipal interest income are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (2-27-12)

**05. Interest Expense Attributable to Tax-Exempt Interest Income.** As provided by Section 63-3022M, Idaho Code, a taxpayer 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. (2-27-12)

**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 must be computed without regard to the special first-year depreciation allowance. 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. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Lump Sum Distributions.** As provided in Section 63-3022(k), Idaho Code, an individual must add the taxable amount of a lump sum distribution excluded from taxable income. (4-7-11)

**02. Withdrawals from an Idaho Medical Savings Account.** As provided in Section 63-3022K, Idaho Code, an account holder must add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (4-7-11)

**03. Withdrawals from an Idaho College Savings Program.** (4-2-08)

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

**b.** As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, 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)

**04. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, an eligible educator as defined in Section 62, Internal Revenue Code, must add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. ~~(3-20-04)~~( )

**05. State and Local Sales Tax.** As provided in Section 63-3022(j), Idaho Code, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 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(1), 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~~ Energy Efficiency Upgrades.** 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~~ installation of ~~insulation of an Idaho~~ energy efficiency upgrades in the residence ~~of the taxpayer~~ built or subject to an outstanding building permit on or before ~~1976~~ 2002. (~~2-27-12~~)(    )

**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 of the taxpayer. (~~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. (2-27-12)

**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. (2-27-12)

**(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. (2-27-12)

**08. Certain Expenses of Eligible Educators.** As provided in Section 63-3022O, Idaho Code, prior to January 1, 2012, the amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. (~~4-7-11~~) ( )

**285. S CORPORATIONS (RULE 285).** Sections 63-3025 and 63-3025A, Idaho Code. (4-2-08)

**01. Tax on S Corporations.** An S corporation that is transacting business in Idaho or authorized to transact business in Idaho is subject to the tax imposed by Section 63-3025, Idaho Code, if not paying the tax imposed by Section 63-3025A, Idaho Code. The tax imposed by Section 63-3025 or 63-3025A, Idaho Code, shall be computed on the total of the net recognized built-in gains and the excess net passive income of the S corporation attributable to Idaho for the taxable year. (4-2-08)

**a.** Net recognized built-in gains shall be determined pursuant to Section 1374, Internal Revenue Code, including any applicable limitations. (4-2-08)

**b.** Excess net passive income shall be determined pursuant to Section 1375, Internal Revenue Code, including any applicable limitations. (4-2-08)

**c.** If the tax computed in Subsection 285.01 of this rule is less than the minimum tax, the S

corporation shall pay the minimum tax. (4-2-08)

**02. Minimum Tax.** The minimum tax is required of every S corporation that is required to file a return. A name-holder or inactive S corporation that is authorized to do business in Idaho shall pay the minimum tax of twenty dollars (\$20) even though the S corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. See Subsection 285.03 of this rule. (4-2-08)

**03. Nonproductive Mining Corporations.** A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. An S corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (4-2-08)

**04. Application of Credits.** If an S corporation was previously a C corporation with an Idaho income tax credit carryover at the time of the S corporation election, the S corporation may use any available credit carryover against the tax on the excess net passive income or net recognized built-in gains if the carryover period related to the Idaho income tax credit has not expired before the taxable year in which the tax must be reported. (4-2-08)

**05. Tax Resulting From the ~~Election Under~~ Requirements of Section 63-3022L, Idaho Code.** An S corporation shall be subject to tax at the corporate rate on the income required to be reported for qualifying shareholders ~~who make the election~~ under Section 63-3022L, Idaho Code. This tax shall be in addition to any tax the S corporation owes under Section 63-3025 or 63-3025A, Idaho Code. See Rules 290 and 291 of these rules for additional information ~~on the election and computing taxable income under Section 63-3022L, Idaho Code.~~ (4-2-08)( )

**06. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) shall be treated for Idaho income tax purposes the same as treated for federal income tax purposes. The QSSS will not be treated as a separate corporation, but all the assets, liabilities, and items of income, deduction, and credit of a QSSS shall be treated as assets, liabilities and such items of the S corporation. Since the QSSS is not treated as a separate taxpayer, it is not subject to the minimum tax. (4-2-08)

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

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

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

- a. Separate accounting as provided in Rule 585 of these rules; (4-2-08)
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (4-2-08)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (4-2-08)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (4-2-08)

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

- a. The shareholder's share of each pass-through item of income and deduction; (4-7-11)

- b. The shareholder's share of each Idaho addition and subtraction; (4-7-11)
- c. The shareholder's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d. The shareholder's share of income allocated to Idaho; (4-7-11)
- e. The S corporation's apportionment factor; and (4-7-11)
- f. The shareholder's distributive share of S corporation gross income. (4-7-11)

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

**05. Qualified Subchapter S Subsidiary.** A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. If the S corporation and its qualified subchapter S subsidiaries are carrying on more than one unitary business, each unitary business must allocate and apportion its income pursuant to Rule 340.03. (4-2-08)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**710. IDAHO INVESTMENT TAX CREDIT: IN GENERAL (RULE 710).**  
Section 63-3029B, Idaho Code. (3-20-97)

**01. Credit Allowed.** The investment tax credit allowed by Section 63-3029B, Idaho Code, applies to investments made during tax years beginning on and after January 1, 1982, that qualify pursuant to Sections 46(c), 47, and 48, Internal Revenue Code, as in effect prior to amendment by Public Law 101-508. Investments must also meet the requirements of Section 63-3029B, Idaho Code, and Rules 710 through 719 of these rules. (5-8-09)

**02. Limitations.** The investment tax credit allowable in any taxable year shall be limited by the following: (3-20-97)

**a. Tax liability.** (3-30-01)

i. For taxable years beginning on or after January 1, 2000, the credit claimed may not exceed fifty percent (50%) of the tax after credit for taxes paid another state. (3-30-01)

ii. For taxable years beginning on or after January 1, 1995 and before January 1, 2000, the credit claimed may not exceed forty-five percent (45%) of the tax after credit for taxes paid another state. (3-30-01)

**b. Credit for qualifying new employees.** If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-30-01)

**c. Unitary taxpayers.** Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-01)

**d. Nonrefundable credits.** The investment tax credit is a nonrefundable credit. It is applied to the income tax liability in the priority order for nonrefundable credits described in Rule 799 of these rules. (3-15-02)

**e. Used Property Limitation.** The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5,

1990.

( )

**03. Carryovers.** (3-20-97)

**a.** Investment tax credit earned on investments made on or after January 1, 1990, but not claimed against tax in the year earned is eligible for a seven (7) year carryover. If a credit carryover from these years is available to be carried into taxable years beginning on or after January 1, 2000, the credit carryover is extended from seven (7) years to fourteen (14) years. (3-30-01)

**b.** For example, a calendar year taxpayer earned investment tax credit in calendar year 1993. The taxpayer was unable to use all the credit in that year and in the subsequent carryover years. Carryover was remaining into the seventh and final carryover year, calendar year 2000. Since the taxpayer had eligible carryover going into a taxable year beginning on or after January 1, 2000, the carryover period changes from seven (7) years to fourteen (14) years. Assuming the carryover is available for the entire carryover period, and that there are no short period years, the last year that the carryover can be used will be calendar year 2007. If the seventh carryover year was a taxable year beginning prior to January 1, 2000, the carryover period has expired and is not extended. (3-30-01)

**c.** Investment tax credit earned on investments made in taxable years beginning on or after January 1, 2000, but not claimed against tax in the year earned is eligible for a fourteen (14) year carryover. (3-30-01)

**04. Motor Vehicle.** Motor vehicle means a self-propelled vehicle that is registered or may be registered for highway use pursuant to the laws of Idaho. Gross vehicle weight is determined by the manufacturer's specified gross vehicle weight. (3-20-97)

**05. Expensed Property.** The cost of property that the taxpayer elects to expense pursuant to Section 179, Internal Revenue Code, is not a qualified investment. (3-30-01)

**06. Bonus Depreciation.** The cost of property that the taxpayer elects to deduct as bonus first-year depreciation pursuant to Section 168(k), Internal Revenue Code, is not a qualified investment for property acquired after 2007. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**719. IDAHO INVESTMENT TAX CREDIT: PROPERTY TAX EXEMPTION IN LIEU OF (RULE 719).**  
Section 63-3029B, Idaho Code. (3-20-04)

**01. In General.** Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. (3-20-04)

**02. Terms.** As used in this rule: (3-20-04)

**a. Qualifying Taxpayer.** A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. (4-6-05)

**i.** The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation shall not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group shall determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. (4-6-05)

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. (4-6-05)

b. Second Preceding Taxable Year. The term second preceding taxable year shall mean the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

~~e. Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (3-20-04)~~

**03. Negative Idaho Taxable Income in Second Preceding Taxable Year. (4-6-05)**

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year shall be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)

**c. Examples of Determining Second Preceding Taxable Year. (3-20-04)**

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (4-6-05)

iii. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year from the fiscal year ended June 30, 2004. (4-6-05)

iv. Assume the same facts as in Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. (4-6-05)

v. Table of examples of determining second preceding taxable year.

| TAXABLE YEAR PROPERTY PLACED IN SERVICE | FIRST PRECEDING TAXABLE YEAR | SECOND PRECEDING TAXABLE YEAR |
|---|------------------------------|-------------------------------|
| Calendar year 2003                      | Calendar year 2002           | Calendar year 2001            |

| <b>TAXABLE YEAR PROPERTY PLACED IN SERVICE</b>                     | <b>FIRST PRECEDING TAXABLE YEAR</b>                                   | <b>SECOND PRECEDING TAXABLE YEAR</b>                                       |
|--|---|--|
| Calendar year 2004   | Calendar year 2003  | Calendar year 2002   |
| Calendar year 2004   | Calendar year 2003  | Short taxable year beginning February 1, 2002 and ending December 31, 2002 |
| Fiscal year beginning July 1, 2002 and ending June 30, 2003        | Fiscal year beginning July 1, 2001 and ending June 30, 2002           | Fiscal year beginning July 1, 2000 and ending June 30, 2001                |
| Fiscal year beginning September 1, 2003 and ending August 31, 2004 | Fiscal year beginning September 1, 2002 and ending August 31, 2003    | Fiscal year beginning September 1, 2001 and ending August 31, 2002         |
| Fiscal year beginning July 1, 2002 and ending June 30, 2003        | Short taxable year beginning January 1, 2002 and ending June 30, 2002 | Calendar year 2001   |

(3-20-04)

**d. Unitary Taxpayers.** Each corporation included in a unitary combined group shall use its Idaho taxable income, as determined pursuant to Section 63-3027, Idaho Code, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. (4-6-05)

**e. Pass-Through Entities.** A taxpayer who is a partnership or an S corporation shall not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

**f. Return Not Filed.** If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer shall not be entitled to the exemption. (3-20-04)

**04. Used Property Limitation.** (3-20-04)

**a. In General.** The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment shall not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. (3-20-04)

**b. Selection of Items of Used Property.** If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars (\$30,000) of the third item shall not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer shall be made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)

**c. Electing Property Tax Exemption on Selected Used Property Items.** Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer shall determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable



year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in Paragraph 719.04.b., of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. (4-6-05)

**(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 2010~~ after 2009 and before ~~April 15, 2011.~~ ~~(2-27-12)~~( )

**01. In General.** A revenue-producing enterprise is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules. (4-7-11)

**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 ~~April 15, 2011.~~ ~~(2-27-12)~~( )

**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.** (2-27-12)

**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. (2-27-12)

**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. (2-27-12)

**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 after 2004 and before April 15, 2011. (~~2-27-12~~)(    )

**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~~ will 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~~ **must** 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~~ **must** be deducted, and any nonbusiness income and expenses allocable to Idaho ~~shall~~ **must** 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~~ **must** 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~~ **must** be deducted, and any nonbusiness income and expenses allocable to Idaho ~~shall~~ **must** be excluded. (3-30-07)(    )

**02. Unitary Taxpayers.** Each corporation included in a unitary combined group ~~shall~~ **must** 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 after 2001 and before April 15, 2011. (2-27-12)(    )

**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)**

**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<br>\$1,000 OR LESS | IDAHO TAXABLE INCOME<br>MORE THAN \$1,000 |
|-----------------|---|---|
| <del>2012</del> | <del>\$90</del>                         | <del>\$70</del>                           |
| 2011            | \$80                                    | \$60                                      |
| 2010            | \$70                                    | \$50                                      |
| 2009            | \$60                                    | \$40                                      |
| 2008            | \$50                                    | \$30                                      |

~~(2-27-12)( )~~

**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)**

**810. TIME FOR FILING INCOME TAX RETURNS (RULE 810).** (3-20-97)  
Section 63-3032, Idaho Code.

**01. Due Date of Returns.** (7-1-98)

**a.** All taxpayers except farmer's cooperatives. Each taxpayer, whether a corporation, S corporation, individual, partnership, estate or trust, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the fourth month following the close of the taxable year. A taxable year, for this purpose, includes a short taxable year as defined by the Internal Revenue Code. However, if the time for filing a short taxable year for federal income tax purposes is later than the fifteenth day of the fourth month following the close of the taxable year, the later date ~~shall~~ will be the date the return is required to be filed with the Tax Commission. (~~3-15-02~~)(    )

**b.** Farmer's cooperatives. Each farmers' cooperative taxable pursuant to Section 63-3025B, Idaho Code, is required to file an income tax return with the Tax Commission on or before the fifteenth day of the ninth month following the close of the taxable year. (7-1-98)

**02. Timely Filing Defined.** If the last day for filing a return falls on a Saturday, Sunday, ~~or~~ legal holiday, or a holiday recognized by the Internal Revenue Service, the return is deemed timely filed if it is filed on the next day that is not a Saturday, Sunday, or legal holiday. This rule also applies to returns falling due at the end of a period of extension granted by the Tax Commission. A legal holiday, for this purpose, is any holiday recognized by the state of Idaho, including special holidays declared by the Governor. (~~3-20-97~~)(    )

**03. Mail.** Section 63-217(1), Idaho Code, specifies that an income tax return sent through the mail is filed timely if it is postmarked on or before the due date of the return. See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010. (3-15-02)

**04. Fifty-Two/Fifty-Three Week Years.** A fifty-two fifty-three (52-53) week year is considered to end on the last day of the calendar month ending nearest to the last day of that taxable year. For example, the taxable year of a taxpayer with a fifty-two fifty-three (52-53) week year that ends on February 3 is considered to end on January 31. In this example the due date of the return is May 15, the fifteenth day of the fourth month following January 31. (3-20-97)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.02 - SALES TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0102-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-3624, 63-3635, 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 17, 2012.

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:

The following rules, as stated in the Notice Of Intent To Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time constraints and will remain as codified: Rules 012, 027, 030, 041, 047, 051, 067, 079, 105, 129, 130, and 136.

Rule 024 is being amended to clarify that a rental of tangible personal property with an operator provided by the equipment owner will be treated as a fully operated rental regardless of whether the hired operator is an employee of the equipment owner.

Rule 037 is being amended to clarify the exemption for the purchase and use of aircraft primarily utilized in transporting freight or passengers including the definition of important terms such as common carrier and public. This Rule is also being amended to reflect statutory changes enacted in the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident.

Rule 043 is being amended to clarify whether certain fees or charges added onto the sale of tangible personal property, such as fuel surcharges or environmental fees, should be included in the taxable sales price.

Rule 044 is being amended to define the term "trade down."

Rule 072 is being amended to clarify the taxability of tangible personal property removed from inventory held for resale.

Rule 095 is being amended to define "money operated dispensing equipment" to include machines operated by credit or debit cards.

Rule 101 is being amended to reflect statutory changes enacted in the last legislative session that changed the period for reviewing the ongoing IRP use tax exemption.

Rule 109 is being amended to define "amusement device" to include machines operated by debit or credit card and prepaid cards.

Rule 128 is being amended to make minor technical corrections to bring the rule in line with current policy and procedure regarding exemption certificates.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Vol. 12-6, page 36](#).

**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) 334-7531.

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 close of business October 24, 2012.

DATED this August 31, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1201**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**10. Personal Property Tax.** A lessor may require reimbursement from the lessee for the personal property tax the lessor must pay on leased equipment. A charge for personal property tax will be exempt from sales tax if the lease is for a term of one year or longer; if the property tax is billed as a separate line item; and if the charge is no more than the property tax actually paid by the lessor. (5-8-09)

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

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

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

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

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

**a.** See Rule 025 of these rules on real property rental. (7-1-99)

**b.** See Rule 037 of these rules on aircraft and flying services. (7-1-99)

**c.** See Rule 038 of these rules on flying clubs. (7-1-99)

**d.** See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)

**e.** See Rule 049 of these rules on warranties and service agreements. (7-1-99)

**f.** See Rule 073 of these rules on transient equipment. (7-1-99)

**g.** See Rule 106 of these rules on motor vehicles. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

[Section 63-3622GG, Idaho Code.](#)

( )

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

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

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

**c.** Transportation of Passengers. The transportation of passengers means the service of transporting

passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

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

**e.** Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more ~~airplanes or other~~ aircraft is not a nonresident. The use of an ~~airplane~~ aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-7-11)( )

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

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

**h.** Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. ( )

**i.** Public. The public does not include: ( )

**i.** Owners or operators of the aircraft; ( )

**ii.** Employees of the aircraft owner or operator; ( )

**iii.** Guests of the aircraft owner or operator; ( )

**iv.** Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; ( )

**v.** An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or ( )

**vi.** An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. ( )

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

**a.** Primarily used to ~~transport~~ provide passenger\* or freight services for hire as a common carrier; (2-18-02)( )

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

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

- i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)
- ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (~~3-20-04~~)( )

**03.** Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. ( )

**034.** **Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

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

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

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

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

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

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

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

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

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

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

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

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

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The

aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**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 agreed 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 in 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)

e. Any fuel surcharges except those charges which the vendor can document are related only to delivery of the property to the end customer. ( )

f. Any environmental or disposal fee except those fees directly imposed by a governmental agency. ( )

**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.** 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. (3-29-12)

a. If a gratuity does not meet all of the following requirements, the gratuity will be subject to sales tax: (3-29-12)

i. A gratuity must be paid to the service provider of the meal as additional income to the base wages of the service provider; (3-29-12)

ii. A gratuity must be separately stated on the receipt or be voluntarily paid by the customer; and (3-29-12)

iii. A gratuity must not be used to avoid sales tax on the actual price of the meal. (3-29-12)

b. For the purposes of Subsection 043.04 of this rule, the following definitions apply: (3-29-12)

i. Meal. Food or drink prepared for or provided to a customer. (3-29-12)

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. (3-29-12)

**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)

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

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

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. ~~Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).~~ To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. (~~5-8-09~~) ( )

a. Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500). ( )

**03. Trade-Downs.** A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero (0) and no sales tax is due on the transaction. ( )

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

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

**b.** Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000). (7-1-93)

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

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

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

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

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

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

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

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

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

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

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

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased

vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax.

(3-30-01)

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

(3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).**

**01. Imposition of Use Tax.** Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code.

(7-1-93)

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term "use" does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules.

(3-15-02)

**03. Storage.** Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho.

(7-1-93)

**04. Specifically Excluded from the Definition of Both Use and Storage Are:** (7-1-93)

**a.** Retention or use of property for subsequent transportation outside the state; or (7-1-93)

**b.** Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use or resale solely outside the state. (7-1-93)

**05. Receipt Showing Sales Tax Paid.** If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer's receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements. (6-23-94)

**06. Out-of-State Purchases.** If the property is purchased outside the state or from a retailer not subject to the Commission's jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. (6-23-94)

**07. Taxes Paid to Another State.** The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid. (7-1-93)



**a.** If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax. (6-23-94)

**b.** If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property. (6-23-94)

**c.** If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is limited to the amount of Idaho tax due on the same transaction or use of the property. (6-23-94)

**08. Use Undeterminable at Time of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (3-15-02)

**09. Removal from This State.** If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply. (7-1-93)

**10. Tangible Personal Property Removed From Inventory.** A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code. ( )

**a.** Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, if a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor. ( )

**b.** Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

**c.** Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees. (7-1-93)

**d.** Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars (\$10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars (\$100). (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

095. MONEY-OPERATED DISPENSING EQUIPMENT (RULE 095).

01. **Money-Operated Dispensing Equipment.** ~~Effective July 1, 1990,~~ The sale, purchase, lease, or rental of money-operated dispensing equipment is exempt from tax if the equipment is only used to dispense a tangible product, amusement, or service on which a retail sales tax is imposed by the state of Idaho. ~~(7-1-93)~~( )

a. Money-operated dispensing equipment includes equipment operated by a debit or credit card. ( )

02. **Parts, Kits, or Supplies.** This exemption does not apply to parts, kits, or supplies used to repair, refurbish, or upgrade the dispensing equipment. Refer to Section 63-3622II, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. **In General.** An exemption is provided from the sales and use tax for the sale or lease of motor vehicles and trailers ~~sold or leased~~ to commercial or private carriers to be substantially used in interstate commerce. This exemption is commonly called the IRP Exemption. Commercial or private carriers ~~shall include~~ are in the business of transporting ~~of~~ persons or commodities owned by the carrier or another, ~~but shall not include~~ Farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code, do not meet the requirements of the IRP exemption. ~~(3-30-07)~~( )

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

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

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

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

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

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

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

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

05. **Documentation.** Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

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

**07. Failure To Meet Interstate Mileage Requirement.** The use of a fleet of trucks and trailers, purchased exempt under the IRP exemption provided by Section 63-3622R, Idaho Code, will become taxable ~~at the end of any registration period for~~ as of June 30 of any year in which the fleet's out-of-state mileage is less than ten percent (10%) of the total fleet mileage during the previous four (4) quarters. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**109. AMUSEMENT DEVICES (RULE 109).**

**01. ~~Currency-Operated~~ Amusement Devices.** "Amusement device" means ~~all coin, currency, debit card, credit card, prepaid arcade card,~~ or token operated machines and devices used for amusement or entertainment. 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~~ other 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 must~~ obtain a seller's permit if ~~he is making~~ the owner or operator makes retail sales other than the use of ~~currency or token operated~~ amusement devices. If the owner or operator ~~is not making~~ does not make such other retail sales, ~~he the owner or operator~~ need not obtain a seller's permit, but must obtain an amusement device permit for each amusement device in service. (6-30-95)( )

**a.** Owners and operators of ~~coin or currency-operated~~ amusement devices ~~are required to must~~ pay a permit fee for every such amusement device in operation. 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. (3-29-12)( )

**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 amusement device in service. ~~A~~ The owner or operator must affix a separate permit on each amusement device in service ~~is required~~. The permit ~~shall~~ must be affixed 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 an amusement device that is no longer in service to another amusement device 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. (3-29-12)( )

**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. (3-29-12)

03. ~~Noncoin-Operated~~ **Other Amusement Machines or Games.** Charges for the use of ~~amusement~~ machines or games which ~~are not currency or token operated~~ do not meet the definition in Subsection 109.01 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~~ such amusement machines or games ~~is required to~~ must obtain a seller's permit if ~~he is charging~~ the owner or operator charges 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).**

01. **In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. **Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

03. **Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

04. **Qualified Buyers for Purposes of Resale.** The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds a ~~an~~ current and valid Idaho seller's permit number. ~~An Idaho seller's permit number has nine (9) digits followed by an "S." Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid.~~ (3-6-00)( )

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. **Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does

not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. ~~(3-4-10)~~( )

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include ~~a~~ its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. ~~(3-4-10)~~( )

**i.** Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

**ii.** Example. A lawn and garden store occasionally sells ~~bar-b-que~~ barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. ~~(3-4-10)~~( )

**iii.** Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

**b.** Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

**c.** Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)

**d.** Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

**e.** The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

**f.** Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

**g.** Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an

American Indian reservation, or when making a gift of a motor vehicle, boat or RV.

~~(3-6-00)~~( )

**h.** Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

**i.** Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

**j.** Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

**a.** Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

**b.** Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular

exemption claimed on the certificate. (3-4-10)

**a.** A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- iv. Selling and distribution equipment and supplies; (3-6-00)
- v. Property used in transportation activities; (3-6-00)
- vi. Equipment or other property used to make repairs; (3-6-00)
- vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)
- x. Recreational vehicles. (3-6-00)

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)

**c.** Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

**d.** A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

**e.** Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

**f.** In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the

process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection.

(3-4-10)

**g.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the ~~buyer~~ purchaser is certifying that the purchase qualifies for an exemption from tax. (3-4-10)(    )

**08. Purchaser's Responsibility.** A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

**b.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)



**09. Timely Acceptance of Certificates.** A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

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

## **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1202**

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code, and Section 63-802, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday - November 20, 2012 - 9:00 a.m.**

**Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
Boise, Idaho**

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 605 clarifies exclusive use provisions in order to determine what leased property is exempt under Idaho Code section 63-602E, the property tax exemption for property used for educational purposes. Rule 605 clarifies that when a building is used for two or more uses one use of which is for non-profit educational purposes, the portion used for educational purposes is exempt and provides that leased personal property, such as computers, is only exempt if it is used exclusively on the school premises or if its use is restricted in such a way to eliminate the possibility of use for other than educational purposes.

Rule 620 clarifies the exemption process provided in House Bill 519 which amended Idaho Code section 63-602W to add a property tax site improvement related to land exemption for land developers. Rule 620 is needed to clarify the exemption process. Rule 620 defines site improvements, explains an application process and eligibility criteria, clarifies that the exemption is lost if the property is conveyed, and explains that the new assessment will be prorated as set out in Idaho Code section 63-602Y.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2, 2012, Idaho Administrative Bulletin, [Vol. 12-5, page 88](#).

**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 Alan Dornfest at (208) 334-7742.

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 close of business on October 24, 2012.

DATED this August 31, 2012.

Alan Dornfest  
Tax Policy Supervisor  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1202**

**604. — ~~608.~~ (RESERVED)**

**605. PROPERTY EXEMPT FROM TAXATION - PROPERTY USED FOR SCHOOL OR EDUCATIONAL PURPOSES (RULE 605).**  
Section 63-602E, Idaho Code. ( )

**01. Eligibility of Leased Property.** Leased property used exclusively for nonprofit school or educational purposes, including charter school purposes, shall be eligible for the exemption provided in Section 63-602E, Idaho Code, provided the following criteria are met: ( )

**a.** Leased real property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. Such leased real property may be part of a multi-use property, in which case only the portions of the property used for the educational purposes shall be eligible for the exemption. ( )

**b.** Leased personal property must be exclusively used for the educational purposes identified in Subsection 605.01 of this rule. To be considered exclusively used in this manner, such personal property must: ( )

**i.** Be used exclusively at a nonprofit school or charter school facility; or ( )

**ii.** Have its use constrained or restricted in such a way as to effectively eliminate the possibility of use for other than educational purposes. ( )

**02. Application for Exemption for Leased Personal Property.** Only the owner of leased personal property can apply for this exemption. Proof of compliance with the requirements of Paragraph 605.01.b. of this rule is required and may be provided by the lessee. ( )

**606. -- 608. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**620. EXEMPTION FOR NEVER OCCUPIED RESIDENTIAL IMPROVEMENTS AND COMMERCIAL, INDUSTRIAL, AND RESIDENTIAL SITE IMPROVEMENTS (RULE 620).**  
Section 63-602W, Idaho Code. ( )

**01. Qualifying Residential Improvements.** Improvements to any land parcel that are residential and have never been occupied for residential purposes may qualify for the exemption pursuant to Section 63-602W(3), Idaho Code. *This rule is effective January 1, 1998.* Such qualifying improvements can include the following:

~~(1-1-98)~~( )

- a. Single family residences, residential townhouses, and residential condominiums; and (1-1-98)
- b. Attached or unattached ancillary structures which are not intended for commercial use and are constructed contemporaneously with the improvements identified in Paragraph 620.01.a. Such structures may include sheds, fences, swimming pools, garages, and other similar improvements, subject to the limitations of Subsection 620.02. (1-1-98)

**02. Non-Qualifying Residential Improvements.** Never previously occupied residential improvements listed in the following Subsections do not qualify for ~~this~~ the exemption provided in Section 63-602W(3), Idaho Code. ~~(1-1-98)~~( )

a. Location. Ancillary structures (see Paragraph 620.01.b.) that are not located on the parcel on which the improvement is located, identified in Subsection 620.01.a. of this rule, shall not qualify ~~for the exemption provided pursuant to Section 63-602W, Idaho Code.~~ ~~(1-1-98)~~( )

b. Remodeled improvements. Remodeling of previously occupied residential improvements does not qualify ~~for the exemption.~~ ~~(1-1-98)~~( )

c. Improvements included in land value. Improvements included in land value, such as septic tanks, wells, improvements designed to provide utility services or access, and other similar improvements shall not qualify ~~for the exemption.~~ Site improvements associated with land may qualify for the exemption in Section 63-602W(4), Idaho Code, provided a timely application is filed and the requirements of the Section 63-602W(4), Idaho Code, and Subsection 620.03 of this rule are met. ~~(1-1-98)~~( )

**03. Special Provisions for the Exemption for Site Improvements.** Site improvements associated with land which are made or caused to be made by the land developer and held by the land developer are exempt, provided the property qualifies for the exemption pursuant to the provisions of Section 63-602W(4), Idaho Code. ( )

a. “Site improvements associated with land.” “Site improvements associated with land” may include developed access, grading, sanitary facilities, water systems, and utilities. ( )

b. Application. The land developer must file the application required for this exemption with the county commissioners as required by Section 63-602, Idaho Code, by April 15 and the taxpayer and county assessor must be notified of any decision by May 15. ( )

i. For any parcel, the application must describe the parcel in sufficient detail for the assessor to identify the parcel. ( )

ii. Multiple parcels may be included in one application, provided the parcels are under the same ownership and are listed and described in the application in sufficient detail for the assessor to identify each parcel. ( )

iii. The application must be filed in the first year for which the exemption is claimed. In subsequent years, no application is necessary for any parcel that received the exemption in the immediate prior year and still qualifies for the exemption. ( )

c. Proof of eligibility for the exemption. To be eligible, the land developer must provide the county assessor and county commissioners with sufficient proof that: ( )

i. The land developer holds the land upon which the site improvements have been made; ( )

ii. The land developer made or caused to be made the site improvements on the land; ( )

iii. The real property is held by the land developer for sale or consumption in the ordinary course of the

land developer's business; and ( )

iv. The land developer is the owner or are in possession of the land under a land sale contract. ( )

**04. Loss of the Exemption for Site Improvements.** The exemption for site improvements provided in Section 63-602W(4), Idaho Code, is lost when construction of any buildings or structural components of buildings is begun or when title to the land is conveyed from the land developer at any time following the installation of the site improvements. ( )

**a. Conveyance.** Any change in ownership conveying title to land by deed or court order is considered a conveyance and result in loss of this exemption. ( )

**b. Timing.** Site improvements losing this exemption are subject to assessment and taxation in accordance with the change of status provisions of Section 63-602Y, Idaho Code. ( )

**c. Loss by individual parcel.** Loss of exemption will occur on a parcel by parcel basis. For example, if ten (10) adjoining parcels are all receiving the exemption, but one (1) of these parcels no longer qualifies, the remaining nine (9) parcels continue to receive the exemption. ( )

**05. Valuation of Land With Qualifying Exempt Site Improvements.** Land otherwise taxable, but including site improvements that qualify for the exemption pursuant to Section 63-602W(4), Idaho Code, will be assessed at market value, in accordance with the provisions of Rule 217 of these rules. ( )

**06. Forestland and Agricultural Use.** This exemption does not apply to parcels assigned to forestland or agricultural categories. ( )

**07. Reporting and Deducting the Amount of the Exemption.** The value exempted must be reported on the abstract as required in Rule 509 of these rules. Any exempted value previously included in a new construction roll will be deducted from the new construction roll value reported in the first year following the year in which the exemption is granted, as provided in Rule 802 of these rules. ( )

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1203

#### 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 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

Rules 714, as stated in the Notice of Intent to Promulgate Rules - Negotiated Rulemaking and published in the June 6, 2012, Administrative Bulletin, are not being promulgated due to time restraints and will remain as codified.

Rule 131 is being amended to give guidance to county assessors on how to handle foreclosure sales. This proposed change adopts the International Association of Assessing Officer's "Standard on Verification and Adjustment of Sales.

New Rule 608 conforms with the provisions of House Bill 584a and provides that the homeowner's exemption continues for one year after the death of the individual who has previously qualified. The new proposed rule will explain that the homestead must continue to the claimant's estate without change in the owner of record and that property that are in life estates will not continue to get the exemption.

Rule 630 conforms with the provisions of House Bill 356 and requires that an annual application be submitted to the county in order to claim the property tax exemption under Section 63-4501 I.C. (New Capital Investments Incentive Act). Rule 630 also clarifies what information is required to be listed on the notice that serves as the annual exemption application.

Rule 995 is being amended to identify the specific Bureau of the Census reports from which the populations for cities and counties are obtained for purposes of sales tax distribution.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2012, Idaho Administrative Bulletin, [Vol. 12-06, page 38](#).

**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 Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1203**

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

**01. Equalization Ratio Study.** Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the “Standard on Ratio Studies” and the “Standard on Verification and Adjustment of Sales” both referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. Equalization ratio studies must consist of at least five (5) sales and/or appraisals. The State Tax Commission may delete sales when necessary to improve representativeness. Sales should be considered as potentially valid if a financial institution is the seller, provided that: ( )

**a.** Such sales comprise more than twenty (20) percent of the sales in any primary category or other category tested for equalization; ( )

**b.** Such sales are validated to account for changes in property characteristics; and ( )

**c.** Any properties that have been vandalized are excluded. ( )

**d.** The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be the median. (4-7-11)

**02. Tested For Equalization.** Except as provided in Subsection 131.03 of this rule, categories to be tested for equalization purposes are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided adequate samples can be obtained. (4-7-11)

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

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

**b.** The State Tax Commission is informed after the county board of equalization adjourns and before the state board of equalization adjourns of the implementation of assessment changes likely to result in a finding that a category found in compliance with equalization standards following the annual ratio study would be found out of compliance with these standards for the current year's assessments. The follow-up ratio study authorized under this option shall be conducted for the primary category likely to be out of compliance with equalization standards and for any secondary categories comprising the primary category, provided adequate samples can be obtained. (4-7-11)

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

**05. Use of Ratio Study Results.** The results of the annual ratio study or any follow-up ratio study shall be one (1) source of information upon which the State Tax Commission may rely when testing assessments for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any primary, or, if applicable under the provisions of Subsection 131.03.b. of this rule, secondary category, described in Subsections 130.02 through 130.07 of these rules, show, with reasonable statistical certainty as defined in Subsection 131.09 of this rule, that the appropriate measure of level of the category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in the category or any portion of the category included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. Within any primary category, except as provided in Subsection 131.06 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for that primary category. (4-7-11)

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

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

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

**09. Reasonable Statistical Certainty.** For the purposes of Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized shall mean that the appropriate measure of level determined by the ratio study for any category tested for equalization must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: (4-7-11)

**a.** The appropriate measure of level for the category(ies) being tested is less than ninety percent (90%)



or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or (4-7-11)

**b.** The appropriate measure of level for the category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study completed prior to August 31, 2007 will be considered as one of the most recent previous two (2) ratio studies. (4-7-11)

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**604. -- ~~6087.~~ (RESERVED)**

**608. PROPERTY EXEMPT FROM TAXATION - HOMESTEAD - CONTINUED ELIGIBILITY AFTER DEATH OF CLAIMANT (RULE 608).**  
Section 63-602G, Idaho Code. ( )

**01. Ownership Interest.** For the homestead previously qualifying for the exemption provided in Section 63-602G, Idaho Code, to continue to qualify in the year following the death of the qualifying claimant, the homestead must continue to be part of the claimant's estate, without change in record owner. If the ownership interest upon which the exemption had been granted was a life estate, the continuation provided in Section 63-602G(8), Idaho Code, does not apply. ( )

**02. Occupancy.** The continuation of this exemption shall not be affected by occupancy status of the property during the year following the claimant's death. For example, the property may be vacant or rented during that period and may be used for something other than residential purposes. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**630. TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).**  
Section 63-4502, Idaho Code. (3-29-12)

**01. Notification of New Capital Investment.** (3-29-12)

**a.** Prior to receiving the benefit of the tax exemption, the taxpayer shall notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification shall be accomplished by submitting a written declaration or notification with the ~~county assessor and the~~ board of county commissioners containing the following information: (3-29-12)( )

i. The name and address of the taxpayer; (3-29-12)

ii. A description of the new capital investment project; (3-29-12)

iii. The assessor's parcel number(s) identifying the location of the project site; (3-29-12)

iv. The date that the qualifying period began; (3-29-12)

v. A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. (3-29-12)

b. The notification required hereunder may be submitted by the taxpayer to the ~~county assessor and the~~ board of county commissioners at any time after the qualifying period begins. However, if the notification is submitted after ~~May~~ April 15 in a given year, a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. Submittal of the notification required hereunder shall constitute application for the exemption in compliance with Section 63-602, Idaho Code. Until the taxpayer meets all the requirements for the New Capital Investments Tax exemption, for each year after the first year in which the exemption is granted, the notice must identify the name and address of the taxpayer and the location of the project site, but does not need to provide additional information as required in Paragraph 630.01.a. of this rule. (3-29-12)( )

**02. Property of the Taxpayer.** Property of a taxpayer includes all real or personal property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. (3-29-12)

**03. New Construction.** Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. (3-29-12)

**04. Failure to Make the Qualifying New Capital Investment.** ( )

**a.** If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property shall lose the exemption granted by this section ~~beginning with the tax year immediately following the~~ at the conclusion of the qualifying period. (3-29-12)( )

**b.** In the event that, at any time during the project period, the taxpayer no longer intends to fulfill the qualified new capital investment requirements, the taxpayer must notify the county commissioners who shall notify the county assessor. Upon receipt of such notification, the property shall be taxable for the remainder of the year in which the notification is provided, pursuant to Section 63-602Y, Idaho Code. Failure of the taxpayer to provide such notice does not prevent the county assessor from discovering the taxpayer's intent through alternate procedures and then notifying the county commissioners that the requirements for the exemption are no longer met. In such an instance, the taxpayer must be notified and may appeal loss of the exemption to the county board of equalization as provided in Section 63-501A, Idaho Code. ( )

**05. Continuation of Tax Exemption Following the End of the Project Period.** ( )

**a.** At any time during the qualifying period, but not later than ninety (90) days after the conclusion of the qualifying period, the taxpayer must provide notice to the county commissioners with sufficient evidence to prove that the required qualifying new capital investment has been made. ( )

**b.** Once the taxpayer has successfully met all the requirements pursuant to Section 63-4502, Idaho Code, and provided notice to the county commissioners pursuant to Paragraph 630.05.a. of this rule, the county commissioners shall notify the county assessor and taxpayer of the taxpayer's continuing qualification for the exemption for all years thereafter. The county assessor shall retain this notice. ( )

**c.** After the year in which the taxpayer has been notified of continuing qualification as provided in Paragraph 630.05.b. of this rule, the taxpayer must continue to notify the county annually to identify the property to be exempted pursuant to Subsection 630.05. Failure to make such notification will not invalidate the exemption; the county assessor must then apply the exemption against the assessed value of the taxpayer's highest value parcel within the county. ( )

**056. Cross Reference.** For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

**995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).**  
Section 63-3638, Idaho Code.

(5-3-03)

**01. Most Current Census.** Population shall be from the most current population census or estimate of incorporated city populations available from “Table 4, Annual Estimates of the Resident Population for Incorporated Places in Idaho” and estimate of county populations from “Table 1, Annual Estimates of the Resident Population for Counties of Idaho” available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. If the State Tax Commission is notified that the Bureau of the Census has revised any city or county population estimates, the revised estimates shall be used for the distribution of sales tax money.  
(3-24-94)( )

**02. Market Value for Assessment Purposes.** Market value for assessment purposes shall mean the market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall include homeowner’s exemptions, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(15), Idaho Code, for the calendar year immediately preceding the current fiscal year.  
(5-3-03)

**03. Current Fiscal Year.** For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September.  
(3-30-01)

**04. Incorporated City.** Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council, ~~and be recognized by the Bureau of the Census, U.S. Department of Commerce, for the distribution of federal general revenue sharing monies.~~  
(3-24-94)( )

**05. ~~Population and~~ Valuation Estimates.** ~~Population and~~ Valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution.  
(3-24-94)( )

**06. Determination Date and Eligibility.** The eligibility of each city for revenue sharing monies pursuant to Section 63-3638(10)(a), Idaho Code, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(10)(c), Idaho Code.  
(4-6-05)

**07. Quarterly Certification.** The State Tax Commission shall certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(10)(c) and 63-3638(10)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(10)(a) and 63-3638(10)(b), Idaho Code. Each county clerk shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission.  
(4-6-05)

**a. City and County Base Shares.** For cities and counties, the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share.  
(3-30-01)

**b. Special Purpose Taxing District Base Shares.** For special purpose taxing districts the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed.  
(3-30-01)

**c. Excess Shares.** Excess shares shall be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(10)(c) or 63-3638(10)(d), Idaho Code. These amounts shall not be subject to redistribution provisions of Section 40-801, Idaho Code.  
(4-6-05)

**d.** Shares Pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code. Shares to be distributed pursuant to Section 63-3638(10)(a) or 63-3638(10)(b), Idaho Code, shall be termed "revenue sharing." Such shares shall be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(10)(b)(i), Idaho Code, shall be considered an annual amount and shall be divided into four (4) equal shares. (4-6-05)

**08. Notification of Value.** The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

**09. Corrections.** (3-30-01)

**a.** When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections shall be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions for the last quarter of the current fiscal year shall be corrected as soon as practicable in distributions made for the following fiscal year. (4-6-05)

**b.** The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

**c.** The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

# IDAPA 35 - IDAHO STATE TAX COMMISSION

## 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

### DOCKET NO. 35-0103-1204

#### 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 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 600 is being amended to comply with recently enacted HB356 which requires applicants for certain property tax exemptions to be notified of the decision to grant or deny the application by May 15. The rule is being amended to state that for all exemptions requiring an application, the applicant will be notified of the decision of the county commissioners by May 15 unless a different date is provided in the exemption statute. The rule further will provide that for all property subject to assessment by the State Tax Commission the application for any exemption shall be included with the operator's statement.

Rule 803 is being amended to comply with Section 63-1305A, Idaho Code, requiring that the taxing district first budgets the maximum amount of property tax permitted pursuant to section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. Instructions are needed in order to implement recently enacted HB697 with respect to the required use of foregone amount.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 4, 2012, Idaho Administrative Bulletin, [Vol. 12-7, page 108](#).

**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 Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1204

**600. PROPERTY EXEMPT FROM TAXATION (RULE 600).**

Section 63-602, Idaho Code. ( )

**01. Burden of Proof.** The burden of proof of entitlement to the exemption is on the person claiming exemption for the property. ~~(4-5-00)~~( )

**02. Notice of Decision.** ( )

**a.** For property subject to local assessment with exemptions requiring annual application as specified in the statute providing the exemption or in Section 63-602(3), Idaho Code, the taxpayer must be notified of the decision of the county commissioners to grant or deny the exemption by May 15 unless a different date is prescribed in the law providing the exemption. ( )

**b.** For property subject to assessment by the State Tax Commission, application for any exemption shall be included with the operator's statement to be submitted as provided in Rule 404 of these rules. ( )

**03. Confidentiality.** Information disclosed as part of an application for an exemption is confidential to the extent provided by in Section 9-340D, Idaho Code, or elsewhere in law. Information disclosed to the county commissioners as part of the application process for an exemption shall be deemed submitted to the assessor and entitled to any confidentiality that would have been conferred had such information been disclosed initially to the assessor. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).**

Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-2-08)

**01. Definitions.** (4-5-00)

**a.** "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

**b.** "Prior Year's Market Value for Assessment Purposes." Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code.

(4-2-08)

**c.** “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

| <b>CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*</b> |          |                  |                  |          |
|--|----------|------------------|------------------|----------|
|  | FY 1999  | FY 2000          | FY 2001          | FY 2002  |
| Annual Budget  | \$10,000 | \$10,000         | \$10,700         | \$11,621 |
| 3% Increase  | \$0      | \$300            | \$321            | \$349    |
| Subtotal   | \$10,000 | \$10,300         | \$11,021         | \$11,970 |
| 1999 Election Amount                                   | \$0      | \$400 of \$1,000 | \$600 of \$1,000 | \$0      |
| Certified Budget                                       | \$10,000 | \$10,700         | \$11,621         | \$11,970 |

\*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

**d.** “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district's budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

**e.** “Recovered/Recaptured Property Substitute Funds Tax List.” Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)

- i. Section 63-602G(5), Idaho Code; and (5-8-09)
- ii. Section 63-3029B(4), Idaho Code; and (5-8-09)
- iii. Section 31-808(11), Idaho Code. (5-8-09)

**f.** “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

**g.** “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

**02. Budget Certification.** The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed L-2 Form prescribed by the State Tax Commission. (4-6-05)

**03. Budget Certification Requested Documents.** Using the completed L-2 Form, each board of

county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission.

(4-2-08)

**04. L-2 Form Contents.** Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

**a.** “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

**b.** “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

**c.** “Cash Forward Balance.” List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

**d.** “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

**e.** “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-2-08)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; and (5-8-09)

iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code. (5-8-09)

v. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement. (4-6-05)

**f.** “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

**g.** Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)



- h.** Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)
- i.** For all taxing districts, L-2 worksheet. (3-20-04)
- ii.** For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)
- iii.** For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)
- iv.** Voter approved fund tracker. (3-20-04)
- v.** For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)
- vi.** For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)
- vii.** For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

**05. Special Provisions for Fire Districts Levying Against Operating Property.** To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

- a.** The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)
- b.** Said new agreement succeeds the original agreement; and (3-30-01)
- c.** In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

**06. Special Provisions for Property Tax Replacement other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, Idaho Code, property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. For all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (5-8-09)

- a.** The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Section 63-3638(10), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Section 63-3638(10), Idaho Code. (5-8-09)

**b.** By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received. (4-2-08)

**c.** Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

**d.** For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. (5-8-09)

**e.** Levy limits shall be tested against the amount actually levied. (3-15-02)

**07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code.** The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. (5-8-09)

**a.** Such property tax replacement money is not to be subtracted from the “balance to be levied” amount certified on the L-2 Form. (5-8-09)

**b.** The otherwise taxable value of the property subject to the exemption provided in Section 63-602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. (5-8-09)

**c.** The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.4.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. (5-8-09)

**08. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services.** For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**09. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District.** For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

**10. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds.** Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

**11. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy.** To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this levy, sum the school district's tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then

divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

**12. Special Provisions for Interim Abatement Districts.** When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

**13. Special Provisions for Levies for Payment of Judgments by Order of Court.** The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. ( )

**134. Cross Reference for School Districts with Tuition Funds.** For any school district certifying a tuition fund levy in 2006 or any year thereafter, see Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that the amount of property tax revenue for a tuition fund is not subject to the limitations of Section 63-802, Idaho Code. (4-2-08)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1205**

**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 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 218 needs to be amended to provide assessors standard guidance in preparation of maps. Assessor's Plat Book, the title of the adopted Bureau of Land Management's Survey Instruction Manual changed. Also, Rule 218 is being modernized to permit maps to be produced in digital format and reference to a 1973 edition of a manual is being updated to the most recent 2009 edition.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 1, 2012, Idaho Administrative Bulletin, [Vol. 12-8, page 74](#).

**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 Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1205**

**218. ASSESSOR'S PLAT BOOK (RULE 218).**

Sections 50-1304, 63-209, 63-210, 63-212, 63-219, and 63-307, Idaho Code. (5-8-09)

**01. Plat Maps.** ~~The assessor shall prepare~~ ~~P~~plat maps for all ~~privately-owned~~ land ~~shall be prepared.~~ (7-1-97)( )

**a.** ~~Permanent plats may be drafted on~~ Plat map format. ~~Plat maps may be drafted and maintained either in ink, on drafting film, or in a digital format. When such maps are on drafting film,~~ thirty (30) inch by thirty-six (36) inch, 0.003 inch drafting film (minimum thickness) ~~should be used.~~ Smaller plat ~~map~~ sizes are permitted as long as they clearly depict parcel boundaries and dimensions. (5-8-09)( )

**b.** ~~Maintenance of plat maps. Plat maps of townships, S~~sections, aliquot parts, subdivisions, and parcel boundaries ~~completed after July 1, 2013~~ shall be ~~drafted with ink on drafting film and updated and maintained~~ in accordance with the ~~Bureau of Land Management (BLM) "Manual of Surveying Instructions for the Survey of the Public Lands of the United States" published by the Government Printing Office, 1973 edition, Technical Bulletin No. 6 referenced in Rule 006 of these rules.~~ (5-8-09)( )

**c.** ~~Maintenance of parcel numbers and all other desired information.~~ Parcel numbers, and all other desired information, shall be ~~maintained in a digital format or~~ drafted with ink. Annotative information shall be added as necessary and, if plotted by computer be of appropriate font style and size to be easily readable. The minimum letter height shall be one point two five (1.25) millimeters. (5-8-09)( )

~~02.~~ **Section Outlines.** Section outlines shall be ~~platted mapped~~ according to: (7-1-97)( )

~~ia.~~ Technical descriptions of Bureau of Land Management, formerly the General Land Office (GLO), surveys, (Section 31-2709, Idaho Code); (7-1-97)

~~ib.~~ Descriptions on recorded surveys (Sections 55-1901 through 55-1911, Idaho Code); (7-1-97)

~~ic.~~ Recorded corner perpetuation records (Sections 55-1603 through 55-1612, Idaho Code); (7-1-97)

~~id.~~ Recorded subdivision plats and assessor's plats (Sections 50-1301 through 50-1330, 63-209, and 63-210(2) Idaho Code); (7-1-97)

~~ie.~~ Deeds or contracts with metes and bounds descriptions (Section 31-2709, Idaho Code); (7-1-97)

~~if.~~ Highway, railroad, and other engineering quality route surveys; (7-1-97)

~~ig.~~ Relevant court decisions; and (7-1-97)

~~ih.~~ Unrecorded data from registered land surveyors (Section 31-2709, Idaho Code). (7-1-97)

~~e03.~~ **Subdivision of Sections.** Subdivision of sections shall be ~~platted mapped~~ in accordance with Sections 31-2709 and 63-209, Idaho Code. (5-8-09)( )

**024. Map Scales.** Non-Computer and computer generated maps shall be scaled. (7-1-97)

**a. Non- computer generated maps.** Non computer generated ~~plats maps~~ shall be: (5-8-09)( )

i. One (1) township at one (1) inch = fourteen thousand four hundred (14,400) inches (1,200 feet), 1:14,400; (5-8-09)

ii. Four (4) sections at one (1) inch = four thousand eight hundred (4,800) inches (400 feet), 1:4,800; one (1) section at one (1) inch = twenty four hundred (2400) inches (200 feet), 1:2,400; (5-8-09)

iii. One (1) quarter section at one (1) inch = twelve hundred (1,200) inches (100 feet), 1:1,200.

(5-8-09)

**b.** Mapping done from aerial photographs. Mapping done from aerial photographs will have the scale recalculated and shown on the map. ~~(7-1-97)~~( )

**c.** Plat maps of subdivision, townsite, and metes and bounds parcels. Subdivision, townsite, and metes and bounds parcels shall be ~~platted~~ mapped to include the basis of bearing with monuments and their coordinates relative to the "Idaho Coordinate System" as described by Sections 31-2709, 50-1301, 50-1303, and 50-1304, Idaho Code. ~~(5-8-09)~~( )

**d.** Drafting of plat titles, subdivision names, and parcel dimensions. Plat titles, subdivision names, and parcel dimensions shall be drafted with ink, or generated by computer at an appropriate scale. The minimum letter height shall be one point two five (1.25) millimeters. ~~(7-1-97)~~( )

**035.** **Property Ownership Records.** Ownership shall be shown on the property ownership records. (7-1-97)

**a.** Ownership notations. Ownership notations include the reputed owner of the property or note that the owner is unknown, or list other persons with interests of record. Ownership may be ascertained from numerous recorded sources as described in Sections 63-212 and 63-307, Idaho Code. ~~(5-8-09)~~( )

**b.** Insertion of additional names. Purchasers, agents, guardians, executors, administrators, heirs, and claimants may have their names inserted with the recorded owner's name as explained in Sections 63-212 and 63-307, Idaho Code. ~~(5-8-09)~~( )

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

### **35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0103-1207**

#### **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 67-5221(1) and 63-105A, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 000 is being amended to update the references to the portions of Idaho Code which specifically authorize property tax administrative rules.

Rule 003 is being amended to update and correct certain reference to administrative appeals available under the property tax administrative rules.

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

Rule 225 is being amended to require that taxing districts and urban renewal revenue allocation areas submit a map upon dissolution. This submittal is unnecessary. Rule 225 is being amended to delete this requirement.

Rule 313 is being amended to clarify that transient personal property located in a neighboring state for a time but does not pay taxes to the neighboring state pays taxes in Idaho based on the value that is computed by including the number of days that the property was in the neighboring state in the proration formula used to compute the value.

Rule 404 is being amended to conform to statute which expands the definition of "pipeline" to include gas gathering lines and brings gathering lines under the regulation of the public utilities commission and therefore will be appraised by state tax commission appraisers. Rule 404 will require that the miles of gathering lines be reported on the natural gas pipeline companies' operator statement to the tax commission for apportionment purposes.

Rule 509 is being amended to add the site improvement exemption found in Idaho Code section 63-902W to the list of property tax exemptions that must be reported to the Tax Commission on the counties property tax roll abstract.

Rule 510 is being amended to delete unused land category 8.

Rule 511 is being amended to delete unused categories 44, 60, 61 and 62 to avoid confusion.

Rule 612 is being amended to provide county assessors guidance on the administration of the property tax exemption for recreational vehicles found in Idaho Code section 63-602J. The rule amendment confirms that the property tax exemption for recreational vehicles is only available for those recreational vehicle owners who have paid the IDT annual license fee.

Rule 619 is being amended to change the due date for the exemption application for operating properties from March 15 to correspond to the due date for the operator's statement of April 30 and to direct the filing of the application for locally assessed property to the county commissioners which conforms with the process enacted by passed House Bill 356.

Rule 802 is being amended to explain to assessors that the previous year's exemption will be deducted from the current year's new construction roll as provided in House Bill 519.

**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(1), 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:

Standards published by the International Association of Assessing Officers, NADA valuation guides, Railway Equipment Register, and the Bureau of Land Management's mapping technical bulletin and survey instruction manual are being incorporated by reference into these rules to give it the force and effect of law and because republishing the document in the rule would be unduly cumbersome and expensive due to its length and format.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Alan Dornfest (208) 334-7742.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

Alan Dornfest  
Tax Policy Supervisor  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7742

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1207**

**000. LEGAL AUTHORITY (RULE 000).**

In accordance with Section 63-105 and 63-105A, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Statutes relating to the property tax laws and related statutes, Chapters 1 through ~~22~~ 17 and Chapters 28, 30, ~~and~~ 35, 36, and 45, Title 63, Idaho Code. Rules relating to the market value of recreational vehicles are authorized by Section 49-44~~56~~, Idaho Code. Rules relating to taxation of newly constructed improvements are authorized by Section 63-105A, Idaho Code. ~~(7-1-98)~~(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**003. ADMINISTRATIVE APPEALS (RULE 003).**

This chapter does allow administrative relief of certain provisions outlined herein. These rules relate to proceedings pursuant to Sections 63-~~112~~407 and 63-7~~40~~7, Idaho Code. ~~(7-1-93)~~(    )



(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

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

**a.** “Standard on Ratio Studies” published in 2010, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in ~~2009~~2012, ~~and~~ “Standard on Mass Appraisal of Real Property” published in 201~~7~~2, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on ~~July~~ June 18~~4~~, 201~~7~~2. (~~3-29-12~~)(    )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 201~~7~~2 for the September through December period by the National Appraisal Guides Incorporated. (~~3-29-12~~)(    )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 201~~7~~2 for the September through December period by the National Appraisal Guides Incorporated. (~~3-29-12~~)(    )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 201~~7~~2 and the first quarter in 201~~2~~3 by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (~~3-29-12~~)(    )

**e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

**f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

**g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

**h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

**i.** “Manual of Surveying Instructions ~~for the Survey of the Public Lands of the United States~~” published by the ~~Government Printing Office for the~~ Federal Bureau of Land Management and the Public Land Survey System Foundation in ~~1973, Technical Bulletin No. 6~~ 2009. (~~5-3-03~~)(    )

(BREAK IN CONTINUITY OF SECTIONS)

**225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).**

Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. (3-30-07)

**01. Definitions.** The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

**a. Taxing Districts.** The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

**b. Alter.** Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

**c. Contiguous.** Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

**d. Deannex.** Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (4-6-05)

**e. Disincorporate.** Disincorporate or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (4-6-05)

**f. Dissolve.** Dissolve or any derivatives of the word as used in Section 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (4-6-05)

**g. Legal Description.** Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

i. Section, township, range and meridian. (3-15-02)

ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)

iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)

iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)

(1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)

(2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (3-15-02)

(3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)

(4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)

v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)

- h.** Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)
- i.** Section, township, range, and meridian identifications. (3-15-02)
  - ii.** North arrow, bar scale, and title block. (3-15-02)
  - iii.** District name and ordinance number or order date. (3-15-02)
  - iv.** Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)
  - v.** Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)
  - vi.** Variations from the requirements of Paragraph 225.01.h. of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)
- i.** Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. (5-8-09)

**02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.**

The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

- a.** A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)
- b.** A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)
- c.** A copy of the ordinance or order effecting the formation or alteration. (4-5-00)
- d.** For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. (3-30-07)
- e.** In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a. through 225.02.c. of this rule. (5-8-09)

**03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs.**  
(3-15-02)

- a.** No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. ~~If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order.~~ (4-6-05) ( )
- b.** Upon receipt of the ordinance or order ~~without an accompanying map of the boundaries~~ from a

disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) ~~and send a copy of a map showing the affected tax code area(s)~~ to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list ~~and map~~ shall be sent by the fourth Friday of January. (3-15-02)(    )

**c.** After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

**d.** For RAAs formed prior to July 1, 2011, within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve. (3-29-12)

**e.** For RAAs formed beginning July 1, 2011, the notification procedures in Paragraph 225.03.d. of this rule shall be initiated within thirty (30) days of the earlier of one (1) year prior to any dissolution date found in the formation ordinance or the date as of which an RAA has been in existence for twenty (20) years. (3-29-12)

**04. Digital Map Information.** Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

**05. Deadline for Completion.** December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

**06. Approval of Property Tax Levy or Revenue Allocation.** For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

**a.** Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

**b.** Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

**c.** Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

**d.** Has had one (1) previous annexation on or after July 1, 2011 and is requesting to annex additional area. In this case, the annexation request will be denied, and the area of the RAA established prior to the new annexation will be considered to comprise the entire RAA. (3-29-12)

**07. Notification of Approval or Disapproval.** The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year. (4-6-05)

**08. One Uniform System.** The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

**09. Tax Code Areas.** The State Tax Commission shall create a separate, unique number for each tax code area. If any area annexed to an existing RAA includes a taxing district with any fund levying prior to January 1, 2008, and continuing to levy but which is not to be used to generate funds to be distributed to an urban renewal agency, the boundaries of the area added to the existing RAA shall constitute a separate tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (5-8-09)

**10. Furnished By The State Tax Commission.** (3-29-12)

**a.** Annually, the State Tax Commission will post the following documents on the State Tax Commission's website: (3-29-12)

i. Updated tax code area maps: (3-29-12)

ii. Updated taxing district maps; (3-29-12)

iii. Updated urban renewal revenue allocation area maps; and (3-29-12)

iv. Documentation of changes related to the above maps. (3-29-12)

**b.** This information is available to all parties. Upon specific request, the State Tax Commission will furnish without charge, one (1) hardcopy set of the above documents to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other hardcopy maps. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**313. ASSESSMENT OF TRANSIENT PERSONAL PROPERTY (RULE 313).**  
Sections 63-213, 63-313, and 63-602KK, Idaho Code. (5-8-09)

**01. Definitions.** The following definitions apply for the assessment of transient personal property. (5-3-03)

**a.** Home County. Home county is identified in Section 63-313, Idaho Code, as the county selected by the owner of any transient personal property as that county where that transient personal property is usually kept. That county selected by the owner shall be a county in the state of Idaho. (5-3-03)

**b.** Periods of Thirty (30) Days or More. Periods of thirty (30) days or more mean increments of no less than thirty (30) consecutive, uninterrupted days, during which any transient personal property is located in any one (1) county. For any period of less than thirty (30) days, the property owner shall report the transient personal property as being in the home county, ~~resulting in that transient personal property being assessed in the home county for the entire year or the entire portion of the year the property has been in taxable status and not been outside the state of Idaho.~~ (5-3-03) ( )

**c.** Prorated Assessment. Prorated assessment means the ratio of the number of days, exceeding twenty-nine (29), to three hundred sixty-five (365) days multiplied by the total market value of the transient personal property. For additional clarification, refer to the following examples. (5-3-03)

i. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

ii. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive,

uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the total market value in the second county and for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. (5-3-03)

iii. If located in a second Idaho county (not the home county) for thirty-one (31) consecutive, uninterrupted days, in a third Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, and in the home county for the remainder of the year, the transient personal property should be assessed for thirty-one/three hundred sixty-five (31/365) of the total market value in the second county, fifty-nine/three hundred sixty-five (59/365) of the total market value in the third county, and two hundred seventy-five/three hundred sixty-five (275/365) of the total market value in the home county. (5-3-03)

iv. If located in a second Idaho county (not the home county) for twenty-nine (29) consecutive, uninterrupted days and later in that same county for twenty-nine (29) consecutive, uninterrupted days and in the home county for the remainder of the year, the transient personal property should be assessed for the total market value in the home county. (5-3-03)

v. If located in a second Idaho county (not the home county) for fifty-nine (59) consecutive, uninterrupted days, outside the state of Idaho for any thirty-five (35) days and taxed in the other state, and in the home county for the remainder of the year, the transient personal property should be assessed for fifty-nine/three hundred sixty-five (59/365) of the value in the second county and for two hundred seventy-one/three hundred sixty-five (271/365) of the total market value in the home county. However, if the property in this example that was outside the state of Idaho for thirty-five (35) days was not taxed in the other state, then the time should be counted in the home county, and the property therefore should be assessed for three hundred six/three hundred sixty-five (306/365) of the total market value in the home county. ~~(5-3-03)~~ ( )

**d.** Transient Personal Property. Transient personal property is defined in Section 63-201, Idaho Code. (5-3-03)

**02. Overassessment Prohibited.** Section 63-213, Idaho Code, prohibits the assessment of any property in any one (1) county for the same period of time that property has been assessed in another county. The sum of the assessments of transient personal property in the home county and each other county where the property has been located shall not exceed the market value of the property. (5-3-03)

**03. Nontaxable Transient Personal Property.** (3-20-04)

**a.** Transient Personal Property in Transit. Under Subsection 63-313(4), Idaho Code, any transient personal property only in transit through the home county or any other county and not remaining in any county for the purpose of use is not subject to property taxation. (3-20-04)

**b.** Sold Transient Personal Property on Which Taxes Have Been Paid. Under Subsection 63-313(4), Idaho Code, any transient personal property, which was sold by the owner in the home county and upon which the full current year's property taxes were paid, is not subject to property taxation for the current year in any other county regardless of whether that property is to be used in or only in transit through any other county. (3-20-04)

**c.** Qualified Investment Exemption. For information and directions relating to the qualified investment exemption, see Rule 988 of these rules. (3-20-04)

**04. Exempt Transient Personal Property.** (5-8-09)

**a.** Section 63-602KK, Idaho Code, when applicable provides for exemption of each eligible taxpayer's personal property to the extent of one hundred thousand dollars (\$100,000) within each county. The limit on the exemption shall apply to the sum of the taxpayer's non-transient personal property and transient personal property. Prior to applying the exemption, transient personal property shall be allocated among the counties based on the prorated value as provided in Subsection 63-313(2), Idaho Code. (5-8-09)

**b.** In cases where the taxpayer has transient personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not

make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. OPERATOR'S STATEMENT -- CONTENTS (RULE 404).**

Sections 63-401 and 63-404, Idaho Code. (5-3-03)

**01. Operator's Statement.** In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

**02. Tax Code Area Maps.** By March 1 of each year, the State Tax Commission shall furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic operator's statement extension equal to the delay. The reporting entity shall review the list of changes to identify any tax code areas, within which any of the entity's operating property is located. The reporting entity shall report, under Subsection 404.01 of this rule based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. (5-3-03)

**03. Reporting of Mileage.** The following procedures apply for reporting mileage. (7-1-99)

**a. Railroad Track Mileage.** The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., shall be reported as Secondary Track Miles. (5-3-03)

**b. Electric Power Line Mileage.** The electric power companies shall report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includible in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (5-3-03)

**c. Telephone Wire Mileage.** All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (5-3-03)

**d. Natural Gas Pipeline and Gathering Line and Water Distribution Pipeline Mileage.** Beginning January 1, 2013, all natural gas and water distribution companies shall report pipeline and gathering line miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. ~~(5-3-03)~~( )

**e. Transmission Pipeline Mileage.** All transmission pipeline companies shall report pipeline miles on a one-inch (1") comparison basis. (4-2-08)

**04. Situs Property.** Situs property includes microwave stations and radio relay towers. This property also includes facilities, used for and in conjunction with thermal generation of electricity, constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. The investment in this property shall be reported in the tax code area(s), within which it is located. (4-2-08)

**05. Record of Property Ownership.** The following procedures apply for maintaining records of operating property ownership. (7-1-99)

**a.** STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office. (7-1-99)

**b.** Identification of Operating Property and Nonoperating Property. On the STC Form R, the State Tax Commission shall identify which property is operating property and which property is nonoperating property. (5-3-03)

**c.** Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year. (7-1-99)

**06. Filing Date for Operator's Statement.** By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho shall file information pertinent to the entity's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. (4-6-05)

**07. Cross Reference.** For information relating to the exemption of certain intangible personal property, see Section 63-602L, Idaho Code, and Rule 615 of these rules. For valuation, allocation, and apportionment information, see Section 63-405, Idaho Code, and Rule 405 of these rules. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**509. CITY, COUNTY, SCHOOL DISTRICT, AND SPECIAL DISTRICT OR UNIT OF GOVERNMENT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES (RULE 509).**

Sections 63-105A and 63-509, Idaho Code. (3-30-07)

**01. Definitions.** The following definitions apply for the purposes of testing for equalization under Section 63-109, Idaho Code, notification under Sections 63-301 and 63-308, Idaho Code, and reporting under Section 63-509, Idaho Code. (3-30-07)

**a.** Increment Value. Increment value means, as defined in Section 50-2903, Idaho Code, the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is positive. (3-30-07)

**b.** Primary Category. Primary category means the categories established and described by Subsections 130.02 through 130.06 of these rules and used by the State Tax Commission to test for equalization under Section 63-109, Idaho Code. (3-30-07)

**c.** Secondary Category. Secondary category means the categories established and described by Rules 510, 511, and 512 of these rules and used by county assessors to list property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and report values to the State Tax Commission under Section 63-509, Idaho Code, and this Rule. Secondary categories may also be tested for equalization purposes, provided they meet the criteria in Subsection 131.05 of these rules. (3-29-12)

**02. Indicate Increment and Exemption Values.** In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections 63-



602W(4), 63-602GG, 63-602HH, 63-602II, 63-602KK, 63-602NN, 63-4502, 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each secondary category of property on each city and county abstract, and the Boise School District abstract. Increment value and the value of the exemptions found in this subsection shall also be indicated and subtracted from the taxable value for each secondary category subject to taxation by special districts and units of government which do not levy property tax against all otherwise taxable property. ~~(3-29-12)~~( )

**03. Submittal of Corrections to Erroneous Abstracts or Related Documents.** When completing the procedures set forth in Section 63-810, Idaho Code, boards of county commissioners should submit the corrections to the taxable values submitted on the abstracts or related documents under provisions of Section 63-509, Idaho Code, and this rule, no later than when they submit the corrected levies under Section 63-810, Idaho Code. (4-2-08)

**04. Cross Reference.** See Rule 115 of these rules for requirements to submit city, Boise School District, and special district or unit of government abstracts. For the descriptions of the categories used to test for equalization, see Subsections 130.02 through 130.06 of these rules. For descriptions of secondary categories used to list and report land values, see Rule 510 of these rules, used to list and report the value of improvements, see Rule 511 of these rules, or used to list and report all property values other than that for land or improvements, see Rule 512 of these rules. For information relating to notification of corrections to erroneous levies, see Sections 63-809 and 63-810, Idaho Code, and Rule 809 of these rules. (3-29-12)

**510. SECONDARY CATEGORIES FOR LAND - LISTING AND REPORTING (RULE 510).** Section 63-509, Idaho Code. County assessors will use the secondary categories described in the following subsections, indicated by numbers, to list land values on the valuation assessment notices under Sections 63-301 and 63-308, Idaho Code. County assessors will use these secondary categories described in the following subsections, indicated by numbers, and the secondary categories described in the following paragraphs, indicated by letters, to report land values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary land categories to parcels of property put to multiple uses. (4-2-08)

**01. Secondary Category 1 - Irrigated Agricultural Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**02. Secondary Category 2 - Irrigated Grazing Land.** Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**03. Secondary Category 3 - Non-Irrigated Agricultural Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**04. Secondary Category 4 - Meadow Land.** Land and only such land eligible for and granted the

partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**05. Secondary Category 5 - Dry Grazing Land.** Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this secondary category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-07)

**06. Secondary Category 6 - Productivity Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. (3-30-07)

**07. Secondary Category 7 - Bare Forestland.** All land and only such land designated by the owner for assessment, appraisal, and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. (3-30-07)

**08. Secondary Category 8 - ~~Speculative Homesite.~~** ~~No value shall be reported in this category on any abstract submitted to the State Tax Commission after the property roll, subsequent property roll, and missed property roll abstracts have been submitted for calendar year 2005. Not presently used.~~ (3-30-07)( )

**09. Secondary Category 9 - Patented Mineral Land.** All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code. (3-30-07)

**10. Secondary Category 10 - Homesite Land.** Rural non-subdivided land being utilized for homesites with secondary categories 1 through 9. Note: This land is always land with improvements located on it since land with no improvements should be in one (1) or more of categories 1 through 9. (4-2-08)

**11. Secondary Category 11 - Recreational Land.** Rural land used in conjunction with recreation but not individual homesites. (3-30-07)

**a. Secondary Category 11 - Vacant Recreational Land.** Vacant rural land used for recreational purposes but not individual homesites or in a properly recorded subdivision. (3-30-07)

**b. Secondary Category 11 - Improved Recreational Land.** Rural land with improvements, including exempt improvements, used for recreational purposes on that land but not individual homesites or in a properly recorded subdivision. (3-30-07)

**12. Secondary Category 12 - Rural Residential Tracts.** Rural residential land not in a properly recorded subdivision. (3-30-07)

**a. Secondary Category 12 - Vacant Rural Residential Tracts.** Vacant rural land used for residential purposes but not in a properly recorded subdivision. (3-30-07)

**b. Secondary Category 12 - Improved Rural Residential Tracts.** Rural land with improvements, including exempt improvements, used for residential purposes on that land but not in a properly recorded subdivision.

(3-30-07)

**13. Secondary Category 13 - Rural Commercial Tracts.** Rural commercial land not in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 13 - Vacant Rural Commercial Tracts. Vacant rural land used for commercial purposes but not in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 13 - Improved Rural Commercial Tracts. Rural land with improvements, including exempt improvements, used for commercial purposes on that land but not in a properly recorded subdivision. (3-30-07)

**14. Secondary Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 14 - Vacant Rural Industrial Tracts. Vacant rural land used for industrial purposes but not in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 14 - Improved Rural Industrial Tracts. Rural land with improvements, including exempt improvements, used for industrial purposes on that land but not in a properly recorded subdivision. (3-30-07)

**15. Secondary Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 15 - Vacant Rural Residential Subdivisions. Vacant rural land used for residential purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 15 - Improved Rural Residential Subdivisions. Rural land with improvements, including exempt improvements, used for residential purposes on that land and in a properly recorded subdivision. Also use this category for rural homesites within subdivisions when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. (4-2-08)

**16. Secondary Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 16 - Vacant Rural Commercial Subdivisions. Vacant rural land used for commercial purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 16 - Improved Rural Commercial Subdivisions. Rural land with improvements, including exempt improvements, used for commercial purposes on that land and in a properly recorded subdivision. (3-30-07)

**17. Secondary Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. (3-30-07)

**a.** Secondary Category 17 - Vacant Rural Industrial Subdivisions. Vacant rural land used for industrial purposes and in a properly recorded subdivision. (3-30-07)

**b.** Secondary Category 17 - Improved Rural Industrial Subdivisions. Rural land with improvements, including exempt improvements, used for industrial purposes on that land and in a properly recorded subdivision. (3-30-07)

**18. Secondary Category 18 - Other Land.** Land not compatible with other secondary categories. (3-30-07)

- a.** Secondary Category 18 - Vacant Other Land. Vacant land not compatible with other secondary categories. (3-30-07)
- b.** Secondary Category 18 - Improved Other Land. Land with improvements, including exempt improvements, on that land but not compatible with other secondary categories. (3-30-07)
- 19. Secondary Category 19 - Waste.** Public Rights-of-Way includes roads, ditches, and canals. Use this secondary category to account for total acres of land ownership. Only list acres, not value, in this secondary category on the abstract. (3-30-07)
- 20. Secondary Category 20 - Residential Lots or Acreages.** Land used for residential purposes and inside city limits. (3-30-07)
- a.** Secondary Category 20 - Vacant Residential Lots Or Acreages. Vacant land used for residential purposes and inside city limits. (3-30-07)
- b.** Secondary Category 20 - Improved Residential Lots Or Acreages. Land with improvements, including exempt improvements, used for residential purposes on that land and inside city limits. Also use this category for urban homesites when the remaining acreage qualifies as actively devoted to agriculture under Section 63-604, Idaho Code, or has been designated forestland under Chapter 17, Title 63, Idaho Code. (4-2-08)
- 21. Secondary Category 21 - Commercial Lots or Acreages.** Land used for commercial purposes and inside city limits. (3-30-07)
- a.** Secondary Category 21 - Vacant Commercial Lots Or Acreages. Vacant land used for commercial purposes and inside city limits. (3-30-07)
- b.** Secondary Category 21 - Improved Commercial Lots Or Acreages. Land with improvements, including exempt improvements, used for commercial purposes on that land and inside city limits. (3-30-07)
- 22. Secondary Category 22 - Industrial Lots or Acreages.** Land used for industrial purposes and inside city limits. (3-30-07)
- a.** Secondary Category 22 - Vacant Industrial Lots Or Acreages. Vacant land used for industrial purposes and inside city limits. (3-30-07)
- b.** Secondary Category 22 - Improved Industrial Lots Or Acreages. Land with improvements, including exempt improvements, used for industrial purposes on that land and inside city limits. (3-30-07)
- 23. Secondary Category 25 - Common Area Vacant Land.** Common area vacant land not included in individual property assessments. (3-30-07)
- 24. Secondary Category 45 - Utility System Vacant Land.** Vacant land used for locally assessed utility systems not under the jurisdiction of the State Tax Commission for appraisal. (3-30-07)
- 25. Secondary Category 57 - Equities In Vacant Land Purchased From the State.** For identification purposes under Section 63-211, Idaho Code, vacant land purchased from the state under contract. (3-30-07)
- 26. Secondary Category 81 - Exempt Land.** Category 81 is for county use to keep an inventory, including acreage, of exempt land. (3-30-07)
- 27. Cross Reference.** For descriptions of secondary categories used to list values for improvements, see Rule 511 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. (3-30-07)

**511. SECONDARY CATEGORIES FOR IMPROVEMENTS - LISTING AND REPORTING (RULE 511).**

Section 63-509, Idaho Code. County assessors will use the following secondary categories to list improved property values on the valuation assessment notice under Sections 63-301 and 63-308, Idaho Code, and to report improved property values to the State Tax Commission on the abstracts under Section 63-509, Idaho Code, and Rule 509 of these rules. For all of the above listed functions, assign all appropriate secondary improvement categories to parcels of property put to multiple uses. (4-2-08)

**01. Secondary Category 25 - Common Area Land and Improvements.** Common area land and improvements on that land not included in individual property assessments. (3-30-07)

**02. Secondary Category 26 - Residential Condominiums.** Land and improvements included in individual assessments of condominiums or townhouses and used for residential purposes. (3-30-07)

**03. Secondary Category 27 - Commercial or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums and used for commercial or industrial purposes. (3-30-07)

**04. Secondary Category 30 - Improvements.** Improvements, other than residential, located on secondary category 20. (3-30-07)

**05. Secondary Category 31 - Improvements.** Improvements used for residential purposes and located on secondary category 10. (3-30-07)

**06. Secondary Category 32 - Improvements.** Improvements, other than residential, located on secondary categories 1 through 12 and 15. (3-30-07)

**07. Secondary Category 33 - Improvements.** Improvements used in conjunction with recreation but not associated with homesites and located on secondary category 11. (3-30-07)

**08. Secondary Category 34 - Improvements.** Improvements used for residential purposes and located on secondary category 12. (3-30-07)

**09. Secondary Category 35 - Improvements.** Improvements used for commercial purposes and located on secondary category 13. (3-30-07)

**10. Secondary Category 36 - Improvements.** Improvements used for industrial purposes and located on secondary category 14. (3-30-07)

**11. Secondary Category 37 - Improvements.** Improvements used for residential purposes and located on secondary category 15. (3-30-07)

**12. Secondary Category 38 - Improvements.** Improvements used for commercial purposes and located on secondary category 16. (3-30-07)

**13. Secondary Category 39 - Improvements.** Improvements used for industrial purposes and located on secondary category 17. (3-30-07)

**14. Secondary Category 40 - Improvements.** Improvements located on secondary category 18. (3-30-07)

**15. Secondary Category 41 - Improvements.** Improvements used for residential purposes and located on secondary category 20. (3-30-07)

**16. Secondary Category 42 - Improvements.** Improvements used for commercial purposes and located on secondary category 21. (3-30-07)

**17. Secondary Category 43 - Improvements.** Improvements used for industrial purposes and located

on secondary category 22. (3-30-07)

18. **Secondary Category 44—Improvements.** ~~Taxable improvements located on otherwise exempt property under the same ownership. No later than January 1, 2008, county assessors will use the appropriate land and improvement secondary categories based on use.~~ **Not presently used.** (3-30-07)(    )

19. **Secondary Category 45 - Utility System Land and Improvements.** Locally assessed land and improvements used as utility systems and not under the jurisdiction of the State Tax Commission for appraisal. (3-30-07)

20. **Secondary Category 46 - Manufactured Housing.** Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-30-07)

21. **Secondary Category 47 - Improvements to Manufactured Housing.** Additions not typically moved with manufactured housing. (3-30-07)

22. **Secondary Category 48 - Manufactured Housing.** Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (3-30-07)

23. **Secondary Category 49 - Manufactured Housing.** Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. (3-30-07)

24. **Secondary Category 50 - Residential Improvements on Leased Land.** Improvements used for residential purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land ~~under separate ownership~~, or any other land under different ownership than the improvements. ~~No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for residential purposes and discontinue use of secondary categories 60, 61, and 62.~~ (3-30-07)(    )

25. **Secondary Category 51 - Commercial or Industrial Improvements on Leased Land.** Improvements used for commercial or industrial purposes and located on leased land, including railroad rights-of-way under separate ownership, exempt land ~~under separate ownership~~, or any other land under different ownership than the improvements. ~~No later than January 1, 2008, county assessors will use this secondary category when the improvement is used for commercial or industrial purposes and discontinue use of secondary categories 60, 61, and 62.~~ (3-30-07)(    )

26. **Secondary Category 57 - Equities in Land With Improvements Purchased From the State.** Land with the improvements on that land that are purchased from the state under contract. (3-30-07)

27. **Secondary Category 60—Improvements on Railroad Rights of Way.** ~~Improvements located on railroad rights of way under separate ownership. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.** (3-30-07)(    )

28. **Secondary Category 61—Improvements by Lessee Other Than Secondary Category 62.** ~~Improvements made by the tenant or lessee to landlord's property. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.** (3-30-07)(    )

29. **Secondary Category 62—Improvements on Exempt or Public Land.** ~~Taxable improvements, owned separately from exempt or public land on which they are located. No later than January 1, 2008, county assessors will use secondary category 50 when the improvement is used for residential purposes or will use secondary category 51 when the improvement is used for commercial or industrial purposes.~~ **Not presently used.**

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

**30. Secondary Category 65 - Manufactured Housing.** Manufactured housing not designated real property and located on exempt, rented or leased land under separate ownership. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-30-07)

**31. Secondary Category 69 - Recreational Vehicles.** Unlicensed recreational vehicles. (3-30-07)

**32. Secondary Category 81 - Exempt Improvements.** Category 81 is for county use to keep an inventory of exempt improvements. (3-30-07)

**33. Cross Reference.** For descriptions of secondary categories used to list land values, see Rule 510 of these rules, or used to list property values other than that for land or improvements, see Rule 512 of these rules. For the descriptions of primary categories and the assignment of secondary categories therein, see Subsections 130.02 through 130.06 of these rules. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**612. PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES, RECREATIONAL VEHICLES, AND VESSELS PROPERLY REGISTERED (RULE 612).**

Sections 49-123, 49-401, 49-402A, 49-422, 49-432, 49-445, 49-446, and 63-602J, Idaho Code. ~~(4-11-06)~~( )

**01. Motor Vehicle Defined.** Motor vehicle means any vehicle as defined in Section 49-123(2)(g), Idaho Code, and any personal property permanently affixed to that vehicle. (4-11-06)

**02. Exempt Motor Vehicles.** Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49, Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code. (4-11-06)

**03. Taxable Vehicles.** The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code. (4-11-06)

**a.** Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. (4-11-06)

**b.** Any manufactured home registered under Section 49-422, Idaho Code. (4-11-06)

**04. Exempt Permanently Affixed Personal Property.** Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. (4-11-06)

**05. Taxable Personal Property.** The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. (4-11-06)

**a.** Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. (4-11-06)

**b.** Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. (4-11-06)

**c.** Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. (4-11-06)

**06. Recreational Vehicles.** The owner of a recreational vehicle must pay a recreational vehicle annual

license fee as authorized by Section 49-445, Idaho Code, and as computed in accordance with Rule 020 of these rules in order to be exempt under Section 63-602J, Idaho Code. Recreational vehicles that are wider than eight and one-half (8½) feet cannot be licensed by the Idaho Department of Transportation and therefore must be included on the assessment roll. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**619. PROPERTY EXEMPT FROM TAXATION -- FACILITIES FOR WATER OR AIR POLLUTION CONTROL (RULE 619).**

**01. Exempt Property.** Only those portions of installations, facilities, machinery, or equipment which are devoted exclusively to elimination, control, or prevention of water or air pollution are exempt. The owner of the property shall annually ~~petition the assessor~~ **apply** for exemption. (7-1-97)( )

**02. Calculation of Partial Exemption.** The exemption shall not include the percentage of the value for any portion of the facility which is used for the production of marketable by-products. The exempted value is the difference between the market value of the pollution control facilities and the present value of the net income from the sale of by-products. Net income shall be determined by subtracting the expenses of sale, raw materials required to produce by-products, and transportation to F.O.B. point from gross sales of recovered by-product.

For example:

The industry capitalization rate is 10%.

The purchase price of scrubber is \$1 million with a 20 year life  
1st Year, Calculation of Exemption;

|   |              |
|---|--------------|
| Gross sales of precipitate  | \$11,000/yr. |
| Transport to F.O.B. point   | \$100/yr.    |
| Lime to precipitate products  | \$900/yr.    |
| Net Income  | \$10,000/yr. |
| Present value of net income   | \$85,130     |
| Exempt Value is purchase price minus present value of net income (\$1,000,000-\$85,130) | \$914,870    |

Indirect costs associated with operating the scrubber such as power, maintenance, etc., are not to be deducted from gross sales to reach net income. (3-30-01)

**03. Ineligibility.** Landfills, toxic waste dumps, or storage facilities deriving revenue from processing or storing pollution or pollution by-products generated by other persons or businesses are ineligible for this exemption. (7-1-97)

**04. Filing Procedure.** ~~Petition~~ **Application** for exemption shall be ~~filed~~ **made** in the following manner: (7-1-97)( )

**a.** The property owner may obtain the ~~declaration~~ **application** forms issued by the State Tax Commission from the county assessor or the State Tax Commission. (3-30-01)( )

**b.** The property owner completes the ~~declaration~~ **application** to report an itemized listing of all installations, facilities, machines or equipment qualifying for exemption. Each component part of the system must be



identified by a brief description (e.g., Dust Collector), the date of original acquisition, dollar amount of the original cost, and the percentage of the component devoted exclusively to pollution control. The petition application must be signed by the owner or duly authorized agent. Lack of required information shall be grounds for denial.

(7-1-97)( )

c. The completed declaration application must be filed with the county assessor commissioners by March 15 for locally assessed property or with the State Tax Commission by April 30 for centrally assessed property by March 15th of each year.

(3-30-01)( )

**05. Inspection.** The county or State Tax Commission representative may inspect the property or audit the owner's records to identify components petitioned for which the exemption has been applied. Those components listed on the declaration application must be identifiable as capital assets of the property.

(3-30-01)( )

**06. Exemption Reported on Abstracts.** For locally assessed property, exempt value shall be reported on the real and personal property abstracts.

(7-1-97)( )

**07. Exemption for Portion of Water Corporation Property.** A portion of water corporation property may be exempt from taxation.

(3-30-01)

a. On or before April 30, each year, the State Tax Commission shall receive a notice from the Idaho Public Utilities Commission listing the value of the investment percentage of the total plant of each water company that is devoted exclusively to the elimination, control, or prevention of water pollution or air pollution.

(3-30-01)

b. In estimating the market value of the company for assessment purposes, the State Tax Commission will take into consideration the investment as certified by the Public Utilities Commission that such equipment bears to the total invested plant of the company.

(3-30-01)

c. The State Tax Commission will notify the water company of the estimated market value, gross assessed value, and the amount of exemption allowed under Section 63-602P, Idaho Code, on or before July 15 ~~of each current year.~~

(3-30-01)( )

d. Any person or party wishing to contest the percentage of exemption reported to the State Tax Commission by the Public Utilities Commission may submit a written request for a public hearing to the State Tax Commission by August 1 of the current tax year. The request for a hearing shall state the petitioner's grounds for contesting the percentage reported by the Public Utilities Commission. On or before the second Monday of August the State Tax Commission shall notify the petitioner of the hearing time and place.

(3-30-01)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).**

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

**01. Definitions.** (4-5-00)

a. "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a secondary category change and in a change in taxable land value to be reflected on the current property roll. (4-7-11)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year. (4-7-11)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to

manufactured homes in Rule 511 of these rules.

(4-2-08)

**02. New Construction Roll Listing.** “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (3-29-12)

**a.** Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from a new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (3-29-12)

**b.** Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (3-29-12)

**c.** Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. (3-29-12)

**03. Special Provisions for Value Increases and Decreases.** Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (~~4-7-11~~)( )

**a.** Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

**i.** Except as provided in Subparagraph 802.03.a.iii., increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll ~~provided, however, that no amount previously included shall be reported again.~~ (~~4-7-11~~)( )

**ii.** Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (~~4-7-11~~)( )

**iii.** Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. ( )

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-7-11)( )

i. Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (3-29-12)( )

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Provided the criteria in Subparagraph 802.03.b.i. are met, ~~V~~value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-7-11)( )

v. Except as provided in Subparagraph 802.03.b.vi., ~~O~~nly land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-7-11)( )

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum allowable property tax budget. ( )

vii. Table A - Effect on New Construction Roll:

| <b>Table A - Effect on New Construction Roll</b> |  |  |
|--|--|--|
| <u>Year</u>                                      | <u>Occurrence</u>                                      | <u>Effect on New Construction Roll (for that year)</u> |
| <u>2011</u>                                      | <u>Site improvements added and taxable</u>             | <u>+ \$500,000</u>                                     |
| <u>2012</u>                                      | <u>Site improvements exempt</u>                        | <u>NA (no prior year's exemption)</u>                  |
| <u>2013</u>                                      | <u>Site improvements exempt</u>                        | <u>- \$500,000</u>                                     |
| <u>2014</u>                                      | <u>Site improvements exempt</u>                        | <u>- \$500,000</u>                                     |
| <u>2015</u>                                      | <u>Loses site improvement exemption before June 30</u> | <u>+ \$400,000</u>                                     |

( )

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three (1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. ( )

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

| <b>Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget</b> |  |  |  |   |
|---|--|--|--|---|
| <u>Year</u>   | <u>Occurrence</u>                          | <u>Effect on New Construction Roll (for that year)</u>           | <u>Maximum Allowable Property Tax Budget</u> | <u>Calculations</u>   |
| <u>2011</u>   | <u>Site improvements added and taxable</u> | <u>+ \$500,000</u>   | <u>\$258,750</u>                             | <u>(\$250,000 X 1.03) + (\$500,000 X 0.0025)</u><br><u>(tax levy rate = \$258,750/ \$100,000,000 = 0.002574627)</u>       |
| <u>2012</u>   | <u>Site improvements exempt</u>            | <u>NA (no prior year's exemption; no new construction value)</u> | <u>\$266,512</u>                             | <u>\$258,750 X 1.03</u><br><u>(tax levy rate = \$266,512/ \$100,000,000 = 0.002665120)</u>                                |
| <u>2013</u>   | <u>Site improvements exempt</u>            | <u>- \$500,000</u>   | <u>\$273,174</u>                             | <u>(\$266,512 X 1.03) - (\$500,000 X 0.002665120)</u><br><u>(tax levy rate = \$273,174 / \$100,000,000 = 0.002731744)</u> |
| <u>2014</u>   | <u>Site improvements exempt</u>            | <u>- \$500,000</u>   | <u>\$280,003</u>                             | <u>(\$273,174 X 1.03) - (\$500,000 X 0.002731744)</u><br><u>(tax levy rate = \$280,003/ \$100,000,000 = 0.002800033)</u>  |

| <b>Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget</b> |   |  |  |  |
|---|---|--|--|--|
| <b>Year</b>   | <b>Occurrence</b>                               | <b>Effect on New Construction Roll (for that year)</b> | <b>Maximum Allowable Property Tax Budget</b> | <b>Calculations</b>  |
| 2015  | Loses site improvement exemption before June 30 | + \$400,000  | \$289,523                                    | $(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$<br>(tax levy rate = \$289,523/<br>\$100,400,000 = 0.002883696 |

( )

**04. Manufactured Housing.** “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

**05. Partial New Construction Values.** Except as provided in Subsection 802.06 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.06 of this rule, any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.06 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

|  |            |
|--|------------|
| 2010 Value   | \$90,000   |
| 2009 Value Already Reported on New Construction Roll | <\$10,000> |
| 2010 New Construction Roll Value (this improvement)  | \$80,000   |

(4-7-11)

**06. Change in Status.** (4-2-08)

**a.** A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W(3) or (4), Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-7-11)( )

**i.** If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. ( )

**ii.** If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be

added to the new construction roll following loss of the exemption. ( )

**b.** Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” shall be added to the appropriate year’s new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year’s new construction roll. (4-7-11)

**c.** When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006.” (4-7-11)

- i.** Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)
- ii.** Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area. (4-7-11)
- iii.** Step 3. Add any positive difference calculated in Step 2 to the current year’s new construction roll value. (4-7-11)
- iv.** Step 4. Adjust the “incremental value as of December 31, 2006” for the RAA by subtracting the increment value determined in Step 1. (4-7-11)

**v.** The following table shows the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006” applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

| <b>Steps (as designated in Paragraph 802.06.c.)</b> | <b>Area</b>   | <b>Value</b>  |
|---|---|---------------|
|   | December 31, 2006, increment value of the original RAA  | \$10,000,000  |
| Step 1  | December 31, 2006, increment value of the de-annexed area   | \$1,000,000   |
|   | December 31, 2009, increment value of the de-annexed area   | \$3,000,000   |
| Steps 2 and 3                                       | Amount related to the de-annexed area to be added to the 2010 new construction roll   | \$2,000,000   |
| Step 4  | Adjustment amount to be deducted from the original RAA’s “incremental value as of December 31, 2006”  | <\$1,000,000> |
|   | Adjusted “incremental value as of December 31, 2006” for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA) | \$9,000,000   |

(4-7-11)

**07. Limitation on Annexation and New Construction Roll Value.** For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

**08. Notification of New Construction Roll and Annexation Values.** On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.09 - TABLE AND KITCHEN WINE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0109-1201**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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

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

Rule 014 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

Rule 016 is being amended to delete outdated language requiring reports of out-of-state wholesalers and distributors.

**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 McLean Russell at (208) 334-7531.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-1201**

014. SECURITY FOR TAX REQUIRED (RULE 014).

**01. Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 13, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on wine by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly wine tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-98)

**03. Security Requirement Excused.** A distributor, winery, or wine direct shipper having an average wine tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax may not be required to furnish security. (3-30-07)

**04. Security for a New Distributor.** When a new distributor, winery, or wine direct shipper applies for a reporting permit number as required by Rule 015 of these rules, security may be required. (3-30-07)

**a.** If a wine tax reporting history is available from a previous ownership, the security required will be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

**b.** If there is no wine tax reporting history available from a previous ownership of the business, the new distributor, winery, or wine direct shipper shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (3-30-07)

**05. Types of Security.** A person required to post security may, ~~in lieu instead~~ of posting a surety bond, deposit with the State Tax Commission any of the following ~~amounts alternatives~~ equivalent to the amount of the ~~security bond~~ required: (7-1-98)( )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)~~

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)~~

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)~~

~~**d.** Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)~~

~~**e.** Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)~~



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

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

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

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

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

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

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

**06. Petition to Waive Security Deposit.** Other than as provided in Subsection 014.03 of this rule, a security shall be required in all instances, unless the State Tax Commission, upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition for Release from Security Requirement.** (7-1-93)

**a.** The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all wine tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all wine tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

**b.** Upon petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, within sixty (60) days examine the books and records of the taxpayer. The State Tax Commission will, no later than ninety (90) days from the date of receipt of the taxpayer's petition, advise the taxpayer of its determination and the reasons therefore. (3-30-07)

**c.** If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 014.07.a. of this rule, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

**d.** In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a

redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 014.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and may be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**016. WINE TAX RETURNS AND REPORTS (RULE 016).**

**01. Due Date of Reports.** Every person liable for the payment of taxes on wine and every person responsible for making reports to the Commission shall, on or before the 15th day of the month following the end of the reporting period, file a written report with the Commission showing all sales of wine for use or delivery within Idaho during the immediately preceding reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (3-29-10)

a. Monthly Filing Generally Required. All persons who pay wine tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all wine tax due from the first through the last day of the preceding calendar month. (3-29-10)

b. Request to File Quarterly or Semiannually. Distributors or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the wine tax may request permission to file quarterly or semiannually instead of monthly. (3-29-10)

c. Request to File Annually. Wine direct shippers, distributors, or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (3-29-10)

d. Final Report. Whenever a taxpayer who is required to file returns under the Wine Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for wine tax purposes and constitutes the taxpayer's final report of wine tax liabilities. The taxpayer must enclose his permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report, he may be subject to liabilities or penalties for failing to comply with the Idaho Wine Tax Act and these rules. (3-29-10)

**02. Weekend or Holiday Due Date.** For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (3-29-10)

**03. Prescribed Forms.** (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms either provided by or approved by the Commission. (3-29-10)

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

~~e. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)~~

~~d.c.~~ In-state distributors, wineries, vintners, producers or manufacturers shall use Form 1752 and

related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (3-30-07)

**ed.** All persons liable for wine tax must file a wine tax return provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (3-30-07)

- i. The name, address, telephone number and permit number of the taxpayer. (3-30-07)
- ii. Beginning and ending inventories. (3-30-07)
- iii. Wine purchases made during the reporting period. (3-30-07)
- iv. Exempt sales and transfers including sales to in-state and out-of-state wholesalers and sales to military or liquor dispensaries. (3-30-07)
- v. Purchases and sales of wine in odd size containers. (3-30-07)
- vi. Spoilage. (3-30-07)
- vii. Total taxable gallons. (3-30-07)
- viii. Credits from previous periods, if any. (3-30-07)
- ix. Total tax due. (3-30-07)
- x. Penalty and interest due, if any. (3-30-07)

**04. Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules." (3-30-07)

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

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

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

**d.** Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-30-07)

## IDAPA 35 - IDAHO STATE TAX COMMISSION

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

DOCKET NO. 35-0110-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 017 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

**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 McLean Russell at (208) 334-7531.

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 close of business October 24, 2012.

DATED this 31 day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1201

**017. SECURITY FOR TAX REQUIRED (RULE 017).**

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

(7-1-98)

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

(3-20-04)

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

(3-20-04)

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

(7-1-98)

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

(7-1-98)

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

(7-1-93)

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

(7-1-93)

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

(7-1-98)

**04. Types of Security.** A wholesaler person required to post security may, in lieu instead of posting a surety bond, deposit with the State Tax Commission any of the following alternatives equivalent to the amount of the security bond required.

(7-1-98)( )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission.~~

(7-1-98)

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor.~~

(7-1-98)

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state, and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment from whereby the fund on deposit is assigned and made~~

~~payable to the State Tax Commission.~~

~~(7-1-98)~~

~~d. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure.~~

~~(7-1-98)~~

~~e. Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission.~~

~~(7-1-98)~~

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

( )

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

( )

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

( )

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

( )

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

( )

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

( )

ii. Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone.

( )

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

(7-1-98)

**a.** The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months.

(7-1-98)

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

taxpayer's petition. (7-1-98)

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

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

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

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

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

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0112-1201**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 23-1051, 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 17, 2012.

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 013 is being amended to reflect current Tax Commission policy and procedure regarding the types of security acceptable in place of a bond.

Rule 017 is being amended to delete outdated language requiring reports of out-of-state wholesalers and distributors.

**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 McLean Russell (208) 334-7531.

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 24, 2012.

DATED this 31st day of August, 2012.

McLean Russell  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7531

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0112-1201**



**013. SECURITY FOR TAX REQUIRED (RULE 013).**

**01. Security for Payment of Tax.** Each person liable for payment of the taxes provided by Chapter 10, Title 23, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and an amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of all taxes imposed on beer by this state for which such person shall be liable, including any penalty and interest. (7-1-98)

**02. Amount of Security.** The amount of the security shall be three (3) times the amount of the tax due on an average monthly beer tax return, using the previous twelve (12) month period as a base. In the case of a taxpayer who is habitually delinquent in the submission of returns or payment of the tax, the amount of the security shall be five (5) times the average monthly tax due. (7-1-93)

**03. Security Requirement Excused.** A wholesaler or brewery having an average beer tax liability of one hundred dollars (\$100) or less per month and having established a six (6) month history of timely filing and payment of the tax will not be required to furnish security. (7-1-93)

**04. Security for a New Wholesaler or Brewery.** When a new wholesaler or brewery applies for a reporting permit number as required by Idaho Beer Tax Administrative Rule 016, security will be required. (7-1-98)

**a.** If a beer tax reporting history is available from a previous ownership, the security required shall be based on the most recent twelve (12) month history of the prior ownership. (7-1-93)

**b.** If there is no beer tax reporting history available from a previous ownership of the business, the new wholesaler or brewer shall furnish security in the amount of one thousand dollars (\$1,000), unless the taxpayer can establish to the satisfaction of the State Tax Commission that a lesser amount should apply. After a six (6) month period of filing history has been established, the security will be reviewed by the State Tax Commission and adjusted accordingly. (7-1-98)

**05. Types of Security.** A person required to post security may, ~~in lieu instead~~ of posting a surety bond, deposit with the State Tax Commission any of the following ~~amounts alternatives~~ equivalent to the amount of the ~~security bond~~ required: (7-1-98)( )

~~**a.** Bearer bonds or other similar obligations of the United States having a market value not less than the amount of the bond required and made payable to the State Tax Commission. (7-1-98)~~

~~**b.** Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in this state and insured by the Federal Deposit Insurance Corporation, made in the name of the depositor, payable to the State Tax Commission, and containing the provisions that interest earned shall be payable to the depositor. (7-1-98)~~

~~**c.** Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the State Tax Commission, along with a properly executed assignment form whereby the fund on deposit is assigned and made payable to the State Tax Commission. (7-1-98)~~

~~**d.** Irrevocable letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the State Tax Commission. The terms of the letter of credit must permit the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penal ties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (7-1-98)~~

~~**e.** Lawful money of the United States. Cash bonds must be submitted in the form of a cashier's check, money order, or other certified funds which are payable to the State Tax Commission. (7-1-98)~~

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

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

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

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

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

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

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

**06. Petition to Waive Security Deposit.** Other than as provided in Subsection 013.03 of this rule, a security shall be required in all instances, unless the State Tax Commission, upon petition by the taxpayer, determines after examination of the taxpayer's books and records that a security is not required. (7-1-98)

**07. Taxpayer Petition for Release From Security Requirement.** (7-1-93)

**a.** The State Tax Commission will release a taxpayer from the posting of a security if the taxpayer has filed all beer tax returns including supplemental schedules on a timely basis for the preceding twenty-four (24) month period, and the taxpayer has paid all beer tax due for the preceding twenty-four (24) month period on a timely basis. (7-1-98)

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

**c.** If at any time after release of a security requirement the taxpayer becomes delinquent for any period in either the filing of returns or the payment of the tax as set forth in Subsection 013.07.a. above, the State Tax Commission may make immediate demand that a security be posted with the State Tax Commission. (7-1-98)

**d.** In the event that a petition for release of security is denied or a demand for posting of security is made by the State Tax Commission, notice shall be mailed to the taxpayer by certified mail. The notice shall include a statement of the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a

redetermination of the State Tax Commission's decision, he must do so by filing a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. Such a petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of determination is mailed to or served upon the claimant. (7-1-98)

e. Failure to post security upon demand, notwithstanding Subsection 013.07.d. above, will be a violation of the rules promulgated by the State Tax Commission and shall be immediately reported to the Director of the Idaho State Police, together with a request or petition that the Director initiate procedures to suspend or revoke the taxpayer's license. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**017. BEER TAX RETURNS AND REPORTS (RULE 017).**

**01. Due Date of Reports.** Every person liable for the payment of taxes on beer and every person responsible for making reports to the Commission shall, on or before the fifteenth day of the month following the end of the reporting period, file a written report with the Commission showing all sales of beer for use or delivery within Idaho during the immediately preceding reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefore, at the time such report is filed. (3-29-10)

a. Monthly Filing Generally Required. All persons who pay beer tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all beer tax due from the first through the last day of the preceding calendar month. (3-29-10)

b. Request to File Quarterly or Semiannually. Wholesalers or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the beer tax may request permission to file quarterly or semiannually instead of monthly. (3-29-10)

c. Request to File Annually. Wholesalers or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (3-29-10)

d. Final Report. Whenever a taxpayer who is required to file returns under the Beer Tax Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for beer tax purposes and constitutes the taxpayer's final report of beer tax liabilities. The taxpayer must enclose his permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Beer Tax Act and these rules. (3-29-10)

**02. Weekend or Holiday Due Date.** For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (3-29-10)

**03. Forms Provided or Approved by Tax Commission.** All dealers engaged in the sale or other disposition of beer imported into Idaho shall report all sales and dispositions of beer on forms either provided or approved by the Commission. (3-29-10)

**04. Inventory Reporting Methods.** Wholesalers of beer must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on Wholesaler Beer Tax Returns provided by the Commission. (7-1-93)

~~**05. Out-of-State Brewers.** Out-of-state brewers of beer shall use dealer's reporting forms to report sales to wholesalers. (7-1-93)~~

**06.5. In-State Brewers.** In-state brewers of beer shall use wholesaler's beer tax returns to report all

withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by a brewery are subject to tax at the time of withdrawal from the brewer's inventory. (7-1-93)

**076. Requirements of a Valid Return.** A tax return or other documents required to be filed in accordance with Section 23-1051, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

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

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

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

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

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**  
**DOCKET NO. 35-0201-1201**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105 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 17, 2012.

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 225 is being modified to be consistent with Administration and Enforcement Rule 140.

Rule 310 is being amended to add the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be found.

Rule 500 is being amended to conform to Idaho Code section 63-3047.

Rule 704 is being amended to conform to statute allowing the exchange of information to Treasurers Office and Idaho Department of Transportation.

**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 (208) 334-7670.

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 24, 2012.

DATED this 31st day of August, 2012.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1201**

**225. PROCEEDINGS ON LEVY OR DISTRAINT (RULE 225).**

Section 63-3060, Idaho Code.

(3-20-97)

**01. In General.** The proceedings on levy or distraint have the same force and effect as a writ of execution issued by a court on final judgment except that the right to claim exemption from execution is limited by Section 63-3058, Idaho Code. The sale or liquidation of property seized ~~shall~~ **will** proceed in the manner provided by the general statutes of the state of Idaho relating to execution on judgment. See Title 11, Idaho Code. ~~(3-20-97)~~ **( )**

**02. Sale of Property.** All costs of execution and sale are the responsibility of the taxpayer and ~~shall~~ **will** be collected as part of the obligation owing the state. Any moneys obtained on the sale of the taxpayer's property ~~shall~~ **will** be applied in the following order: to costs incurred, ~~penalty,~~ interest, ~~and principal or~~ tax, ~~owing and~~ **penalty.** Any moneys received in excess of the total obligation ~~shall~~ **will** be paid to the taxpayer unless, prior to disbursement, other creditors file a claim on the state. See Section 11-202, Idaho Code. ~~(3-20-97)~~ **( )**

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

(3-20-04)

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

(4-6-05)

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

| PERIOD                                  | RATE OF INTEREST    | INTERNAL REVENUE SERVICE REVENUE RULING |
|---|---------------------|---|
| July 1, 1981, through December 31, 1993 | 12% simple interest | Not Applicable                          |
| Calendar Year 1994                      | 7% simple interest  | Revenue Ruling 93-64                    |
| Calendar Year 1995                      | 9% simple interest  | Revenue Ruling 94-61                    |
| Calendar Year 1996                      | 8% simple interest  | Revenue Ruling 95-67                    |
| Calendar Year 1997                      | 9% simple interest  | Revenue Ruling 96-49                    |
| Calendar Year 1998                      | 8% simple interest  | Revenue Ruling 97-41                    |
| Calendar Year 1999                      | 7% simple interest  | Revenue Ruling 98-50                    |
| Calendar Year 2000                      | 8% simple interest  | Revenue Ruling 99-41                    |
| Calendar Year 2001                      | 8% simple interest  | Revenue Ruling 2000-45                  |
| Calendar Year 2002                      | 7% simple interest  | Revenue Ruling 2001-49                  |
| Calendar Year 2003                      | 5% simple interest  | Revenue Ruling 2002-61                  |

| PERIOD                    | RATE OF INTEREST          | INTERNAL REVENUE SERVICE REVENUE RULING |
|---------------------------|---------------------------|---|
| 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                  |
| Calendar Year 2012        | 4% simple interest        | Revenue Ruling 2011-20                  |
| <u>Calendar Year 2013</u> | <u>3% simple interest</u> | <u>Revenue Ruling 2012-24</u>           |

~~(3-29-12)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. SETTLEMENTS (RULE 500).**

Sections 63-3047 and 63-3048, Idaho Code.

(3-29-10)

**01. Grounds for Settlement.** The Tax Commission may settle ~~the tax liability~~ any taxes, penalties, or ~~both~~ interest of a case if one (1) or more of the following circumstances exist: ~~(3-29-10)~~( )

**a.** Disputed liability, (3-29-10)

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. (3-29-10)

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. (3-29-10)

**b.** Doubt as to collectability; (3-29-10)

i. Doubt as to collectability exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. (3-29-10)

ii. An offer to settle based on doubt as to collectability generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. (3-29-10)

- c.** Economic hardship of the taxpayer. (3-29-10)
- i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. (3-29-10)
- ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances. (3-29-10)
- d.** Promotion of effective tax administration. (3-29-10)
- i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. (3-29-10)
- ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. (3-29-10)
- 02. Agreement Final.** A settlement agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer *shall will* be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. ~~(3-29-10)~~( )
- 03. Form of Settlement.** The taxpayer must submit an offer to settle in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission *shall will* promptly notify the taxpayer. ~~(3-29-10)~~( )
- 04. Withdrawal of Offer.** A taxpayer may withdraw his offer to settle at any time prior to its acceptance by the Tax Commission. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).** Sections 23-907, 39-8405, ~~49-326~~, 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. ~~(3-29-12)~~( )

**01. Legislature.** The Tax Commission *shall will* 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 will* 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 will* 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)
  - iii.** Tax declaration for blindness as required by Section 49-326, Idaho Code. ( )
  - 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; (3-29-12)
  - 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: (3-29-12)
- i. The names and ~~current~~ addresses of businesses in Idaho; ~~and~~ (~~3-29-12~~)( )
- 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; ~~and~~ (~~3-29-12~~)( )
- iii. The taxpayer identifying numbers. ( )