

Dear Senators SIDDOWAY, Rice, Werk, and  
Representatives COLLINS, Wood, Burgoyne:

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

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules  
033,705,201,195,263,872 (Docket No. 35-0101-1301);

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules  
040,045,075,105,120,254,121,125,140,180,194,251,252,270,280,291,710,714,771,801,855,880  
(Docket No. 35-0101-1302);

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No.  
35-0102-1301);

IDAPA 35.01.03 - Rules Pertaining To The Property Tax Administrative Rules (Docket No.  
35-0103-1302);

IDAPA 35.01.09 - Rules Pertaining To The Wine Tax Administrative Rules (Docket No.  
35-0109-1301);

IDAPA 35.01.10 - Rules Pertaining To The Idaho Cigarette & Tobacco Products Tax Administrative  
Rules (Docket No. 35-0110-1301);

IDAPA 35.01.14 - Rules Pertaining To The Prepaid Wireless E911 Fee Administrative Rules (Docket  
No. 35-0114-1301);

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No.  
35-0201-1301);

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No.  
35-0201-1302).

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 10/10/2013. 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 11/08/2013.

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:** September 23, 2013

**SUBJECT:** State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules 033,705,201,195,263,872 (Docket No. 35-0101-1301)

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules 040,045,075,105,120,254,121,125,140,180,194,251,252,270,280,291,710,714,771,801,855,880 (Docket No. 35-0101-1302)

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No. 35-0102-1301)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax Administrative Rules (Docket No. 35-0103-1302)

IDAPA 35.01.09 - Rules Pertaining To The Wine Tax Administrative Rules (Docket No. 35-0109-1301)

IDAPA 35.01.10 - Rules Pertaining To The Idaho Cigarette & Tobacco Products Tax Administrative Rules (Docket No. 35-0110-1301)

IDAPA 35.01.14 - Rules Pertaining To The Prepaid Wireless E911 Fee Administrative Rules (Docket No. 35-0114-1301)

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No. 35-0201-1301)

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No. 35-0201-1302)

Attached with this memo will be nine sets of proposed rules from the State Tax Commission. I will put them in order. The Income Tax Administrative Rules - Rules 033,705,201,195,263,872 (Docket No. 35-0101-1301). These proposed rules implement four separate bills enacted by the Legislature in 2013. The bills implemented are House Bill 2, House Bill 22, House Bill 139 and House Bill 184. HB 2 allows a deduction for an amount equal to the amount of the loss recovery if the taxpayer did not receive a deduction for the loss on a prior Idaho tax return. HB 22 aligns the reporting and paying of Idaho income tax withheld with the same reporting period for the employee W-2s. Employers would report and pay income tax withheld between the first and fifteenth of each month by the twentieth of the same month and report and pay income tax withheld between the sixteenth of the month and the fifth of the next months. HB 139 limits the amount of compensation (guaranteed payments) paid to a partner by a partnership doing business in Idaho that can be attributed to the

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state in which the partner performed the services to \$250,000. Amounts paid in excess of \$250,000 will be sourced to Idaho based upon the Idaho apportionment factor . The \$250,000 limit will be adjusted each year for inflation. The legislation also clarifies that all compensation paid to a retired partner is sourced to the partner's state of domicile. HB 184 simplifies the treatment of Net Operating Losses (NOLs) for Idaho income tax purposes.

Income Tax Administrative Rules - Rules 040,045,075,105,120,254,121,125,140,180,194,251,252,270, 280,291,710,714,771,801,855,880 (Docket No. 35-0101-1302). These rules implement the already mentioned HB 2, 139 and 184 and also implement HB 4 that provides that any taxes paid to another state on which a credit for taxes paid is allowed shall be added back to income to prevent a double benefit; adds the word "widower" for income tax treatment of certain benefits; provides that the deduction for donation of technological equipment shall not exceed the fair market value or cost of the donation; and provides application to backup withholding by pass-through entities. These proposed rules also revise the definition of the term "place of abode" with regard to federal foreign income exclusions. The rules also implement HB 296 of 2011 and HB 438 of 2012 regarding the Idaho Investment Tax Credit and depreciation.

Sales Tax Administrative Rules (Docket No. 35-0102-1301). These proposed rules help implement three bills from 2013: HB 12, 15 and 187. HB 12 provides a sales tax exemption for food purchased with benefits provided under the Federal Supplemental Nutrition Assistance Program; clarifies that for members of the military and accompanying spouses no use tax shall apply to certain articles acquired prior to a certain time. HB 15 defines "primary" and "primarily" as the cumulative amount of all taxable or all non-taxable uses rather than individual uses of tangible personal property for sales and use tax purposes. HB 187 clarifies the serving size of a free tasting of wine or beer and exempt tasting of food from the payment of use taxes, if given as a free sample to a potential customer . This legislation also defined a sample of nonalcoholic beverages and food as a sample from a unit available for sale at the tasting location. Similar legislation was passed in 2012 by the Idaho Legislature under H 489 which exempted tasting of beverages including, but not limited to, wine and beer from the payment of use taxes. Also the Commission is proposed to add a rule to state that sales and use of equipment primarily used to improve and install real property are taxable even if the real property is used in production and implements a 1991 Idaho Supreme Court decision between the Commission and Potlatch.

Property Tax Administrative Rules (Docket No. 35-0103-1302). This bill implements HB 141 and HB 313 of 2013. HB 141 provided that wells drilled for the production of oil, gas or hydrocarbon condensate are exempt from property taxation. HB 315 relates to the business personal property tax. The legislation made three changes to the exemption granted under section 63-602KK, Idaho Code. The bill creates a new \$3,000 exemption on a de minimis item of tangible personal property that is purchased on or after January 1, 2013 and has a purchase price of \$3,000 or less. An item falling under this category will not be placed on the personal property tax rolls and will not be tracked for personal property tax purposes. A definition for "acquisition costs" and an "item of taxable personal property" are also included. The bill triggered the \$100,000 exemption on business personal property in Section 63-602KK, Idaho Code, on January 1, 2013. In addition, the exemption will be expanded to include operating property. The replacement amount will be based on the 2013 personal property tax certification provided by the county clerk to the state tax commission. The replacement amount is estimated to be \$20 million. The amount of the exemption will be fixed in time and annually distributed to taxing districts each year thereafter. Replacement funding will come annually from the state general fund through the sales tax revenue distribution formula provided for in Section 63-3638, Idaho Code. The bill created a uniform application process to be prescribed by the State Tax Commission intended to simplify reporting. The county assessor will be required to mail or email, at the request of the taxpayer, the annual application to all taxpayers and include the prior year application. In lieu of submitting an annual affidavit, taxpayers with taxable personal property values less than \$100,000 will only be required to file an application once every five years provided that certain conditions are met.

Wine Tax Administrative Rules (Docket No. 35-0109-1301). This proposed rule would provide that if an Idaho wine direct shipper is licensed as a wine direct shipper in another state, sales of wine by the wine direct shipper to a resident of that state and delivered to a location in that state are exempt from the Idaho tax on wine.

Idaho Cigarette & Tobacco Products Tax Administrative Rules (Docket No. 35-0110-1301). This implements the provisions of HB 7 of 2011. HB 7 made changes to definitions adding "delivery seller" to the definition of wholesaler. This change brings Idaho into conformity with federal law and deleted the references to any substitute from the tobacco product definition. This eliminated a question as to whether tobacco cessation products should be taxed as tobacco products. The definition of wholesale sales price is expanded to include any person, and place of business no longer includes vending machines.

Prepaid Wireless E911 Fee Administrative Rules (Docket No. 35-0114-1301). These proposed rules implement the provisions of HB 193 of 2013. HB 193 provided for the imposition of prepaid wireless E911 fees, provided for the remittance of fees to the State Tax Commission, provided for seller retention of a percentage of fees, provided for payment of remitted fees to the Idaho Emergency Communications Fund, to restricted certain liability and prohibited the imposition of additional E911 funding obligations, and provided for the distribution of funds. The proposed rules state that out-of-state sales are exempt from the fee and provides guidance to seller in making the determination when a sale is out-of-state.

Administration & Enforcement Rules (Docket No. 35-0201-1301). These rules implement HB 3 of 2013. HB 3 allowed the Tax Commission, upon receipt of a valid written request, to release information that will identify the name and address of the user of the stolen tax identification number but will not allow disclosure of the financial information contained on that return.

Administration & Enforcement Rules (Docket No. 35-0201-1302). This proposed rule will add the interest rate for calendar year 2014 and the Revenue Ruling where the federal rate for the calculation can be found.

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

cc: State Tax Commission

Alan Dornfest, Cynthia Adrian & McLean Russell

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1301

#### 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 16, 2013.

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 033 and 705, as stated in the Notice of Intent To Promulgate Rules – Negotiated Rulemaking and published in the May 1, 2013, Administrative Bulletin, are not being promulgated and will remain as codified.

Rule 201 is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

Rule 195 is being promulgated consistent with 2013 House Bill 2 which provides that certain loss recoveries are deductible for Idaho purposes.

Rule 263 is being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

Rule 872 is being amended consistent with 2013 House Bill 22 to revise the reporting and paying periods for Idaho income tax withheld by certain employers.

**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 263 may have an increase of \$440,000 annually to the General Fund.

**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 1, 2013, Idaho Administrative Bulletin, volume 13-5, pages 86-90.

**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 Wednesday, October 23, 2013.

DATED this 20<sup>th</sup> day of August, 2013.

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 FOR DOCKET NO. 35-0101-1301**

**195. LOSS RECOVERIES (RULE 195).**

Section 63-3022R, Idaho Code.

( )

**01. In General.** A deduction is allowed in taxable years beginning after December 31, 2012 for recoveries of losses deducted from federal taxable income in a prior year that were not allowed or allowable as a deduction in calculating Idaho taxable income to the extent the recovery is included in federal taxable income of the current year.

( )

**02. No Double Deduction.** No deduction is allowed for recovery of an amount not included in federal taxable income of the current year. No deduction is allowed to the extent the loss recovered previously reduced Idaho taxable income.

( )

**03. Example.** A taxpayer claims an itemized deduction of one hundred thousand (\$100,000) on his 2010 federal tax return for a theft loss from a Ponzi-type investment scheme. The deduction results in a federal net operating loss of fifty thousand (\$50,000) for 2010 but no Idaho net operating loss because the itemized deduction is not allowable in calculating an Idaho net operating loss under Section 63-3021, Idaho Code. On his 2013 federal tax return, the taxpayer includes in federal taxable income a recovery of sixty thousand (\$60,000) of the amount previously deducted. Since ten thousand (\$10,000) of the recovered amount reduced 2010 Idaho taxable income and fifty thousand (\$50,000) did not reduce 2010 Idaho taxable income, a fifty thousand (\$50,000) deduction is allowed in calculating 2013 Idaho taxable income.

( )

Example: The 2013 Idaho deduction allowed is fifty thousand (\$50,000) since that is the amount that was previously disallowed for Idaho purposes.

**195~~6~~. -- 199. (RESERVED)**

***(BREAK IN CONTINUITY OF SECTIONS)***

**201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).**

Section 63-3022(c), Idaho Code.

(7-1-99)

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

(3-20-97)

**a.** The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income.

(3-20-97)

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

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

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

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

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

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

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

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

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

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

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

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

a. The net operating loss carryback allowed for the entire carryback period may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-7-11)

~~b.~~ The sum of net operating loss deductions must not exceed the amount of the net operating loss incurred. ( )

~~bc.~~ Except as provided in Paragraphs 201.04.~~ed.~~ and 201.04.~~f.~~, ~~the a~~ net operating loss ~~carryback~~ is applied as follows: ~~(4-7-11)~~( )

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

ii. ~~For n~~Net operating losses incurred in taxable years beginning on and after January 1, 2000, ~~the net operating loss carryback is~~ but prior to January 1, 2013, are applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ~~(4-5-00)~~( )

iii. Net operating losses incurred in taxable years beginning on and after January 1, 2013, are applied to the twenty (20) succeeding taxable years, in order, until absorbed. ( )



~~ed.~~ For taxable years beginning prior to January 1, 2013, if the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.bc. do not apply and the net operating loss carryover is applied as follows: ~~(4-7-11)~~( )

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

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. ~~(4-5-00)~~( )

~~de.~~ For taxable years beginning prior to January 1, 2013, if the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback may not result in a refund for the closed taxable year. ~~(4-7-11)~~( )

f. For net operating losses incurred in taxable years beginning on and after January 1, 2013, if an amended return carrying back the loss is filed within one (1) year of the end of the taxable year of the net operating loss, the net operating loss is applied to the second preceding taxable year and if not absorbed, the difference is applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. ( )

**05. Timing and Method of Electing to Forego Carryback For Taxable Years Beginning Before January 1, 2013.** ~~(3-30-01)~~( )

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (4-7-11)

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

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

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

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss does not constitute an election for Idaho purposes. (4-7-11)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a, it is considered untimely and the net operating loss is applied as provided in Paragraph 201.04.bc. (4-7-11)

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

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

**08. Conversion of C Corporation to S Corporation.** An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation. However, an S corporation

subject to Idaho tax on net recognized built-in gains or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain and excess net passive income. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

**04. Guaranteed Payments Treated As Compensation. ( )**

**a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules.** ( )

**b. The 2013 amount is two hundred fifty thousand dollars (\$250,000) and will be adjusted annually.** ( )

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

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).** (3-20-97)  
Sections 63-3035 and 63-3036, Idaho Code.

**01. Payment of State Income Tax Withheld.** (4-6-05)

a. In General. An employer ~~shall~~ **must** remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars (\$750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars (\$750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. ~~(5-8-09)~~( )

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, ~~shall will~~ **will** remit the tax withheld based on split-monthly withholding periods. ~~The first \$split-monthly withholding period begins with on the first day of the month and ends on the 15th day of the same month with payment made not later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the 15th last day of the following same month- with Ppayments for a split-monthly withholding period shall be made no later than five (5) the fifth days after the end of the withholding period following month.~~ ~~(4-6-05)~~( )

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000	\$60,000
On or After January 1, 2004, but Before July 1, 2005	\$6,000	\$72,000
On or After July 1, 2005	\$20,000	\$240,000

(4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer ~~shall will~~ **will** remit state income tax withheld on or before the last day of January. However, an employer who is a farmer ~~shall will~~ **will** remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. ~~(4-11-06)~~( )

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

**a.** In General. An employer ~~shall~~ **must** file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return ~~shall~~ **will**:  
(5-8-09)( )

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

**b.** Due Date of Reconciliation Returns. The annual reconciliation return ~~shall~~ **must** be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. (5-8-09)( )

**c.** Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return ~~shall~~ **must** be completed and filed by the due date. (4-6-05)( )

**03. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

**a.** The employer ~~shall~~ **must** file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment ~~shall~~ **must** be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-6-05)( )

**b.** The employer ~~shall~~ **must** file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request ~~shall~~ **must** be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)( )

**04. Valid Returns.** All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule ~~shall~~ **will** be filed using the proper forms as prescribed by the Tax Commission. The forms ~~shall~~ **will** include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-07)( )

## IDAPA 35 - IDAHO STATE TAX COMMISSION

### 35.01.01 - INCOME TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0101-1302

#### 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 16, 2013.

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 040** is being amended to clarify the definition of the term “place of abode” with regard to federal foreign income exclusion.

**Rule 045** is being amended consistent with 2013 House Bill 139 to add a statutory reference to the heading and add subsection 06 to address pension income.

**Rule 075** is being amended to add the tax brackets for calendar year 2013 and remove the information for calendar year 2008 so only five years of historical data is retained in the rule.

**Rule 105** is being amended consistent with 2013 House Bill 4 regarding income adjustment addition of credit for taxes paid to other states.

**Rules 120 & 254** are being amended to conform to 2013 House Bill 2 to add the deduction for certain loss recoveries and to conform to 2013 House Bill 4 to add that the deduction for donation of technological equipment is limited to the lesser of cost, fair market value, or Idaho taxable income of the taxpayer.

**Rule 121** is being amended consistent with 2013 House Bill 184 to revise the time period relating to a net operating loss (NOL) carryback, remove language relating to NOL subtracted from income, establish provisions relating to a NOL for a taxable year commencing on or after January 1, 2013, establish provisions relating to the subtraction of a portion of a NOL, revise provisions relating to a claim for credit or refund that relates to an overpayment attributable to a NOL carryback and provide that certain claims for NOLs shall be made pursuant to law.

**Rule 125** is being amended to change the word “or” in the last sentence of Subsection 01 to “and”.

**Rule 140** is being amended consistent with 2013 House Bill 4 to provide that in order to qualify for the energy efficiency upgrade deduction the residence must be in Idaho and be the primary residence of the taxpayer.

**Rule 180** is being amended consistent with 2013 House Bill 4 to provide that a deduction for technological equipment donations cannot exceed the taxpayer’s cost of the technological equipment donated nor reduce Idaho taxable income to less than zero.

**Rule 194** is being amended to conform with a federal law change for medical expense itemization minimums.

**Rule 251** is being amended to clarify that total income is federal total income.

**Rule 252** is being amended to remedy the distortive percentage that occurs when the ratio of Idaho total income to total income is used to allow certain deductions to part-year or nonresidents.

**Rules 270, 280 & 291** are being amended consistent with 2013 House Bill 139 to provide for a sourcing formula to Idaho for partnership income with exceptions.

**Rule 710** is being amended consistent with 2011 House Bill 296 to add that the cost of property that the taxpayer elects to deduct as bonus depreciation is not qualified for the Idaho Investment Tax Credit when the bonus depreciation was also allowed in computing depreciation for Idaho.

**Rule 714** is being amended consistent with 2012 House Bill 438 which changed the requirements for claiming investment tax credit carryovers. Qualifying property must remain in Idaho during the recapture period (first 5 years), not during the carryover period (14 succeeding years).

**Rule 771** is being amended to add tax year 2012 and the applicable grocery credit amounts to the table.

**Rule 801** is being amended to clarify that the election under Section 63-3022L is available only for taxable years beginning prior to January 1, 2012.

**Rule 855** is being amended to clarify that the permanent building fund is paid by pass-through entities paying Idaho income tax for individuals on a composite return but not when the entity pays backup withholding for individuals.

**Rule 880** is being amended consistent with 2013 House Bill 4 & 2013 House Bill 184 in regard to credit and refund rules.

**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 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 Wednesday, October 23, 2013.

DATED this 29<sup>th</sup> day of August, 2013.

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

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**FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0101-1302**

**040. PART-YEAR RESIDENT (RULE 040).**

Section 63-3013A, Idaho Code.

(3-20-97)

**01. In General.** A part-year Idaho resident is any individual who resides in or is domiciled in Idaho for only part of the taxable year. (3-20-97)

**a.** An individual who has a place of abode in Idaho and is present in Idaho for other than a temporary or transitory purpose is deemed to reside in Idaho. (3-20-97)

**b.** For the rules relating to the determination of an individual's domicile, see Subsection 030.02 of these rules. (7-1-98)

**02. Temporary or Transitory Purpose.** For purposes of this rule, an individual is not residing in Idaho if he is present in Idaho only for a temporary or transitory purpose. Likewise, an individual is not residing outside Idaho merely by his temporary or transitory absence from Idaho. (3-20-97)

**a.** The length of time in Idaho is only one factor in determining whether an individual is present for other than a temporary or transitory purpose. Other factors to be considered include business activity or employment conducted in Idaho, banking and other financial dealings taking place in Idaho, and family and social ties in Idaho. In general, an individual is present for other than a temporary or transitory purpose if his stay is related to a significant business, employment or financial purpose or the individual maintains significant family or social ties in Idaho. (3-20-97)

**b.** An individual is present in Idaho only for a temporary or transitory purpose if he does not engage in any activity or conduct in Idaho other than that of a vacationer, seasonal visitor, tourist, or guest. (3-20-97)

**c.** Presence in Idaho for ninety (90) days or more during a taxable year is presumed to be for other than a temporary or transitory purpose. To overcome the presumption, the individual must show that his presence was consistent with that of a vacationer, seasonal visitor, tourist or guest. (3-20-97)

**03. Place of Abode.** An individual who owns a home in Idaho will not be treated as having a place of abode at that residence if the individual does not have the right to immediately occupy that residence. This definition does not apply for purposes of the federal foreign income exclusion and only applies for purposes of Sections 63-3013 and 63-3013A, Idaho Code. (7-1-98)( )

**a.** Example. An individual who is not domiciled in Idaho owns a home in Idaho that is leased to a third party for the entire taxable year. Since the individual does not have the right to immediately occupy the home, it is not treated as that individual's abode for purposes of determining his residency status. (7-1-98)

**b.** Example. An individual who is not domiciled in Idaho owns a home in Idaho that is offered for rent. For the first three (3) months of the taxable year the home is not rented and remains vacant. During the final nine (9) months of the taxable year the home is leased to a third party. The individual will be treated as having a place of abode in Idaho during the first three (3) months of the taxable year since the individual had the right to immediately occupy the home. If the individual is present in Idaho during the first three (3) months of the taxable year for other than a temporary or transitory purpose, that individual will be deemed to reside in Idaho. (7-1-98)

**041. -- 044. (RESERVED)**

**045. NONRESIDENT (RULE 045).**

Sections 63-3014, 63-3026A, Idaho Code.

(3-20-97)( )

**01. Traveling Salesmen.** (3-20-97)

**a.** A nonresident salesman who works in Idaho is subject to Idaho taxation regardless of the location of his post of duty or starting point. (3-20-97)

**b.** If an individual is paid on a mileage basis, the gross income from sources within Idaho includes that portion of the total compensation for personal services that the number of miles traveled in Idaho bears to the total number of miles traveled within and without Idaho. If the compensation is based on some other measure, such as hours, the total compensation for personal services must be apportioned between Idaho and other states and foreign countries in a manner that allocates to Idaho the portion of total compensation reasonably attributable to personal services performed in Idaho. See Rule 270 of these rules. (3-30-01)

**02. Motor Carrier Employees Covered by Title 49, Section 14503, United States Code.** Compensation paid to an interstate motor carrier employee who has regularly assigned duties in more than one state is subject to income tax only in the employee's state of residence. A motor carrier employee is defined in Title 49, Section 31132(2), United States Code, and includes: (7-1-99)

**a.** An operator, including an independent contractor, of a commercial motor vehicle; (3-20-97)

**b.** A mechanic; (3-20-97)

**c.** A freight handler; and (3-20-97)

**d.** An individual, other than an employer, who in the course of his employment directly affects commercial motor vehicle safety. Employees of the United States, a state, or a local government are not included. Employer, as used in this rule, means a person engaged in business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it. See Title 49, Section 31132(3), United States Code. (3-20-97)

**03. Water Carrier Employees Covered by Title 46, Section 11108, United States Code.** Compensation paid to a water carrier employee is subject to income tax only in the employee's state of residence if such employee: (3-20-04)

**a.** Is engaged on a vessel to perform assigned duties in more than one (1) state as a pilot licensed under Title 46, Section 7101, or licensed or authorized under the laws of a state; or (3-20-04)

**b.** Performs regularly assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one (1) state. (3-20-04)

**04. Air Carrier Employees Covered by Title 49, Section 40116(f), United States Code.** Compensation paid to an air carrier employee who has regularly assigned duties on aircraft in more than one state is subject to the income tax laws of only: (7-1-99)

**a.** The employee's state of residence, and (3-20-97)

**b.** The state in which the employee earns more than fifty percent (50%) of the pay from the air carrier. (3-20-97)

**05. Rail Carrier Employees Covered by Title 49, Section 11502, United States Code.** Compensation paid to an interstate rail carrier employee who performs regularly assigned duties on a railroad in more than one (1) state is subject to income tax only in the employee's state of residence. (7-1-99)

**06. Pension Income Covered by Title 4, Section 114, United States Code.** Pension income, including certain guaranteed payments made to a retired partner of a partnership, per Title 4, Section 114(b)(1)(I), United States Code, is subject to income tax only in the individual's state of residence or domicile. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).**



Section 63-3024, Idaho Code.

(3-20-04)

**01. In General.** The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. 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 2008:~~

<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>	
\$1.00	\$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)

~~**a.** For taxable years beginning in 2009:~~

<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	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642

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

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

(4-7-11)

**eb.** 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)

**ec.** 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)

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

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

(4-4-13)

**e.** For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
<u>\$1</u>	<u>\$1,409</u>	<u>\$0 ±</u>	<u>1.6% of taxable income</u>
<u>\$1,409</u>	<u>\$2,818</u>	<u>\$22.54 ±</u>	<u>3.6% of the amount over \$1,409</u>
<u>\$2,818</u>	<u>\$4,227</u>	<u>\$73.26 ±</u>	<u>4.1% of the amount over \$2,818</u>
<u>\$4,227</u>	<u>\$5,636</u>	<u>\$131.03 ±</u>	<u>5.1% of the amount over \$4,227</u>
<u>\$5,636</u>	<u>\$7,045</u>	<u>\$202.89 ±</u>	<u>6.1% of the amount over \$5,636</u>
<u>\$7,045</u>	<u>\$10,568</u>	<u>\$288.84 ±</u>	<u>7.1% of the amount over \$7,045</u>
<u>\$10,568 or more</u>		<u>\$538.94 ±</u>	<u>7.4% of the amount over \$10,568</u>
<u>Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.</u>			

( )

**(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 are measured by net income and 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 or Passive 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 loss occurred during a taxable year when the corporation did not transact business in Idaho. However, unless a capital loss is not required to be added back where the corporation was part of a unitary group ~~with~~ and at least one (1) member of the group was taxable by Idaho for ~~that~~ the taxable year in which the loss was incurred. ~~(4-4-13)~~( )

**b.** An individual must add a capital loss or passive loss that was deducted in computing taxable income if the loss was incurred in an activity not taxable by Idaho at the time it was incurred. (4-4-13)

**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)**

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

Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. (2-27-12)

**01. State and Local Income Tax Refunds.** State and local income tax refunds included in taxable income may be subtracted, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (2-27-12)

**02. Idaho Net Operating Loss.** As provided in Section 63-3022(c), Idaho Code, an Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules may be subtracted. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (2-27-12)

**03. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (2-27-12)

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

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

**c.** Certain income from loss recoveries. See Rule 195 of these rules. ( )

**04. Technological Equipment Donation.** As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the lower of cost or fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. (~~2-27-12~~)( )

**05. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (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 adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**a.** Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (2-27-12)

**b.** Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. (2-27-12)

**i.** If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (2-27-12)

**ii.** If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (2-27-12)

**iii.** If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (2-27-12)

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

**07. Income Restored Under Federal Claim of Right.** As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer is allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction is allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (2-27-12)

**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~~ will 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~~ will 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~~ will 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~~ will be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes.

~~(3-30-01)~~( )

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

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

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

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

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

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

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



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

**07. 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 installation of energy efficiency upgrades in the residence of the taxpayer built or subject to an outstanding building permit on or before 2002. (4-4-13)

**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. (4-4-13)

**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. For taxable years beginning on and after January 1, 2000, but prior to January 1, 2013, 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. For taxable years beginning on and after January 1, 2013, the first one hundred thousand (\$100,000) of loss sustained in any taxable year of an estate or trust may be carried back by the estate or trust if an amended return



carrying the loss back is filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. (2-27-12)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

**01. In General.** Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 ~~or~~ and before 2010. (2-27-12)( )

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

**a.** If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer is entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes. (2-27-12)

**b.** If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer is not entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. (2-27-12)

**c.** The Idaho adjustments are required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer may claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. (2-27-12)

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**140. DEDUCTION FOR ENERGY EFFICIENCY UPGRADES (RULE 140).**

Section 63-3022B, Idaho Code.

(3-20-97)

**01. Qualifying Date.** The energy efficiency upgrade must be installed in a residence of the taxpayer, or addition to a residence, that existed on or before January 1, 2002. A residence, or addition to a residence, constructed after January 1, 2002, does not qualify. (4-4-13)

**02. Qualifying Residence.** The residence must be the primary residence of the taxpayer and must be located in Idaho. ( )

**03. 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, “Rules of Building Safety,” Section 004. (4-4-13)

**04. Siding.** Siding is not considered 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. (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

**180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (RULE 180).**

Section 63-3022J, Idaho Code.

(3-20-97)

**01. Limitations.** The deduction for donations of technological equipment is limited to the lower of cost, fair market value, or Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. (~~5-3-03~~)( )

**02. Fair Market Value.** Fair market value is determined pursuant to Section 170, Internal Revenue Code. (3-20-97)

**03. Pass-Through of Deduction.** (3-20-97)

**a.** See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. (3-20-97)

**b.** The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

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

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

(5-8-09)

**01. Examples of Limitations When Costs are Otherwise Deducted or Accounted For.** If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the ~~seven and one-half percent (7.5%)~~ **federal** adjusted gross income limitation, the amount that is deducted as an itemized deduction ~~shall~~ **will** first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the ~~seven and one-half percent (7.5%)~~ **federal** adjusted gross income limitation, the full amount of health insurance costs and premiums paid for long-term care insurance (fifty-percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations ~~shall~~ **must** not be less than zero (0). ~~(5-8-09)~~( )

**02. Example with ~~Seven and One-Half Percent (7.5%)~~ **Applicable Percentage** of Federal Adjusted Gross Income Equal to Zero (0).**

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

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

**03. Example with ~~Seven and One-Half Percent (7.5%)~~ **Applicable Percentage** of Federal Adjusted**

Gross Income Equal to Three Thousand Dollars (\$3,000).

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

(5-8-09)( )

04. Example with ~~Seven and One Half Percent (7.5%)~~ Applicable Percentage of Federal Adjusted Gross Income Equal to Six Thousand Dollars (\$6,000).

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term care insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% <u>Applicable percentage</u> of federal adjusted gross income	\$6,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
HEALTH INSURANCE		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100

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

(5-8-09)( )

**05. Example with ~~Seven and One Half Percent (7.5%)~~ Applicable Percentage of Federal Adjusted Gross Income Equal to Fourteen Thousand Dollars (\$14,000).**

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

(5-8-09)( )

**06. Applicable Percentage. For taxable years beginning January 1, 2013, the percentage is seven and one-half percent (7.5%) if the taxpayer or spouse is age sixty-five (65) or older. The percentage for taxpayers under the age of sixty-five (65) is ten percent (10%).** ( )

(BREAK IN CONTINUITY OF SECTIONS)

**251. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- COMPUTATION OF IDAHO TAXABLE INCOME (RULE 251).**

Section 63-3026A, Idaho Code. (3-20-97)

**01. Idaho Total Income.** To determine the Idaho taxable income of nonresident and part-year resident individuals, first compute the taxpayer's Idaho total income. (3-15-02)

**a.** Idaho total income is that portion of total income subject to Idaho taxation. It is the amount reported as total income on Form 43. (3-15-02)

**b.** For purposes of this rule, federal total income means gross income less certain deductions allowed under the Internal Revenue Code. It is the amount reported on the federal individual income tax return that is identified as total income. ~~(3-15-02)( )~~

**02. Idaho Adjusted Gross Income.** From Idaho total income, make the applicable adjustments provided in Rule 252 of these rules to arrive at Idaho adjusted gross income. (3-15-02)

**03. Idaho Adjusted Income.** From Idaho adjusted gross income, make the applicable additions and subtractions set forth in Rules 253 and 254 of these rules to arrive at Idaho adjusted income. (3-20-97)

**04. Idaho Taxable Income.** From Idaho adjusted income, subtract the exemption and deduction amounts as provided in Rule 255 of these rules to arrive at Idaho taxable income. (3-20-97)

**252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).**

Section 63-3026A(6), Idaho Code. (3-20-97)

**01. In General.** Deductions allowed in computing adjusted gross income shall will be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed shall will be computed as provided in this rule. Each computation in this rule shall will include the amounts reported for the taxable year unless otherwise indicated. ~~(3-29-10)( )~~

**02. Deductions Directly Related to Specific Items of Income or Property.** If the deduction directly relates to a specific item of income or property, the allowable deduction shall will be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction shall will be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: ~~(3-29-10)( )~~

**a.** Penalty on early withdrawal of savings. The allowable deduction shall will be computed by dividing the interest income of the time savings deposit subject to the penalty included in Idaho income by the total interest income of the time savings deposit included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes. ~~(3-29-10)( )~~

**b.** Certain business expenses of reservists, performing artists, and fee-basis government officials. (3-29-10)

**c.** Domestic production activities deduction. The allowable deduction shall will be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. ~~(3-29-10)( )~~

c. Domestic production activities deduction. The allowable deduction shall be computed by dividing the qualified production activities income included in Idaho income by the total qualified production activities income. This percentage is multiplied by the domestic production activities deduction allowed for federal purposes. (3-29-10)

d. Jury duty pay remitted to an employer. (3-29-10)

e. Deductible expenses related to income from the rental of personal property engaged in for profit. (3-29-10)

f. Reforestation amortization and expenses. The allowable deduction ~~shall~~ **will** be computed by dividing the income from the related timber operations included in Idaho income by the total income from the related timber operations. If there is no income from the related timber operations for the year of the deduction, the allowable deduction ~~shall~~ **will** be computed based on the percentage of property in Idaho to total property to which the reforestation amortization and expenses relate. This percentage is multiplied by the reforestation amortization and expense deduction allowed for federal income tax purposes. ~~(3-29-10)~~( )

g. Repayment of supplemental unemployment benefits. The allowable deduction ~~shall~~ **will** be computed by dividing the supplemental unemployment benefits included in Idaho income by the total supplemental unemployment benefits reported in federal income. This percentage is multiplied by the repayment deduction allowed for federal purposes. ~~(3-29-10)~~( )

h. Attorney fees and court costs. The allowable deduction ~~shall~~ **will** be computed by dividing the total income related to the attorney fees and court costs included in Idaho income by the total income from such actions. This percentage is multiplied by the attorney fees and court costs allowed for federal purposes. ~~(3-29-10)~~( )

**03. Deductions Allowed Based on Qualifying Types of Income.** If the deduction is dependent on the taxpayer earning a qualifying type of income, the allowable deduction ~~shall~~ **will** be computed by dividing the amount of the qualifying income reported in Idaho income by the total of such qualifying income reported. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. ~~(3-29-10)~~( )

a. Payments to an individual retirement account (IRA), federal health savings or medical savings account, or Section 501(c)(18)(D) retirement plan. The allowable deduction ~~shall~~ **will** be computed by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. This percentage is multiplied by the deduction allowed for federal purposes. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules. ~~(3-29-10)~~( )

b. Payments to a Keogh retirement plan, simplified employee pension (SEP) Plan, SIMPLE Plan, self-employment tax, and self-employment health insurance. The allowable deduction ~~shall~~ **will** be computed by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. This percentage is multiplied by the self-employment deductions allowed for federal purposes. ~~(3-29-10)~~( )

**04. Other Deductions.** Deductions that do not relate to specific items of income or to the earning of qualifying income ~~shall~~ **will** be allowed in the proportion that Idaho total income bears to **federal** total income computed without the federal net operating loss deduction. Such deductions include the following: ~~(3-29-10)~~( )

a. Alimony payments. (3-29-10)

b. Moving expenses. (3-29-10)

c. Student loan interest payments. (3-29-10)

d. Tuition and fees deduction. (3-29-10)



**(BREAK IN CONTINUITY OF SECTIONS)**

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

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. (2-27-12)

**01. Idaho Net Operating Loss.** An Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules, may be subtracted to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (2-27-12)

**02. State and Local Income Tax Refunds.** State and local income tax refunds included in Idaho total income may be subtracted unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (2-27-12)

**03. Income Not Taxable by Idaho.** As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States may be subtracted if that income is included in Idaho total income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (2-27-12)

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

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

**c.** Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on his tribe's federally recognized Indian reservation is not taxable on income derived within that reservation. See Rule 033 of these rules. (2-27-12)

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

**e.** Certain income from loss recoveries. See Rule 195 of these rules. ( )

**04. Military Pay.** Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (2-27-12)

**05. Social Security and Railroad Retirement Benefits.** Social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code may be subtracted to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (2-27-12)

**06. Household and Dependent Care Expenses.** The allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, may be subtracted if incurred to enable



the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, a percentage is calculated by dividing Idaho earned income by total earned income. The qualified expenses are multiplied by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (2-27-12)

**07. Insulation and Alternative Energy Device Expenses.** Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted. (2-27-12)

**08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities.** One thousand dollars (\$1,000) may be subtracted for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (2-27-12)

**09. Adoption Expenses.** The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage. (2-27-12)

**10. Capital Gains Deduction.** The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted. (2-27-12)

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

**a.** The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted. (2-27-12)

**b.** Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income. (2-27-12)

**12. Technological Equipment Donation.** As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the **lower of cost or** fair market value of technological equipment donated to qualifying institutions may be subtracted, limited to the Idaho taxable income of the taxpayer. (~~2-27-12~~)(    )

**13. Worker's Compensation Insurance.** As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

**14. Idaho College Savings Program.** The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted. (2-27-12)

**15. Retirement Benefits.** As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, a percentage is calculated by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, is multiplied by the percentage. (2-27-12)

**16. Health Insurance Costs.** The allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes may be subtracted. To determine the allowable portion of the amounts paid for medical care insurance, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022P, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. (2-27-12)

**17. Long-Term Care Insurance.** As provided in Section 63-3022Q, Idaho Code, a deduction from

taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, a percentage is calculated by dividing Idaho total income by total income. The deduction allowable pursuant to Section 63-3022Q, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. (2-27-12)

**18. Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (2-27-12)

**a.** Depreciation. The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. (2-27-12)

**b.** Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions apply in computing the Idaho capital loss allowed. (2-27-12)

**i.** If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (2-27-12)

**ii.** If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (2-27-12)

**iii.** If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (2-27-12)

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

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. In General.** If a nonresident individual performs personal services, either as an employee, agent, independent contractor, partner, or otherwise, both within and without Idaho, the portion of his total compensation

that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. ~~(2-27-12)~~( )

**02. Definitions.** (3-20-97)

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

**b.** The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation. (2-27-12)

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

**d.** Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the Internal Revenue Code. (2-27-12)

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

**04. Multiple Employers.** If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he must determine an Idaho compensation percentage separately for each employer or principal. (2-27-12)

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

**a.** The taxpayer must fully explain the alternative method in a statement attached to his Idaho individual income tax return. (2-27-12)

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).** Sections ~~63-3026A(3)~~, 63-3027 and 63-3030(a)(9), Idaho Code. ~~(3-30-07)~~( )

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

**02. Exceptions to Apportionment Formula.** If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax Commission may require, an alternative method, including the following: (3-30-07)

- a.** Separate accounting as provided in Rule 585 of these rules; (3-30-07)
- b.** The exclusion of a factor pursuant to Rule 590 of these rules; (3-30-07)
- c.** An additional factor or substitute factor pursuant to Rule 595 of these rules; or (3-30-07)
- d.** The employment of any other method that would fairly represent the extent of business activity in Idaho. (3-30-07)

**03. Information Provided to Partners.** The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: (4-5-00)

- a.** The partner's share of each pass-through item of income and deduction; (4-7-11)
- b.** The partner's share of each Idaho addition and subtraction; (4-7-11)
- c.** The partner's share of Idaho qualifying contributions, Idaho tax credits, and tax credit recapture; (4-7-11)
- d.** The partner's share of income allocated to Idaho; (4-7-11)
- e.** The partnership's apportionment factor, and if the partner is not an individual, the partnership's property, payroll and sales factor numerator and denominator amounts, including the amount of capitalized rent expense; and (4-7-11)
- f.** The partner's distributive share of partnership gross income if the partner is an individual, trust, or estate. (4-7-11)

**(BREAK IN CONTINUITY OF SECTIONS)**

**291. TAX PAID BY PASS-THROUGH ENTITIES FOR OWNERS OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2012 (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 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. (4-4-13)

**02. Income Reportable to Idaho.** The following items must be included in the computation of Idaho taxable income for an individual: (4-4-13)

~~**a.** Compensation paid by the pass-through entity to the owner or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (4-4-13)~~

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

**eb.** 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)**

**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~~ will 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. (4-4-13)

**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~~ when the bonus first-year depreciation was also allowed in computing depreciation for Idaho. ~~(5-8-09)( )~~



(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 taxable~~ year ~~to which a carryover may be taken~~ during the recapture period. (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~~ will be determined by the ratio of departures from locations in Idaho to total departures. (4-4-13)( )

**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. (4-4-13)

**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~~ will 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~~ will 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. (4-4-13)

**04. Examples.** (4-4-13)

**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). (4-4-13)

**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. (4-4-13)

**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. (4-4-13)

**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). (4-4-13)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

**a.** A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2013</u>	<u>\$100</u>	<u>\$80</u>
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40



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

(4-4-13)( )

**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)**

**801. PERSONS REQUIRED TO FILE INCOME TAX RETURNS (RULE 801).**

Section 63-3030, Idaho Code.

(3-30-07)

**01. In General.** Persons who meet the filing requirements under Section 63-3030, Idaho Code, ~~shall~~ will file Idaho income tax returns unless otherwise provided in the Idaho Income Tax Act or by federal law.

~~(3-30-07)~~(\_\_\_\_)

**02. Individuals Who Make Elections Under Section 63-3022L, Idaho Code.** For taxable years beginning prior to January 1, 2012, ~~if~~ an individual partner, member, shareholder, or beneficiary is qualified and makes an election under Section 63-3022L, Idaho Code, for the entity to pay the tax attributable to his income from the entity, such individual ~~shall~~ will not be required to file an Idaho individual income tax return for that taxable year.

~~(3-30-07)~~(\_\_\_\_)

**03. Corporations Included in a Unitary Group.** A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. See Rule 365 of these rules. (3-30-07)

**04. Taxpayers Protected Under Public Law 86-272.** A taxpayer whose Idaho business activities fall under the protection of Public Law 86-272 is not required to file an Idaho income tax return since the taxpayer is exempt from the tax imposed under the Idaho Income Tax Act. If a taxpayer is a member of a unitary group, it ~~shall~~ will be included in the combined report although it is exempt from the income tax. The taxpayer's property, payroll, and sales ~~shall~~ will be included in the computation of the group factor denominators and its business income ~~shall~~ will be included in the computation of apportionable income for the unitary group.

~~(3-30-07)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. PERMANENT BUILDING FUND TAX (RULE 855).**

Sections 63-3082 through 63-3087, Idaho Code.

(3-20-97)

**01. In General.** The permanent building fund tax is an excise tax of ten dollars (\$10) reportable on each income tax return required to be filed unless specifically exempt. The proceeds of this tax are credited to the Permanent Building Fund pursuant to Section 57-1110, Idaho Code. (3-20-97)

**02. Pass-Through Entities.** The permanent building fund tax does not apply to ~~partnerships, estates, trusts or S corporations~~ a pass-through entity if all the income or loss of the entity is distributed to or otherwise reported on the income tax return of another taxpayer. A ~~partnership, estate, trust or S corporation~~ pass-through entity that has Idaho taxable income or loss ~~shall~~ must pay the permanent building fund tax. For information on when an entity is required to pay the permanent building fund tax for an individual who makes the election under Section 63-3022L, Idaho Code, see Subsection 855.06 of this rule. (5-8-09)(\_\_\_\_)

**03. Corporations Included in a Group Return.** The permanent building fund tax applies to each member of a unitary group transacting business in Idaho, authorized to transact business in Idaho, or having income

attributable to Idaho and included in a group return, except as provided in Subsection 855.05 of this rule. (3-30-07)

**04. Inactive or Nameholder Corporations.** An inactive or nameholder corporation that files Form 41 to pay the twenty dollar (\$20) minimum tax ~~shall~~ **must** pay the permanent building fund tax. ~~(3-20-97)~~( )

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

**06. Entities That Pay the Tax for Individuals ~~Making the Election~~ Under Section 63-3022L, Idaho Code.** When an ~~individual officer, director, shareholder, partner, member, or beneficiary makes the election under Section 63-3022L, Idaho Code, to have the corporation, partnership, trust, or estate~~ **pass-through entity** pays ~~his~~ **the** Idaho income tax **on a composite return for an individual shareholder, partner, member, or beneficiary on his share of** income from the entity, the entity ~~shall~~ **must** pay the permanent building fund tax for each ~~qualifying~~ **making the election** ~~filing as part of the composite return. When a pass-through entity pays backup withholding for individuals, the permanent building fund tax will be paid by each individual when they file their return.~~ If an individual ~~is making the election for~~ **has tax paid by** more than one (1) entity for a taxable year, each entity ~~shall be~~ **is** required to pay the permanent building fund tax for the individual. Proration of the permanent building fund tax is not allowed for an individual who has ~~made multiple elections~~ **tax paid by multiple entities** for a taxable year. ~~(5-8-09)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**880. CREDITS AND REFUNDS (RULE 880).**

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

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

**a.** A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)

**b.** An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

**c.** ~~An excessive amount that a pass-through entity withholds pursuant to Section 63-3036B, Idaho Code.~~ ( )

**d.** All amounts erroneously or illegally assessed or collected. (3-20-97)

**e.** The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

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

**a.** The basis for the credit or refund claim, and (4-2-08)

**b.** The amount of the overpayment. (4-2-08)

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

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

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

**c.** If a claim for credit or refund relates to an overpayment attributable to an Idaho net operating loss carryback incurred in taxable years beginning on and after January 1, 2013, an amended return carrying the loss back must be filed within one (1) year of the end of the taxable year of the net operating loss that results in such carryback. ( )

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

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

**06. Limitations on Refunds of Withholding and Estimated Payments.** As provided by Section 63-3072(c), Idaho Code, the Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. (2-27-12)

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

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

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

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

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105, 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2013.

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 036** The rule as currently written reflects the general rule that most signs remain tangible personal property; however, there are notable exceptions, specifically traffic, highway, and street signs, that become real property after installation. The proposed changes clarify that certain signs, such as traffic, highway, and street signs, become real property after installation while others, such as business signs, do not. It is also noted that temporary traffic signage does not become real property. For those signs that become real property, the rule now explains that the installer of the sign operates as a contractor improving real property and, therefore, owes sale or use tax on its purchase or use of the sign materials.

**Rule 037** House Bill 15 (2013) created a definition for primary and primarily in regards to the use of tangible personal property. Use of aircraft was one of the areas particularly affected by this change. Two simple examples have been added to address the new definition in the context of the use of an aircraft.

**Rule 041** House Bill 187 (2013) exempted the use of beverages when given away as part of a tasting. The proposed changes clarify that for events in which participants pay to participate in a tasting, the charges to participate are still taxable.

**Rule 046** The proposed changes clarify that coatings of all kinds (paint, powder coating, spray on bedliner, chrome plating, etc.) will be treated consistently for sales tax purposes. Unless an exemption applies, the materials portion of a sale of a coating is taxable. The rule also explains the circumstances under which the application labor will be taxable or exempt.

**Rule 079** The proposed changes clarify that sales and use of equipment primarily used to improve and install real property are taxable even if the real property is used in production. This position was upheld by the Idaho Supreme Court in a 1991 court case between the Commission and Potlatch.

**Rule 114** House Bill 12 (2013) updated the obsolete language of the food stamp exemption to bring it in line with the current federal program, SNAP. The proposed changes reflect the statutory changes and remove obsolete references to aspects of the assistance programs that no longer exist (i.e. state provided sales machines).

**Rule 130** This rule clarifies promoter's responsibility in regards to documentation that must be obtained from participants at the event. It also updates the rule to reflect the procedure already in place regarding Forms ST-124 that all participants at the event are required to complete.

**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 3, 2013 Idaho Administrative Bulletin, [Volume 13-1](#), pages 87 and 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 rules, 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 October 23, 2013.

DATED this 30<sup>th</sup> day of August, 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

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**FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1301**

**036. SIGNS AND BILLBOARDS (RULE 036).**

**01. Signs and Billboards as Custom Made Articles.** The fabrication, manufacturing, lettering, etc., of advertising or informational signs of whatever description, including, but not limited to, neon signs, display lettering on trucks, display cards, show cards, etc., are considered made-to-order goods or custom made articles and as such are subject to Idaho sales tax based upon the total sales price of the completed sign to the user. The sales price shall include material and labor. (7-1-93)

**02. Rental of Signs.** The rental of signs is subject to sales tax and a sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which in fact a sale, will be treated as a sale and tax collected on the entire sales price at the date upon which the contract is executed. (7-1-93)

**03. Material That Becomes Part of a Sign.** ~~Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. The sale of advertising signs may consist of a mixed transaction including both a sale of tangible personal property and a sale of real property.~~ (3-15-02)( )

**a.** ~~Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. Both the materials and labor required to fabricate the sign are taxable. Therefore, the entire price of the tangible personal property sold will be taxable to the customer.~~ ( )

**b.** ~~Signs may be attached to poles or mountings that are affixed to real property in such a way that they~~

are intended to remain in place and become a real property improvement. The person installing materials into real property is acting as a contractor and is the consumer of the materials installed, such as the concrete or sign poles. The contractor owes a sales or use tax on the purchase of these materials. ( )

**04. Road Signs.** Road signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of road signs include traffic signs such as speed limit signs and stop signs; street signs; recreational area signs; highway signs such as mileage signs and exit signs; and highway exit service information signs. ( )

**a.** In general, road signs become real property upon installation. Consequently, an installer of road signs acts as a contractor improving real property when performing the installation work. Therefore, a road sign installer is the consumer of all materials used in the installation of the road sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials or had the sign materials provided by the sign owner. However, if the sign owner has already paid sales or use tax on its purchase of the sign materials, the installer will not owe any additional use tax. ( )

**b.** Alternatively, if a road sign is intended to serve a temporary purpose, the road sign does not become real property regardless of the nature of its purpose or how the road sign is affixed to real property. ( )

**i.** Example 1: A contractor installs a stop sign on behalf of a public transportation department to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to the public transportation department. The stop sign remains tangible personal property while installed. Therefore, the contractor does not owe use tax. ( )

**ii.** Example 2: A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as "Be Prepared to Stop." The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs is taxable to the contractor. ( )

**045. Custom Painting Directly on Real Property.** A sale of custom painting of displays, graphics or signs directly on walls or windows of a building is not considered to be a retail sale of tangible personal property and is not taxable. The sign painter must pay sales or use tax on purchases of materials used to paint these custom displays, graphics or signs. (7-1-99)

**056. Billboards.** (7-1-99)

**a.** Billboards which are also referred to as twenty-four (24) sheet posters and painted billboards, are not in the same category as signs covered in this rule. The rental of a billboard is not a rental of tangible personal property under the Idaho Sales Tax Act. (7-1-99)

**b.** Billboard Material. Material used in the construction, erection, painting, and maintenance of a billboard is subject to sales or use tax. (7-1-99)

**037. AIRCRAFT AND FLYING SERVICES (RULE 037).**  
Section 63-3622GG, Idaho Code. (4-4-13)

**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 aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-4-13)

**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. (4-4-13)

**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. (4-4-13)

**i.** Public. The public does not include: (4-4-13)

i. Owners or operators of the aircraft; (4-4-13)

ii. Employees of the aircraft owner or operator; (4-4-13)

iii. Guests of the aircraft owner or operator; (4-4-13)

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; (4-4-13)

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 (4-4-13)

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. (4-4-13)

**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 provide passenger or freight services for hire as a common carrier; (4-4-13)

**i.** Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time.



( )

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 50 = 110 hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. ( )

- 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. (4-4-13)

**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. (4-4-13)

**04. 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)

**05. 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)

**06. 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 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. (4-4-13)

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)

**07. 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)

**08. 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)

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

**10. 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)

**11. 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)**

**041. FOOD, MEALS, OR DRINKS (RULE 041).**

**01. In General.** This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

**02. Commercial Establishments.** Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

**03. Clubs and Organizations.** Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

**a.** When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

**b.** The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

**c.** When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

**04. Colleges, Universities, and Schools.** A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

**a.** If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

**b.** Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

**a.** If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

**b.** If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

**c.** Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

**06. Boarding Houses.** Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

**07. Honor System Snack Sales.** Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

**a.** Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

**b.** The formula for computing the taxable amount is:  $TS / (100\% + TR)$  where TS is total sales and TR is the tax rate. (4-2-08)

**08. Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting,

the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. ( )

**101. Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

- a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)
- b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)
- c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

**142. Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

- a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)
- b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)
- c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

**(BREAK IN CONTINUITY OF SECTIONS)**

**046. ~~PLATING AND REPLATING~~ COATINGS ON TANGIBLE PERSONAL PROPERTY (RULE 046).**

**01. ~~Plating and Replating.~~ Plating and replating operations are considered to be providing repair services. If the materials such as chrome, gold, or silver can be separately stated on the billing to the customer, a tax will apply on the sale of the material. If, as in the case of chrome plating of automobile bumpers and accessories, the vat of material is used and reused, the material would be incidental to the overall charges. The replating company will pay tax on the materials at time of purchase. See ISTC Rule 062. **Coatings Generally.** A coating is a substance covering the surface of tangible personal property usually intended to improve the durability or aesthetic appeal of the tangible personal property to which it is applied. There are a variety of coatings including paint, powder coating, chrome plating, spray-on bedliners, and anodized coatings. Effective July 1, 2014, this rule applies to all types of coatings and it is intended that such coatings receive the same tax treatment. This rule does not apply to coatings applied directly to real property such as paint applied to the walls of a building. (7-1-93)( )**

**02. ~~Exchange Basis.~~ This, however, would not apply where a company operates on an exchange basis, giving credit for the bumpers or accessories against the price of the reconditioned piece of equipment. This type of**

~~transaction must be handled in the same manner as a trade-in with sales tax charged on the difference. See ISTC Rule 044.~~ **Coatings are Tangible Personal Property.** The materials applied to tangible personal property to produce a coating are tangible personal property both before and after the application process. Therefore, unless an exemption applies, the sale of a coating is a taxable sale. (7-1-93)( )

**03. Reconditioned Material.** ~~Sales of reconditioned or replaced material or parts will be taxable on the full sales price.~~ **Material Charges.** Unless an exemption applies, the materials portion of a sale of a coating is taxable. If the seller is unable to measure the exact amount of material used, a reasonable method of estimation is acceptable. (7-1-93)

**04. Nontaxable Labor Charges.** In any of the following circumstances, the labor to apply a coating will be nontaxable labor: ( )

**a.** A previous coating is removed and replaced with a new coating, regardless of any differences in quality between the two (2) coatings. ( )

**b.** A coating is applied to used tangible personal property on top of an already existing coating. ( )

**c.** Example 1: A vendor applies a spray-on bedliner to an individual's truck bed. The truck bed surface is already coated with automotive paint. The materials charge is taxable, but the labor is not taxable. ( )

**05. Taxable Labor Charges.** In any of the following circumstances, the labor to apply a coating will be taxable labor: ( )

**a.** A coating is applied to new tangible personal property, regardless of whether the tangible personal property already has a coating. ( )

**b.** A coating is applied to new or used tangible personal property that has never been previously coated. ( )

**06. Separate Statement.** For circumstances under which the labor portion of the transaction is exempt, both materials and labor must be separately stated on the customer's billing statement. If there is no separate statement of materials and labor, the entire transaction is subject to sales tax. ( )

**07. Used Tangible Personal Property.** For purposes of this rule, tangible personal property is used if the tangible personal property has been previously put to the use for which it was intended. If a contractor hires someone to apply a coating to tangible personal property that the contractor intends to incorporate into real property, the tangible personal property has not been put to the use for which it was intended and is considered new tangible personal property. ( )

**a.** Example 1: A contractor hires someone to apply a coating to metal ducting. The contractor intends to incorporate the metal ducts into a ventilation system in a building. Since the ducting has not yet been put to the use for which it was intended, it is not used tangible personal property and all labor and material charges will be taxable. ( )

**b.** Example 2: A person buys a piece of furniture for use in the home. The person uses the drawers for a year before hiring someone to apply a stain to the drawers. At that point, the drawers are used tangible personal property. If the drawers had a previous coating of any kind, the labor to apply the stain will be nontaxable. If the drawers had no previous coating, the labor to apply the stain will be taxable. ( )

**c.** Example 3: A company buys equipment from a supplier. Before the equipment is ever put to the use for which it was intended, the company takes the equipment to be coated by a different supplier. Since the equipment has not yet been put to the use for which it was intended, it is new tangible personal property. Regardless of whether the equipment already has a coating, both the materials and labor to apply the new coating are taxable. ( )

**08. Tangible Personal Property Held for Resale.** For new or used tangible personal property held by a seller as part of its inventory, any labor costs incurred to apply a coating to the tangible personal property and charged to the end consumer are taxable services agreed to be rendered as part of the sale of the tangible personal property. The labor charges are exempt only if the sale of the tangible personal property is exempt. However, if the seller pays a third party to apply a coating to tangible personal property in its inventory, the seller may claim a resale exemption on the transaction. ( )

**a.** Example 1: A dealership has a used truck in its inventory. A customer will purchase the truck on the condition that the dealership will apply a spray-on bedliner. The dealership hires another company to apply the spray-on bedliner and pays three hundred dollars (\$300) for the job (split evenly between materials and labor). The dealership fills out a resale exemption certificate for the spray-on bedliner company. No tax should be charged on this transaction. The dealership then charges its customer five hundred dollars (\$500) (split evenly between materials and labor) and separately states these charges from the sales price of the truck. The materials charge is a taxable sale of tangible personal property. The labor charge is a taxable service agreed to be rendered as part of the sale of the truck. The dealership must charge tax on the entire five hundred dollars (\$500). ( )

**09. Exemptions.** Like any sale of tangible personal property, if the customer provides a valid exemption certificate to the seller claiming an exemption that applies to the transaction, the seller has no obligation to collect sales tax on the transaction. The seller must maintain a copy of the exemption certificate on file. See Rule 128 of these rules for additional information. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. In General.** Section 63-3622D, Idaho Code, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (5-8-09)

**a.** A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property that it will sell and is intended to be ultimately sold at retail. (5-8-09)

**b.** The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: (5-8-09)

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

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

iii. Businesses devoted to processing tangible personal property for use as fuel for the production of energy. (5-8-09)

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

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

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

**c.** To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. (5-8-09)

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

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

**b.** Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

**c.** Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

**d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

**e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

**f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

**g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

**h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

**i.** Equipment used primarily to fabricate production equipment. (7-1-93)

**04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)

**05. Taxable Purchases.** The production exemption does not include any of the following: (4-11-06)

**a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

**b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

**c.** A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)

**d.** Office equipment and supplies. (7-1-93)

**e.** Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)



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

is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. **Exemption Certificate.** To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. **Special Rules.** Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

**114. SALES UNDER THE SNAP AND WIC PROGRAMS, RECORDS REQUIRED, ~~FOOD STAMPS, FOR PAYMENTS WITH ELECTRONIC BENEFITS TRANSFERS, CARDS AND WIC CHECKS TENDER~~ (RULE 114).**

Sections 63-3622EE and 63-3622FF, Idaho Code. ( )

01. **In General.** Sales of food purchased under the ~~Federal Food Stamp Program, the Federal Food, Conservation and Energy Act of 2008, Federal Supplemental Nutrition Assistance Program (SNAP)~~ or the Federal Special Supplemental Food Program for Women, Infants, and Children, ~~(WIC)~~ are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the purchaser uses ~~food stamps, vouchers,~~ electronic benefits transfer ~~(EBT)~~ cards, ~~WIC tender,~~ or any other exchange medium authorized ~~for these programs~~ by federal law. ~~(4-7-11)~~( )

02. **Records Required.** Retailers who accept ~~food stamps, electronic benefits transfer~~ EBT cards, ~~and or WIC checks tender as payment~~ must maintain accurate records of ~~exempt those~~ sales. Adequate records include sales reports or tender-type reports with collections from each type. ~~(7-1-99)~~( )

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

Sections 63-3620 & 63-3620C, Idaho Code. ( )

**01. Promoter's Responsibility.** Promoters ~~at~~ of promoter sponsored events, as defined in Section 63-3620C, Idaho Code, ~~shall~~ **must** obtain a completed copy of ~~a~~ **the sales tax declaration section of** Form ST-124, Idaho Sales Tax Declaration, from each participant at ~~the~~ **an** event. The promoter must obtain pre-numbered Forms ST-124 from the State Tax Commission. The promoter ~~shall~~ **must** forward a copy of the completed Form ST-124 to the State Tax Commission within ten (10) days following the beginning of the event. The promoter ~~shall~~ **may** also maintain a copy in its file. The State Tax Commission may request from the promoter a master list of participants to be submitted in addition to the completed Forms ST-124. (3-30-01)( )

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

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

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

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

~~b. Participant B attends the July 16, event and completes a Form ST-124 stating it will not be selling any items of tangible personal property. Participant B also attends the September 22, event but in this event it will be selling tangible personal property. The promoter will need to obtain a new Form ST-124 and forward it to the State Tax Commission.~~ (3-30-01)

**052. Use of the Form ST-124.** The Form ST-124 must be used every time a promoter issues a temporary seller's permit. A promoter must use the Form ST-124 to issue temporary permits even to those participants who have attended events during the preceding year. The promoter will provide ~~the~~ **each** participant with the Form ST-124, ~~who will~~ Upon completing the sales tax declaration section of the form, the participant must return it to the promoter. The promoter will retain a copy of the Form ST-124 and provide a copy to the State Tax Commission. In this section, the participant states that the participant either has a valid seller's permit, will use Form ST-124 as a temporary seller's permit for the event, or will not make any taxable sales at that event. If a participant uses Form ST-124 as a temporary seller's permit, the promoter will be considered the issuer of that permit as an agent of the State Tax Commission. The Form ST-124's sales tax declaration shall include the following: (3-30-01)( )

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

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

~~e. The participant's federal employer identification number.~~ (5-8-09)

~~d.c.~~ Either: (3-30-01)

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

ii. A statement that an Idaho sales tax permit will be obtained before the date of A statement from the

participant that the Form ST-124 will be used as a temporary seller's permit for the event; or ~~(3-30-01)~~( )

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

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

**03.** **Participant's Failure to Provide a Form ST-124 to the Promoter.** For every participant that does not provide the completed sales tax declaration portion of Form ST-124 to the promoter, the promoter must provide to the State Tax Commission a list of those participants within ten (10) days following the beginning of the event. For each participant listed, the promoter shall include the following: the business name, address, phone number, and names of all individuals who own and operate the business. ( )

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

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

## IDAPA 35 - STATE TAX COMMISSION

### 35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

#### DOCKET NO. 35-0103-1302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 63-105A, Idaho Code, and Section 63-802, 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, 2013.

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

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

**Rule 006** The changes to this rule update references to appropriate and current editions of guides and professional technical standards used to determine values of certain property and to measure assessment level and uniformity.

**Rule 020** The current method used to value the recreational vehicle (living quarters) portion of the combined use vehicle allocates 25% or 30%, depending on the number of heating, cooking, and plumbing fixtures found in each vehicle, of the total vehicle's market value to the value of the recreational vehicle. This 10 year old method is outdated and cumbersome and needs to be made easier to apply and to recognize current market value information. Based on current market research the new method illuminates the need to determine the number of fixtures in each vehicle and allocates 50% of the total vehicle's value to arrive at the market value of the recreational vehicle upon which the license fee is determined.

**Rule 205** This rule clarifies by listing examples that certain properties are improvements (buildings and structures) and real property and therefore should not be eligible for the personal property exemption provided for in 63-602KK. The rule lists cell towers, underground storage tanks, poles and towers, signposts, pipelines and conduit and railroad track as examples of improvements that are not eligible for the personal property exemption.

**Rule 302** The provisions in section 63-602KK providing for an affidavit has been deleted by HB 315 (2013). This will make permanent the provisions of Temporary Rule 302. The entire rule is being deleted because it is no longer needed and would cause confusion in the administration of the personal property exemption.

**Rule 406** This rule addresses market valuation for assessment purposes of public rate regulated electric utility operating property. It provides methodologies for valuing public rate regulated electric utility operating property that will provide future stability and predictability for the impacted taxpayers and taxing districts.

**Rule 407** This rule may make the hearing process more summary and simple and possibly move to a less adversarial process by adopting a more presentational process, during the process by which operating property tax valuation appeal hearings are conducted by the Tax Commissioners sitting as the state board of equalization.

**Rule 626** The rule provides guidance to the Tax Commission and companies on how to report exempt personal property for operating property. The rule gives guidance to county assessors and clerks. The rule gives instruction for adjusting the amounts on the personal property tax reduction list so that the amount to be reimbursed to the taxing districts by the State may be adjusted to be as accurate as possible.

**Rule 632** HB 141 (2013) enacted a new section to Idaho Code (63-602OO) providing a property tax exemption for oil or gas related wells. Definitions of oil and gas related wells are needed along with clarifications as to what property is exempted. This rule defines oil and gas wells as the structures and land within the hole and explains which property is eligible and ineligible for the exemption.

**Rule 700** This rule adds a cross reference in the property tax circuit breaker rule (Rule 700) to the Tax Commission's Administrative and Enforcement Rule (IDAPA 35.02.01.702.c. which provides that certain information may be released to state or federal elected officials.

**Rule 803** This rule is needed to clarify that the tax commission will not approve a property tax levy that has been computed based on a property tax budget amount that exceeds the amount stated in the notice of budget hearing. This proposed rule would add to paragraph 35.01.03.802.02 (Budget Certification) a provision stating that the levy approved by the tax commission shall not exceed the levy computed on the amount shown in the notice of budget hearing.

**Rule 902** This rule modification will delete the requirement to issue tax notices for those accounts that have zero balances due to the personal property exemption granted by Section 63-602KK. I.C. 63-602KK (2013) provides that replacement funds be computed once based on the 2013 personal property exemption amount. The previous version of I.C. 63-602KK required that the replacement amount be computed anew for each year. The annual review of replacement funds will not be required in future years. The on-going requirement for the county to send a tax notice (Bill) to citizens with zero tax owing is being deleted.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the September 4, 2013 Idaho Administrative Bulletin, [Volume 13-9](#), page 197.

**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 rules, 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 October 23, 2013.

DATED this 30<sup>th</sup> day of August, 2013.

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

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**FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-1302**

**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~~3~~, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2012, “Standard on Mass Appraisal of Real Property” published in 2012, “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 June 14, 2012. (~~4-4-13~~)( )

**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2012~~3~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-4-13~~)( )

**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2012~~3~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-4-13~~)( )

**d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2012 and the first quarter in 2013~~4~~ by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (~~4-4-13~~)( )

**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” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

**007. -- 019. (RESERVED)**

**020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).**  
Section 49-446, Idaho Code. (5-3-03)

**01. Value of Recreational Vehicle For Registration Fees.** Beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule.



DEPRECIATION SCHEDULE FOR RVS				
	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price of the RV or the applicable value from Subsection 020.02 or 020.03 below by the appropriate "Percent Good" based on the "Age" and type of RV. Decide the "Age" based on the year of purchase as follows: purchased in the current year equals "Age" zero (0), purchased in the previous year equals "Age" one (1), etc. For example, in year 2004, the "Age" for an RV purchased in 2004 is zero (0), the "Age" for an RV purchased in 2003 is one (1), the "Age" for an RV purchased in 2002 is two (2), the "Age" for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. This depreciation schedule is based on the "Recreation Vehicle Guide of the National Automobile Dealers Association" and the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" approved by the State Tax Commission as required under Section 49-446, Idaho Code. The State Tax Commission will maintain the information on which this depreciation schedule is based while it is in use and for a minimum of three (3) years after it has been replaced. If the purchase price for the RV is not known, use the approved edition of the "Recreation Vehicle Guide of the National Automobile Dealers Association" or the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" as referenced in Rule 006 of these rules to determine the market value.

(5-3-03)

**02. Value of Motor Home or Van Conversion For Registration Fees.** The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion's total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

**03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees.** For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is *the price listed on the bill of sale for the living quarters. When the price of the living quarters is not listed separately on the bill of sale, for a vehicle with less than four (4) facilities, the value of the RV is twenty five percent (25%) of the sales price, and for a vehicle with four (4) or more facilities, the value of the RV is thirty ~~thirty~~ fifty percent (35%) of the sales price. A facility is any one (1) of the following:* (5-3-03)(    )

- ~~a. Stove;~~ (5-3-03)
- ~~b. Lavatory/toilet;~~ (5-3-03)
- ~~c. Heater/air conditioner;~~ (5-3-03)
- ~~d. Refrigerator/icebox;~~ (5-3-03)
- ~~e. Sink with water faucet; or~~ (5-3-03)
- ~~f. Electricity/gas supply.~~ (5-3-03)

**04. Assessment Notice Mailed or Assessment Canceled.** If after August 31, the required annual registration fee has not been paid, a taxpayer's valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**205. PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).**  
 Sections 39-4105, 39-4301, 63-201, 63-302, 63-309, 63-602KK, 63-1703, 63-2801, Idaho Code. (5-8-09)

**01. Real Property.** Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. (5-8-09)

**a. Land.** Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. (5-8-09)

**b. Law and Courts.** Real property also consists of all other property which the law defines, or the courts may interpret, declare, and hold to be real property under the letter, spirit, intent, and meaning of the law. (5-8-09)

**c.** Improvements. Improvements are buildings, structures, fences, and similar property that is built upon land. Improvements are real property regardless of whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed, or attached. (5-8-09)

**02. Personal Property.** Personal property is defined in Section 63-201, Idaho Code, as everything that is the subject of ownership that is not real property. (5-8-09)

**03. Fixtures.** Fixtures are defined in Section 63-201, Idaho Code. (5-8-09)

**a.** Three ~~part~~ **factor** test. If an item of property satisfies all three tests, the item becomes a fixture and therefore real property. ~~(5-8-09)~~( )

**i.** Annexation. Although once moveable chattels, articles become accessory to and a part of improvements to real property by having been physically or constructively incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property; and (5-8-09)

**ii.** Adaptation. The use or purpose of an item is integral to the use of the real property to which it is affixed; and (5-8-09)

**iii.** Intent. Items should be considered personal property unless a person would reasonably be considered to intend to make the articles, during their useful life, permanent additions to the real property. The intent depends on an objective standard and what a reasonable person would consider permanent and not the subjective intention of the owner of the property. (5-8-09)

**b.** Fixtures does not include machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles. (5-8-09)

**04. Property Eligible For The Exemption in Section 63-602KK(2), Idaho Code.** ( )

**a.** Personal property means everything that is the subject of ownership and that is not included within the term real property. Real property means land and all rights and privileges thereto belonging or any way appertaining and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law. Real property also includes improvements. Improvements means all buildings, structures, fences, water ditches constructed for mining, manufacturing or origination purposes, and fixtures, whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached. The three factor test is the predominant determinant when considering whether fixtures are real property. When Subsection 205.03.b. of this rule and the three (3) factor test create a conflict in determining whether an item is eligible, the three (3) factor test shall resolve the conflict. ( )

**b.** Examples. Based upon the definitions of personal and real property in Subsection 250.04.a. of this rule the following items are real property and are not eligible for the exemption in 63-602KK(2), of Idaho Code: ( )

**i.** Cell towers and similar structures; ( )

**ii.** Underground storage tanks; ( )

**iii.** Poles and towers; ( )

**iv.** Signposts; ( )

**v.** Pipelines and conduit; ( )

**vi.** Railroad track; ( )

~~04~~**5.** **Operating Property.** Operating Property is defined in Section 63-201, Idaho Code. For any purpose for which the distinction between personal property and real property is relevant or necessary for operating property, operating property will be characterized as personal or real based upon the criteria stated in this guideline and the rules of the State Tax Commission. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

231. -- ~~301~~**3.** (RESERVED)

~~302.~~ **LIST OF TAXABLE PERSONAL PROPERTY (RULE 302).**  
~~Sections 63-302 and 63-602KK, Idaho Code.~~ (5-8-09)

~~01.~~ **Application for Exemption Required.** ~~Except as provided in Subsection 302.04 of this rule, the list of personal property required by Section 63-302, Idaho Code, shall serve as the taxpayer's application for the exemption provided by Section 63-602KK, Idaho Code. The following information must be provided by the taxpayer:~~ (3-29-10)

~~a.~~ *Name of the applicant; and* (5-8-09)

~~b.~~ *An attestation that no other individual or organization has or will apply for the exemption in the county when those other individual(s) or organization(s) would be ineligible under this rule for the 63-602KK exemption. Under Idaho Code section 63-602KK, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code, as defined in Section 63-3004, Idaho Code.* (5-8-09)

~~02.~~ **Designation of Personal Property Eligible for Exemption.** ~~When required, the list of personal property required by Section 63-302, Idaho Code, shall include all taxable personal property including the personal property that may be found to be exempt under the provisions of Section 63-602KK, Idaho Code.~~ (3-29-10)

~~03.~~ **Failure to File the List.** ~~Except as provided in Subsection 302.04 of this rule, the taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code. If the list is otherwise required and is not filed by the taxpayer, the assessor may list and assess the items to be taxed based on his best judgment and information available to him. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code.~~ (3-29-10)

~~04.~~ **Affidavit in Lieu of Application for Exemption.** ~~The "Affidavit in Lieu of Application for Exemption" permitted in Section 63-602KK, Idaho Code, shall be identified as the "personal property affidavit." Except as provided in Subsection 302.05 of this rule, a taxpayer may submit a personal property affidavit in lieu of the list of personal property required by Section 63-302, Idaho Code, and this affidavit will constitute a valid substitute application for the exemption provided in Section 63-602KK, Idaho Code, provided that the taxpayer complies with Subsections 302.04.a. and 302.04.b. of this rule.~~ (3-29-10)

~~a.~~ *The list(s) required by Section 63-302, Idaho Code, was (were) submitted the first year during which the exemption applies to personal property for that taxpayer.* (3-29-10)

~~b.~~ *The personal property affidavit includes an estimate of the current market value of the taxpayer's property upon which application for the exemption in Section 63-602KK, Idaho Code, is being made. This estimate of current market value may be in aggregate for all property otherwise required to be listed under the provisions of Section 63-302, Idaho Code.* (3-29-10)

~~e.~~ *The aggregate estimate of current market value included on the personal property affidavit shall be used by the assessor to fulfill the requirements of Section 63-301, Idaho Code, to determine the market value for assessment purposes of the taxpayer's personal property.* (3-29-10)

~~d. The personal property affidavit shall be permitted provided that the value reported by the taxpayer for property otherwise required to be listed under Section 63-302, Idaho Code, does not exceed one hundred thousand dollars (\$100,000). (3-29-10)~~

~~e. If the current market value of the taxpayer's property required to be listed under Section 63-302, Idaho Code, exceeds one hundred thousand dollars (\$100,000), the taxpayer must list all property otherwise required to be listed under Section 63-302, Idaho Code, not just the property or value exceeding one hundred thousand dollars (\$100,000). (3-29-10)~~

~~f. A taxpayer with multiple parcels for which separate lists have been filed previously and otherwise subject to the filing requirements in Section 63-302, Idaho Code, may file the personal property affidavit provided that the total current market value of all otherwise reportable personal property for all of the parcels owned by that taxpayer in a county does not exceed one hundred thousand dollars (\$100,000). (3-29-10)~~

~~05. **Qualified Investment Exemption Participants Not Eligible to File the Affidavit.** Taxpayers who have elected to designate property to be included in the exemption provide for in Section 63-3029B, Idaho Code, shall not be eligible to file the personal property affidavit otherwise permitted in Subsection 302.04 of this rule. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. (3-29-10)~~

~~303. (RESERVED)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~406. **(RESERVED) RULES PERTAINING TO MARKET VALUE OF OPERATING PROPERTY OF RATE REGULATED ELECTRIC UTILITY COMPANIES (RULE 406).** Section 63-105(2) and Section 63-205(1), Idaho Code. ( )~~

~~**01. Valuation of Operating Property of Rate Regulated Electric Utility Companies.** The market value for assessment purposes of operating property of rate regulated electric utility companies shall be determined by the state tax commission using statute, these rules as referenced in Rule 001 of these rules, any other applicable law, and the following: ( )~~

~~**a.** Depending on the weighting placed on the income approach, as described in Subsection 406.01.d. of this rule, no more than twenty percent (20%) weight will be placed on the cost indicator when utilizing the Historic Cost Less Depreciation (HCLD) method in the system value correlation. ( )~~

~~**b.** In the income approach, income to be capitalized will be normalized, utilizing the Gross Domestic Product Implicit Price Deflator found in Table I.1.9 from the United States Department of Commerce, Bureau of Economic Analysis (<http://research.stlouisfed.org/fred2/series/GDPDEF/>) last accessed August 12, 2013, by using an average of at least the previous four (4) years' net operating incomes and by adjusting each year's net operating income for unusual non-recurring items. ( )~~

~~**c.** In the income approach, a market discount rate will be determined and will include a flotation cost component supported by nationally recognized sources. ( )~~

~~**d.** A weighting between eighty percent (80%) and one hundred percent (100%) will be placed on the income approach in the system value correlation. ( )~~

~~**e.** Within the market approach, as prescribed in Rule 405 of these rules, a sales comparison approach may be used if reliable data is available and appropriate comparison adjustments can be made. No weight will be placed on a stock and debt approach in the system value correlation. ( )~~

f. For rate regulated electric utility companies, the weightings prescribed in this rule shall supersede any weightings in the system correlation prescribed in Subsection 405.08 of this rule. ( )

02. Accounting For Obsolescence. Subsection 406.01.a. of this rule shall be construed to mean that the use of no more than twenty percent (20%) weight placed on the cost indicator, when utilizing HCLD method to calculate the cost approach, accounts for any and all forms of depreciation, including any and all forms of obsolescence, and the appraiser shall not consider any further obsolescence as provided for in Subsection 405.05 of these rules. ( )

**407. ~~APPEAL OF HEARING TO REVIEW~~ OPERATING PROPERTY ~~ASSESSMENTS~~ ~~APPRAISALS~~ (RULE 407).**

**01. Procedure Governed.** This rule shall govern all practice and procedure before the State Tax Commission sitting as a Board of Equalization in hearings under Section 63-407, Idaho Code. Hearings are not contested cases under the Idaho Administrative Procedures Act. Hearings are open meetings under the Idaho open meetings law and all written materials are subject to Idaho public records law. The taxpayer may request that the board of equalization go into executive session to discuss confidential materials. (7-1-99)( )

**02. Liberal Construction.** These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the State Tax Commission. For good cause the State Tax Commission may permit deviation from these rules and the taxpayer may request a stipulated finding that would result in an appealable decision in lieu of a hearing before the state board of equalization. (7-1-99)( )

**03. Communication.** All notices and petitions required to be filed with the State Tax Commission must be in writing. Each notice must identify the filing party, be signed by the filing party, be dated and give the filing party's mailing address and telephone number. The provisions of Section 63-217, Idaho Code, apply to the filing of documents with the State Tax Commission. (7-1-99)

**04. Service by State Tax Commission.** All notices and orders required to be served by the State Tax Commission may be served by mail. Service shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail. (7-1-99)

**05. Notice to County Assessors.** When the calendar of hearings under Section 63-407, Idaho Code, is final, the State Tax Commission shall send a copy of this calendar to the assessor of each county. (7-1-99)

**06. Parties.** The following are parties to a hearing of the State Tax Commission meeting as Board of Equalization. (7-1-99)

**a.** Petitioner. A person petitioning for a hearing shall be called the petitioner. (7-1-99)

**b.** Staff. The State Tax Commission staff may appear as a party at the hearing and may be represented by one (1) or more Deputy Attorneys General assigned to the State Tax Commission. (7-1-99)

**c.** Legal advisor to the commission. When sitting as a Board of Equalization, the State Tax Commission may obtain legal advice from a Deputy Attorney General who is not representing the State Tax Commission staff. (7-1-99)

**07. Appearances and Practice.** The following apply for appearances and practice in a hearing. (7-1-99)

**a.** Rights of parties. At any hearing, both parties may appear, introduce evidence, ~~examine and cross-examine witnesses;~~ ask questions through the presiding officer, make arguments, and generally participate in the conduct of the proceeding. (7-1-99)( )

**b.** Taking of appearances. The presiding officer conducting the hearing shall require appearances to be stated and shall see that both parties present are identified on the record. (7-1-99)

c. Representation of taxpayers. An individual may represent himself or herself or be represented by an attorney. A partnership may be represented by a partner, authorized employee or by an attorney. A corporation may be represented by an officer, authorized employee or by an attorney. (7-1-99)

**08. Pre-Hearing Conferences.** ~~The following apply for holding pre-hearing conferences.~~ (7-1-99)( )

a. ~~Reasons for holding pre-hearing conferences.~~ The State Tax Commission may, upon notice to both parties, hold a pre-hearing conference for the following purposes: (7-1-99)( )

i. Formulating or simplifying the issues; (7-1-99)

ii. Obtaining admissions of fact and of documents which will avoid unnecessary proof; (7-1-99)

iii. Arranging for the exchange of proposed exhibits or prepared expert testimony; (7-1-99)

iv. Limiting the number of witnesses; (7-1-99)

v. Setting the hearing procedure, ~~at for the hearing~~ and including allocation of an amount of time for the hearing; and (7-1-99)( )

vi. Reviewing other matters to expedite the orderly conduct and disposition of the proceedings. (7-1-99)

vii. Allowing any continuance. ( )

b. Action taken. Any action taken at the conference and any agreement made by the parties concerned may be recorded and the State Tax Commission may issue a pre-hearing order which will control the course of subsequent proceedings unless modified. (7-1-99)

c. Compromise and offers to compromise. Evidence of an offer or agreement to compromise the dispute and the conduct and statements made in compromise negotiations are not admissible at the hearing. (7-1-99)

**09. Hearings.** The following apply to the hearings. (7-1-99)

a. Request for hearing. A request for a hearing shall be in ~~the form of a petition writing and~~ filed with the State Tax Commission on or before August 1 of the current year. The ~~petition request~~ shall state the factual and legal basis on which the request is based. (7-1-99)( )

b. Notice of hearing. The State Tax Commission shall notify both parties and all counties of the place, date and time of the hearing. (7-1-99)

c. ~~Motions. Motions may be submitted for the State Tax Commission's decision by written or oral argument or both. The filing of affidavits in support or opposition is permitted. Motions filed by different parties but involving the same point of law may be set for hearing at the same time. The practice for motions shall generally conform to the Idaho Rules of Civil Procedure, with modifications and exceptions as ordered by the State Tax Commission.~~ Submission of documents and other evidence. The taxpayer's operating statement, applicable yield studies, the staff's appraisal and the taxpayer's notice of appeal and request for hearing are deemed a part of the record of the hearing. Other written appraisals, exhibits, statements, arguments and other documents for the Commissioners to consider shall be submitted by both parties at least three (3) days in advance of the hearing. Additional information may be presented by either party at the time of their oral presentations, but such additional information should be limited to subject matter and evidence provided at least three days prior to the hearing. Parties shall submit ten (10) copies. (7-1-99)( )

d. Presiding officer. The Chairman of the State Tax Commission shall appoint an individual who is not a member of the State Tax Commission's staff to conduct the hearing. In the absence of a conflict of interest or



other good cause, this person will normally be the Commissioner overseeing the centrally assessed property section of the State Tax Commission or the designee thereof. A Commissioner shall not vote on any matters where he has oversight. (7-1-99)

e. The proceeding. In a non-adversarial proceeding witnesses shall present evidence and arguments directly to the Commissioners. The presentation may include written materials including a transcript of the witnesses' oral statements. Copies of written materials (including copies of visual presentations) shall be provided each Commissioner, the Commission's secretary and the Staff. At the conclusion of a witness' testimony, Commissioners may pose questions. The party with the burden of proof on the matter to be considered shall present first and may make a closing presentation. This closing presentation should be limited to the subject matter and evidence presented during the proceeding. ( )

ef. Testimony under oath. All testimony to questions of fact to be considered by the State Tax Commission in hearings, except matters noticed officially or entered by stipulation, shall be under oath. Before taking the witness stand testimony is presented each person shall swear, or affirm, that the testimony he is about to give shall be the truth. Attorneys may present oral and written legal argument on behalf of clients as part of the presentation by the party they represent. (7-1-99)( )

fg. Rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made by the State Tax Commission. Unless otherwise provided in these rules the Idaho Rules of Evidence will be generally followed but may be modified at the discretion of the State Tax Commission to aid in ascertaining the facts. When objection is made to the admissibility of evidence, the evidence may be received subject to later ruling by the State Tax Commission. The State Tax Commission, at its discretion either with or without objection may limit or exclude inadmissible, incompetent, cumulative or irrelevant evidence. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. (7-1-99)( )

gh. Recessing hearing for conference. In any proceeding the presiding officer may, in at his discretion, call both parties together for a conference prior to the taking of testimony, or may recess the hearing for a conference. The presiding officer shall state on the record the results of the conference. (7-1-99)

hi. Transcript. An official electronically recorded transcript of the hearing will may be taken at the discretion of the Commission when requested by a party. A petitioner desiring the taking of stenographic notes by a qualified court reporter may notify the State Tax Commission in writing and shall arrange for the hiring of a reporter and bear the expense of the reporter's fees. If the reporter's transcript is deemed by the State Tax Commission or presiding officer as the official transcript of the hearing, the petitioner shall furnish the State Tax Commission a transcript free of charge. (7-1-99)( )

ij. Transcript copies. A request for a copy of the a transcript of proceedings at any hearing must be in writing or on the record. Upon completion of the transcript, the State Tax Commission shall notify the person requesting a copy of the fee for producing the transcript. Upon receipt of the fee, the State Tax Commission will send a copy of the transcript. (7-1-99)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).**

Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code. (3-29-10)( )

01- Effective Date. This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during fiscal year 2008 by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 2010, have exceeded the receipts for fiscal year 2008 by five percent (5%) or more, then this exemption would take effect on January 1, 2011. Once this exemption takes effect, it will remain in effect continuously. (3-29-10)

**021. Locally Assessed Property - Application Required** ~~to Establish Initial Eligibility for Exemption.~~ (3-29-10)( )

**a.** ~~In order to establish initial eligibility for this exemption,~~ The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. ~~The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code.~~ For purposes of reporting personal property, the value is to be based on market value, not book value. (3-29-10)( )

**b.** Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, that are exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. ( )

**bc.** ~~Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer. In addition, for taxpayers with personal property with a total market value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total market value of all otherwise taxable personal property is less than or equal to one hundred thousand dollars (\$100,000), and must be filed with the county assessor no later than April 15 of the appropriate year.~~ (5-8-09)( )

**03. Procedure During Years Following Year of Initial Eligibility for Exemption.** (3-29-10)

**a.** ~~Unless the exemption has been deemed improper, for all years following the initial establishment of eligibility for the exemption, the taxpayer may continue to file the lists required by Sections 63-302, 63-313, and 63-602Y, Idaho Code, or, if applicable, for property otherwise reportable as required by Section 63-302, Idaho Code, may file the affidavit provided in Section 63-602KK(6), Idaho Code. If the taxpayer chooses to file the affidavit, such filing must conform to the filing date provided in Section 63-302, Idaho Code.~~ (3-29-10)

**b.** ~~If, after receiving the exemption, the taxpayer fails in any subsequent year to timely file the required lists of personal property or, if applicable, the affidavit provided in Section 63-602KK(6), Idaho Code, the taxpayer can re-establish future eligibility for the exemption by means of filing the lists required by Sections 63-302, 63-313 and 63-602Y, Idaho Code.~~ (3-29-10)

**e.** ~~For the duration of the period during which recapture could apply, the affidavit option shall not be available for taxpayers who elect to designate property to be included in the exemption provided for in Section 63-3029B, Idaho Code.~~ (3-29-10)

**042. Locally Assessed Property - Taxpayers' Election of Property Location.** ( )

**a.** Multiple Locations Within A County. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application

specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. 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. ~~If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed.~~ However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. (3-29-10)( )

**b.** Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per county. ( )

**03. Centrally Assessed Property – Application Required.** ( )

**a.** Except for private railcar fleets, the taxpayer must file a list of personal property with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsection 626.03.c. of this rule, for such personal property to be considered for the exemption, the operator's statement must include: ( )

**i.** A description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; ( )

**ii.** Cost and depreciated cost of the personal property; ( )

**iii.** The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. ( )

**b.** For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the requirements to show specific or county locations, found in Subsections 626.03.a.i. and 626.03.a.iii. shall not apply. Instead, the Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county. The remaining taxable and exempt market value is to be further apportioned to each taxing district and urban renewal revenue allocation area. ( )

**c.** For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), the application procedure described in Subsection 626.03.a. of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county. ( )

**d.** When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. ( )

**04. Centrally Assessed Property - Taxpayers' Election of Property Location.** Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection 626.03.b. of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. ( )

**05. Valuation Assessment Notice.** The valuation assessment notice required by Section 63-308, Idaho

Code, must show the ~~gross value~~ taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, the exempt market value pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. *The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required until every fifth year following when the claimant must reapply.* (3-29-10)(      )

~~**06. Preliminary and Final Personal Property Tax Reduction Lists.**~~ (5-8-09)

~~**a.** Except as provided in Paragraph 626.06.e. of this rule, the preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption:~~ (3-29-10)

~~i. The name of the owner, listed in alphabetical order unless the State Tax Commission grants permission for accounts to be listed in an alternate order;~~ (5-8-09)

~~ii. The description of the property item(s) subject to exemption or partial exemption;~~ (5-8-09)

~~iii. The location(s) of the property item(s) showing the tax code area; and~~ (5-8-09)

~~iv. The assessed value of the property item(s) listed as equalized by the county board of equalization.~~ (3-29-10)

~~**b.** This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code, or the affidavit permitted by Section 63-602KK, Idaho Code. Transient personal property will not be listed on the preliminary list.~~ (3-29-10)

~~**e.** Except as provided in Paragraph 626.06.e. of this rule, the final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.06.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption:~~ (3-29-10)

~~i. The tax levy applicable to the personal property;~~ (5-8-09)

~~ii. The tax before the exemption;~~ (5-8-09)

~~iii. The tax after the exemption;~~ (5-8-09)

~~iv. The amount of the exemption;~~ (5-8-09)

~~v. The aggregate total of the tax exempted; and~~ (5-8-09)

~~vi. The aggregate total of the tax exempted within each taxing district and each revenue allocation area.~~ (5-8-09)

~~**d.** This final personal property tax reduction list may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK(3), Idaho Code. The final certified list shall be filed with the Tax Commission not later than the third Monday of November of each year.~~ (3-29-10)

~~**e.** If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the~~

~~list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs 626.06.a.ii., and 626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule. (3-29-10)~~

~~076.~~ **Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.** ( )

~~a.~~ If an entry on the ~~preliminary or final~~ **personal** property tax reduction list is found to be erroneous, the ~~Tax~~ Commission shall disapprove as much of the claim as necessary and so notify the county clerk. (5-8-09)( )

~~b.~~ If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the fourth Monday in February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation, and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the fourth Monday in February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency, and shall change any payment due to the county in accordance with the correction. ( )

~~c.~~ If a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in the amount to be paid in June of 2014. ( )

~~d.~~ If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission shall adjust the payment to the county, and then the county shall begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. Any amount so recovered shall be remitted to the Commission. ( )

~~e.~~ Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property, or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission. ( )

**07. Limitation on Eligibility for the Exemption.** ( )

~~a.~~ Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. ( )

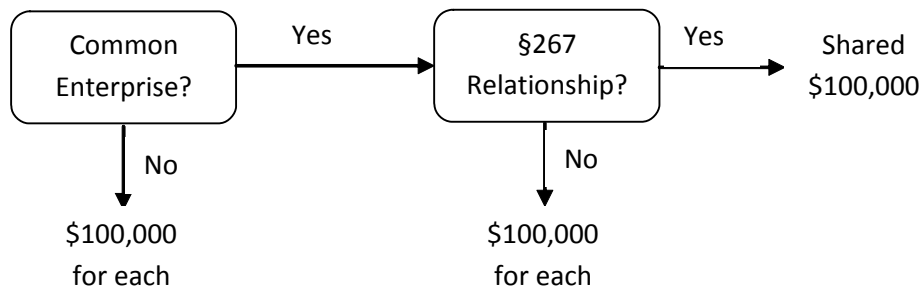
~~b.~~ Personal property exempt in accordance with statutes other than Section 63-602KK, Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ( )

~~c.~~ Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. ( )

~~d.~~ Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be

eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. ( )

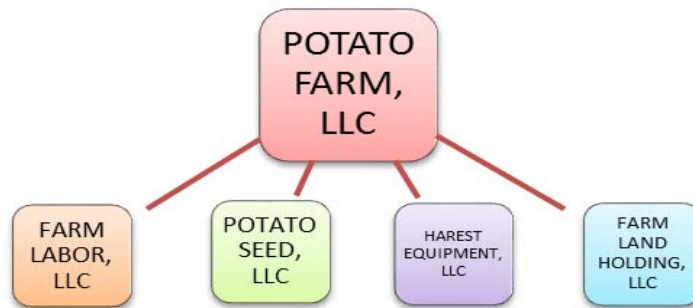
**08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships.** If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, a taxpayer includes two or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart: ( )



Here, the usual functions involved in a working potato farm are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC

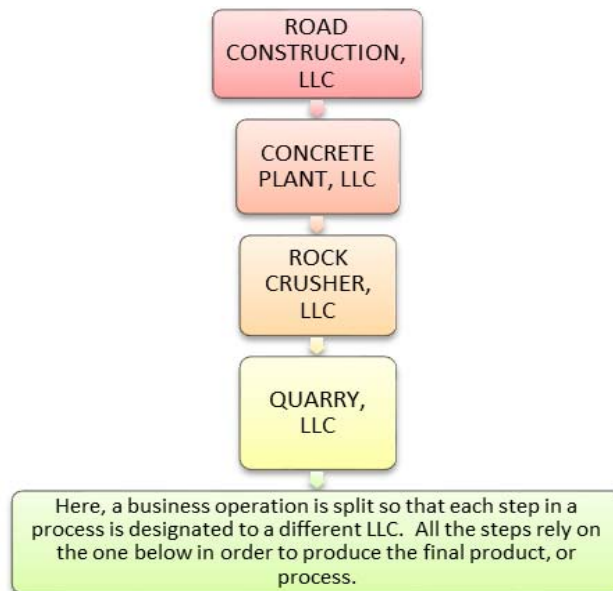
**a.** First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in common enterprise. ( )

**i.** Horizontal Commonality is explained by the following chart: ( )



**ii.** Vertical Commonality is explained by the following chart: ( )





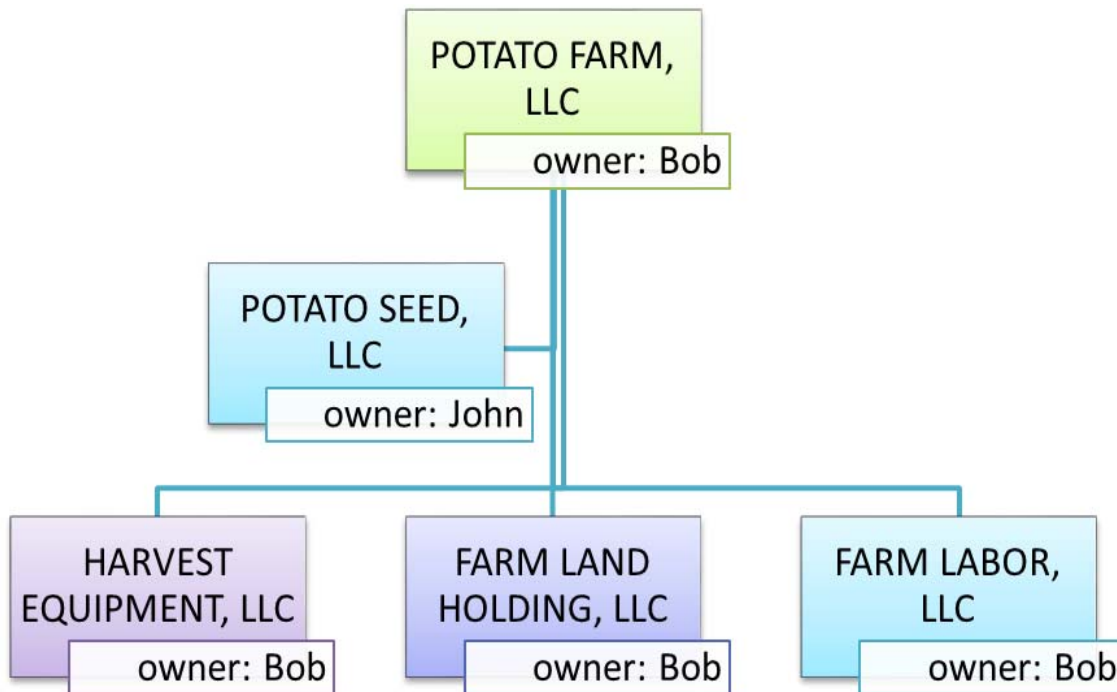
**b.** Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, the entities or individuals would be considered one (1) taxpayer for purposes of this exemption. ( )

**c.** Ownership alone does not determine whether entities are considered one taxpayer for purposes of this exemption. Two (2) businesses can have identical ownership, and each receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. ( )

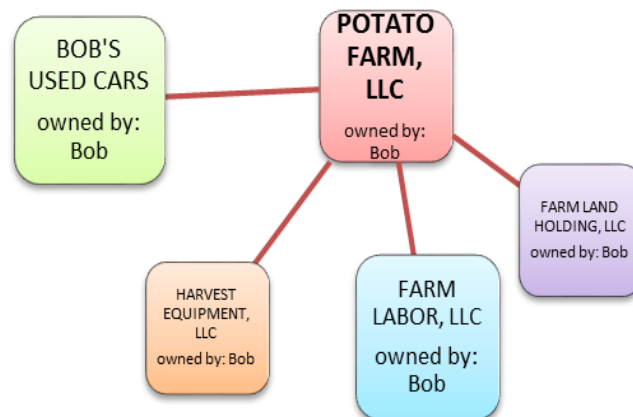
**d.** The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: ( )

**i.** Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ( )





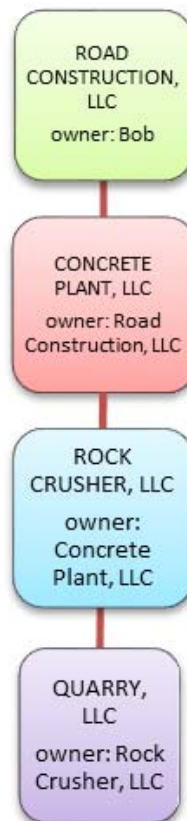
So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.



ii. Example 2. This is an example of the same owner with multiple businesses not all united in a common enterprise. Bob's farm businesses are common enterprises, and therefore entitled to only one (1) exemption

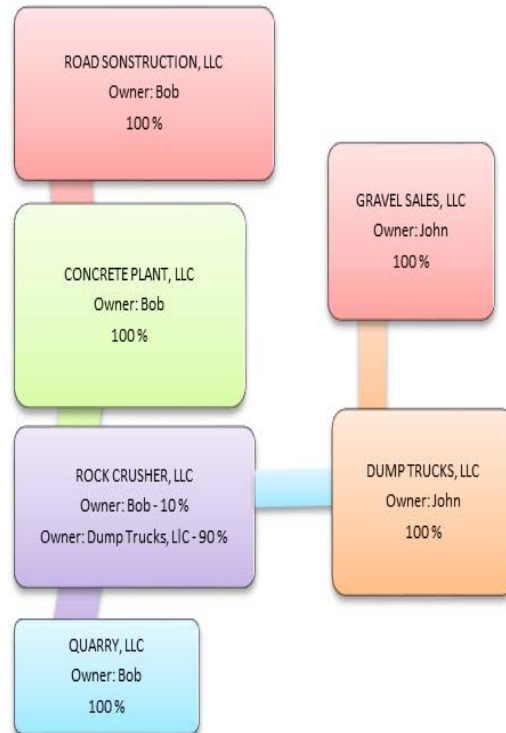
for all the farm businesses. Bob's used car business is not involved with Bob's farm businesses, so Bob is entitled to an additional exemption related to his used car business. ( )

iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. ( )



Here, one exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

iv. Example 4. This is an example showing how owners of common enterprises may intersect. ( )



This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.

e. In cases of partial ownership as noted in example four wherein Bob owns ten percent (10%) and Dump Trucks, LLC owns ninety percent (90%) only the majority owner is eligible to receive this exemption. ( )

**09. Special Rules for the Exemption Provided in Section 63-602KK(1), Idaho Code. ( )**

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. ( )

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. ( )

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ( )

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application. ( )

**10. Limitation on Replacement Money. ( )**

a. Once the 2013 amount of replacement money for each taxing district, and unit, and for each urban renewal district revenue allocation area is made final, following corrections as provided in this rule, there shall be no additions. However, there may be changes and reductions as follow: ( )

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. ( )

ii. If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. ( )

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. ( )

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 11 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. ( )

b. If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code, there shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property receives the exemption in Section 63-602KK(2) in the future. ( )

**11. Special Provision For Replacement Money For State Authorized Plant Facilities Levy.** The state authorized plant facilities levy will be applied to the exempt personal property, in any school district within which this levy has been certified in 2013, and the amount of tax calculated will be billed to the Commission as part of the property tax reduction list. The Commission shall remit any related funds directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund. ( )

**12. Special Provision For Exempt Personal Property Within Urban Renewal Revenue Allocation Areas (RAAs).** When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. ( )

**13. Special Provision For Reporting Exempt Value.** Beginning in 2014, taxing district values submitted to the Commission as required in section 63-510, Idaho Code, shall indicate the otherwise taxable value exempt pursuant to section 63-602KK(2), in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor, or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho State Board of Education and the Idaho Department of Education for each school district, as required in Section 63-1312, Idaho Code. ( )

~~0814.~~ **Cross Reference.** ~~For more information on the lists and affidavit option, see Rule 302 of these rules.~~ For information on transient personal property see Rule 313 of these rules and for information on the definition of personal property see Rule 205 of these rules. (3-29-10)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**632. PROPERTY EXEMPT FROM TAXATION – OIL OR GAS RELATED WELLS (RULE 632).** ( )  
Section 63-60200, Idaho Code. ( )

**01. Definitions of Oil or Gas Well.** ( )

**a.** Wells drilled for the production of oil, gas or hydrocarbon condensate may include the well, casing, and other structures permanently affixed inside the well, and the land inside the perimeter of the well. ( )

**b.** The well shall include the part where the gas producing stratum has been successfully cased off from any oil. ( )

**02. Ineligible Land and Equipment.** ( )

**a.** Wellheads and gathering lines or any line extending above ground level shall not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate shall not qualify. ( )

**b.** Land, other than that used for the well as defined in Subsection 632.01 of these rules, shall not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land shall reflect the increase, unless the land qualifies independently for any other property tax exemption. ( )

**03. Application.** As provided in Section 63-602(3), Idaho Code, annual application is required for the exemption provided in this section and must be made to the county commissioners by April 15. ( )

~~632~~3. -- 644. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (RULE 700).** (3-15-02)  
Section 63-701, Idaho Code. (3-15-02)

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden of Proof.** See Rule 600 of these rules. (3-15-02)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one spouse lives in a medical care facility or otherwise lives outside the home except as provided in Rule 709 of these rules. For the purposes of excluding from claimant's income any return of principal paid by the recipient of an annuity, follow these guidelines. (3-30-07)

**a.** An annuity means a contract sold by an insurance company to the claimant or claimant's spouse and designed to provide payments to the holder at specified equally spaced intervals or as a lump sum payment with the following conditions: (3-30-07)

i. The annuity must not be part of any pension plan available to an employee; (3-30-07)

ii. No tax preference is given to the money spent to purchase the annuity (purchase payments must not reduce the buyer's taxable income); (3-30-07)

iii. The buyer of the annuity must have purchased the annuity voluntary and not as a condition of employment or participation in an employer provided pension system; and (3-30-07)

iv. Earnings from investments in the annuity must be tax-deferred prior to withdrawal. (3-30-07)

**b.** Annuities do not include KEOGH plans, Individual Retirement Accounts (IRAs), employer provided pensions, and similar financial instruments. Life insurance premiums shall not be treated as the principal of an annuity. (3-30-07)

**c.** The recipient of the annuity payment(s), the claimant or claimant's spouse, has the burden of proving the income is the principal paid by the recipient. Such proof includes copies of the holder's annuity contract and any other documentation clearly indicating the conditions listed in Subparagraphs 700.03.a.i. through 700.03.a.iv. of this Rule are met. IRS form 1099 does not provide sufficient proof. (3-30-07)

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned, as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction of Value.** Proportional reduction of value pursuant to Section 63-701(7), Idaho Code, is required for partial ownership of otherwise eligible property. (3-15-02)

**a.** There is no reduction of value for community property with no other interests except as provided in Rules 610.07 and 709.04 of these rules. Additionally, there is no reduction in value for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than a five percent (5%) interest in the entity unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. (3-15-02)

**b.** In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimant's share of the property. This value is determined by multiplying the market value of the land and of the improvement times the claimant's percent of ownership and subtracting the claimant's homeowner's exemption. (4-2-08)

**i.** Example 1. The claimant is the sole occupant of the property but only owns fifty percent (50%) of the property. In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of \$50,000.

Land Market Value	\$50,000
Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value & Improvement Market Value (Land Market Value & Improvement Market Value x Percentage of Ownership)	\$100,000
Claimant's Homeowner's Exemption (Claimant's Share of Improvement and Land Market Value x 50%, not to exceed \$89,325 for 2007)	<\$50,000>
Claimant's Eligible Net Taxable Value equals Claimant's Share of Market Value less Homeowner's Exemption (\$100,000 - \$50,000 = \$50,000)	\$50,000

(4-2-08)

**ii.** Example 2. Tom Johnson and Marie Johnson, husband and wife, and property tax reduction claimant June Smith jointly own a property and occupy one (1) residential improvement located on the property. Calculate both homeowners' exemptions, and apply Ms. Smith's property tax reduction benefit to the tax on the net

taxable value of her interest in the property.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 66.67%)	\$59,550	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2007 (\$89,325 X 33.33%)	\$29,775	Ms. Smith's Homeowner's Exemption
Value of prorated interest less homeowner's exemption.	\$73,548	Ms. Smith's property tax reduction benefit is applied to the tax on the net taxable value.

(4-2-08)

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A widow/widower is a person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-15-02)

**08. Cross Reference.** See Chapter 79, Title 67, Idaho Code, for requirements relating to lawful presence in the United States. [See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Subsection 702.02.c. for information concerning authorization to release applicant information to a state or federal elected official.](#) (4-2-08)(    )

**(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 and signed L-2 Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed using the amount shown in the notice of budget hearing. (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 803.04.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. (4-4-13)

**14. 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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).**  
Sections ~~63-602KK~~, 63-704, and 63-902, Idaho Code. (5-8-09)

~~**01. Tax Notices with Zero Tax Owed.** The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code *or as a result of the property tax exemption provided in Section 63-602KK, Idaho Code.* For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed. (5-8-09)( )~~

~~**02. Tax Notices Applicable to Taxpayers Eligible for the Exemption Provided by Section 63-602KK, Idaho Code.** *The tax notice for taxpayers who receive a reduction in the amount of property tax due must show the gross value of the personal property, the gross tax amount, the amount exempted, the tax amount to be paid by the state, and the net tax due from the taxpayer even if zero (0) tax is owed.* (5-8-09)~~

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.09 - WINE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0109-1301**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105 and 23-1323, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2013.

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

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

**Rule 012** Clarifies when the exemption applies to wine sold by Idaho wine direct shippers to customers outside Idaho.

**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 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 87.

**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:

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, 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 October 23, 2013.

DATED this 30<sup>th</sup> day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-1301

012. EXEMPTIONS (RULE 012).

01. **Burden of Proof.** The burden of proving any exemption, deduction, credit, or refund allowed by the Act and these rules is upon the person claiming it. (7-1-93)( )

02. **Wholesale Sales of Wine Outside This State.** Every resale of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state ~~shall be~~ **is** exempt from tax on wine. (7-1-93)( )

03. **Sales By Wine Direct Shippers Outside This State.** If an Idaho wine direct shipper is licensed as a wine direct shipper in another state, sales of wine by the wine direct shipper to a resident of that state and delivered to a location in that state are exempt from Idaho tax on wine. ( )

034. **Sales to Purchasers on Military Reservations.** Sales to authorized purchasers on military reservations for the purpose of and resulting in sale or consumption on such reservation ~~shall be~~ **are** exempt from ~~the~~ tax on wine. (7-1-93)( )

045. **Sales to Idaho State Liquor Dispensary.** Sales of wine to the Idaho State Liquor Dispensary ~~shall be~~ **are** exempt from ~~the~~ tax on wine. (7-1-93)( )

056. **Dispositions From One Distributor to Another.** Any disposition of wine by transfer or sale or any other means from one (1) distributor to another distributor ~~shall be~~ **is** exempt. (7-1-93)( )



## IDAPA 35 - STATE TAX COMMISSION

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

DOCKET NO. 35-0110-1301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking 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, 2013.

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 019** House Bill 7 (2011) amended the statutory definition of “wholesale sales price” to include “any person” selling tobacco products. The rule section on “wholesale sales price” has been updated to reflect the change. In addition, the rule change addresses when separately stated charges are part of the wholesale sales price subject to tax and when those charges should be excluded. Finally, the rule provides several new examples of how the wholesales sales price should be applied to sales made by out-of-state distributors who voluntarily hold an Idaho tobacco tax permit.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 87.

**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 rules, 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 October 23, 2013.

DATED this 30<sup>th</sup> day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1301

**019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).**

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

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

**03. Determining Wholesale Sales Price.** Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. ~~(7-1-93)~~( )

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

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

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

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

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

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

### **35.01.14 - PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES**

#### **DOCKET NO. 35-0114-1301 (NEW CHAPTER)**

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

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105, and 31-4813, 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, 2013.

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:

House Bill 193 (2013) imposed a new 2.5% fee on the sale of prepaid wireless telecommunications service. Starting January 1, 2014, the prepaid wireless E911 fee will be collected by retailers of such service from their customers. A new chapter of rules must be created to address the administration of the fee.

Rules 001 – 006 are the standard rules required for any new chapter of rules.

Rule 100 clarifies that the fee only applies to the sale of prepaid wireless service, not a device that utilizes such a service. However, the rule explains the circumstances under which the fee must be collected on the entire transaction if the price of the prepaid wireless service is not separately stated from the price of the other items in the transaction.

Rule 200 clarifies which sellers of prepaid wireless service must collect the fee. The collection responsibility is imposed on any retailer that would be required to collect the Idaho sales tax (on transactions subject to sales tax).

Rule 300 clarifies that out-of-state sales are exempt from the fee and provides guidance to sellers in making the determination when a sale is out-of-state.

**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 3, 2013 Idaho Administrative Bulletin, [Volume 13-7](#), page 94.

**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: The statute imposing the prepaid wireless E911 fee requires the Tax Commission to administer the fee as similarly to the sales tax as possible. Therefore, the sales tax administrative rules are incorporated and will be referenced when necessary. In addition, the Tax Commission administration and enforcement rules apply to all taxes and fees administered by the Tax Commission.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, 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 October 23, 2013.

DATED this 30<sup>th</sup> day of August 2013.

McLean Russell  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7844

**FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0114-1301**

**IDAPA 35**  
**TITLE 01**  
**CHAPTER 14**

**35.01.14 - PREPAID WIRELESS E911 FEE ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY.**

In accordance with Sections 63-105 and 31-4813, Idaho Code, the Tax Commission has the authority to promulgate rules implementing and administering the prepaid wireless E911 fee. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules will be cited as IDAPA 35.01.XX, "Prepaid Wireless E911 Fee Rules." ( )

**02. Scope.** These rules will be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a fee on all sales of prepaid wireless communications service in Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

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

**003. ADMINISTRATIVE APPEALS.**

This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE**

These rules incorporate IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules" and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Main Office.** The Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The phone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the fax number is (208) 334-7846. The e-mail address is

“taxrep@tax.idaho.gov.” All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code. ( )

**007. -- 099. (RESERVED)**

**100. IMPOSITION OF THE PREPAID WIRELESS E911 FEE.**

The prepaid wireless E911 fee is only imposed on a sale of prepaid wireless telecommunications service at two and one-half percent (2.5%) of the sales price. The prepaid wireless E911 fee is not imposed on a sale of any device, such as a cell phone, that utilizes the prepaid wireless telecommunications service. However, the sale of the device will be subject to the fee if all of the following apply: ( )

**01. Separately State The Cost.** The seller does not separately state the cost of the prepaid wireless telecommunications service from the rest of the transaction, ( )

**02. Service Sold Exceeds.** The amount of the prepaid wireless telecommunications service sold exceeds ten (10) minutes or five dollars (\$5.00), and ( )

**03. Portion of The Sale.** The seller cannot show from its records the portion of the sale that should properly be applied to the sale of the prepaid wireless telecommunications service. ( )

**101. -- 199. (RESERVED)**

**200. SELLERS REQUIRED TO COLLECT THE PREPAID WIRELESS E911 FEE.**

**01. Requirements to Collect.** If any of the following apply to a seller making sales of prepaid wireless telecommunications service in Idaho, the seller must register for a prepaid wireless E911 fee permit and collect the prepaid wireless E911 fee: ( )

**a.** The seller is legally required to hold an Idaho sales tax permit, ( )

**b.** The seller already holds an Idaho sales tax permit, whether it is legally required or not, or ( )

**c.** The seller has a physical presence in Idaho. ( )

**02. Sales into Idaho by an Out-of-State Seller.** If a seller does not meet any of the above requirements, the seller does not need to collect the prepaid wireless E911 fee even if making sales to Idaho customers. ( )

**201. -- 299. (RESERVED)**

**300. OUT-OF-STATE SALES.**

**01. Prepaid Wireless Telecommunications Service Cards.** As part of a sale of prepaid wireless telecommunications service, a seller may transfer to the customer a physical card or similar object containing a code required for activation or extension of the prepaid wireless telecommunications service. If the seller mails the card or similar object to a customer at an out-of-state address, the sale is not subject to the prepaid wireless E911 fee. ( )

**02. Sales by Phone or Over the Internet.** If a seller completes a sale of prepaid wireless telecommunications service by phone or over the internet without transferring any physical object to the customer, the seller must rely on the billing address of the customer to determine whether the sale is subject to the prepaid

wireless E911 fee. If the billing address is in the state of Idaho, the seller must charge the prepaid wireless E911 fee. If the billing address is outside the state of Idaho, the seller does not have to charge the prepaid wireless E911 fee. ( )

**03. Seller Relies on the Billing Address.** If a seller relies on the billing address to determine whether the prepaid wireless E911 fee applies to a sale, the seller must retain documentation of the billing address. If a seller that holds or is required to hold a prepaid wireless E911 fee permit makes a sale of prepaid wireless telecommunications service without charging the fee and does not retain documentation of the billing address, the Tax Commission may hold the seller liable for the prepaid wireless E911 fee on that sale. ( )

**301. -- 999. (RESERVED)**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**  
**DOCKET NO. 35-0201-1301**  
**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 16, 2013.

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 705 is being promulgated consistent with 2013 House Bill 3 to give additional guidance on the procedures required to make a valid request for information regarding the name and address of the user of the stolen tax identification number.

**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 rule changes are simple in nature.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 23, 2013.

DATED this 20<sup>th</sup> day of August, 2013.

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 FOR DOCKET NO. 35-0201-1301**

**705. DISCLOSURE OF INFORMATION – IDENTITY THEFT (RULE 705).**



Section 63-3077F, Idaho Code. ( )

**01. In General.** The Tax Commission may disclose to a victim of identity theft the name and address of an individual using the victim's social security number or other tax identification number. If the victim of identity theft is a minor, the Tax Commission may disclose the information to the parent or legal guardian. If the victim is deceased, the Tax Commission may disclose the information to the surviving spouse or executor of the estate. ( )

**02. Written Authorization to Disclose Information.** ( )

**a.** The Tax Commission may disclose the name and address to the victim upon receipt of a valid written information request. ( )

**b.** The written request must contain: ( )

i. The victim's name, address, and social security number or other tax identification number; ( )

ii. The tax year affected; ( )

iii. The signature of the victim or legal representative; ( )

iv. Copies of the victim's driver's license and social security card or passport, if applicable. ( )

v. If the victim is a minor, a copy of the birth certificate along with the driver's license or passport of the parent or legal guardian. ( )

vi. If the victim is deceased, a copy of the legal document authorizing the executor of the estate along with the executor's driver's license or passport. ( )

**7056. -- 799. (RESERVED)**

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1302**

**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 16, 2013.

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

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

Rule 310 is being amended to add the interest rate for calendar year 2014 and the Revenue Ruling where the federal rate for the calculation can be found.

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

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

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 23, 2013.

DATED this 22<sup>nd</sup> Day of August, 2013.

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 FOR DOCKET NO. 35-0201-1302**

**310. INTEREST RATES (RULE 310).**  
Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

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

(4-6-05)

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

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24
<u>Calendar Year 2014</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2013-18</u>

(4-4-13)( )