

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

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

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1401);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1402);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1403);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1404).

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 11/07/2014. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/09/2014.

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 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
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:** Principal Legislative Research Analyst - Brooke Brouman

**DATE:** October 21, 2014

**SUBJECT:** State Tax Commission - Sales Tax

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1401)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1402)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1403)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1404)

**(1) Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1401):** The State Tax Commission's proposed rule is prompted by House Bill No. 598 that passed during the 2014 legislative session. House Bill No. 598 amended Section 63-3616, Idaho Code, to specify that software accessed remotely is not "tangible personal property" and to define "remotely assessed computer software." The Commission's proposed rule makes the following changes:

- (a) Defines "computer hardware," "computer program," "computer software," "information stored in electronic medium," "load and leave method," and "remotely accessed computer software" and revises the definitions of "computer software" and "storage media";
- (b) Sets forth criteria for determining whether or not canned software is taxable;
- (c) Specifies that remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax;
- (d) Revises provisions relating to maintenance contracts;
- (e) Specifies that sales, leases and rentals of certain digital products are taxable;
- (f) Specifies which digital subscriptions are and are not taxable;
- (g) Specifies that digital games are tangible personal property regardless of access or delivery method and the sale of a digital game is taxable; and

(h) Specifies that charges to store data on storage media owned and controlled by another party is a nontaxable service.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

**(2) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1402):** The State Tax Commission's proposed rule revises requirements relating to drop shipments, sets forth sales tax responsibilities of unpermitted manufacturers and sales tax responsibilities of retailers and provides related matrices. The Commission states that the purpose of the proposed rule changes is to clarify for manufacturers, retailers and customers what their sales or use tax responsibilities are.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

**(3) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1403):** The State Tax Commission's proposed rule makes the following changes:

(a) Revises provisions relating to contractors improving real property to clarify which materials are and are not covered by the out-of-state contracts tax exemption set forth in Section 63-3622B, Idaho Code;

(b) Revises provisions relating to leases of tangible personal property to clarify that property purchased pursuant to exercising an option to purchase will be at fair market value and to clarify when the owner/lessor must collect taxes from the lessee/buyer;

(c) Provides that activities and equipment excluded from the logging sales tax exemption in Section 63-3622JJ, Idaho Code, may qualify under the production exemption in Section 63-3622D, Idaho Code; and

(d) Requires exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations. The Commission states that the forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed and the Commission will have the information needed to verify the exemption claim.

The Commission states that there is a positive fiscal impact of \$50,000 to the state general fund on an annual basis as a result of the change to Rule 102 relating to logging.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

**(4) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1404):** The State Tax Commission's proposed rule makes the following changes:

(a) Revises the definition of "contractor improving real property" to include any person acting as a speculative builder and remove any person acting as a speculation contractor;

(b) Removes the requirements that if the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment, and the reports and checks should be sent separately to the Commission; and

(c) Revises provisions relating to the use tax exemption for new residents and military personnel, which the Commission states reflect legislative changes and more closely aligns the rule with the statutory exemption.

Negotiated rulemaking was not conducted because of the simple nature of the proposed rule changes.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

cc: State Tax Commission - Sales Tax  
Sherry Briscoe

## IDAPA 35 - STATE TAX COMMISSION

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

DOCKET NO. 35-0102-1401

#### NOTICE OF RULEMAKING - PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 027. Computer Equipment, Software, and Data Services - In response to House Bill 598 passed during the 2014 legislative session, the rule is being amended to clarify that software accessed remotely (i.e. cloud-based software) is not tangible personal property. In addition, software delivered electronically or by the load and leave method will no longer be tangible personal property. Finally, the rule clarifies that digital books, games, music, and movies are tangible personal property regardless of how they are transferred to the user.

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

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

**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 7, 2014 Idaho Administrative Bulletin, [Vol. 14-5, pages 70 and 71](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist 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 22, 2014.

DATED this 29th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1401  
(Only those Sections being amended are shown.)

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).  
Section 63-3616, Idaho Code

01. ~~Hardware and Computers Defined~~ **Definitions.** For purposes of this rule, the following terms will have the following meanings: (3-6-00)( )

a. ~~Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies.~~ **Canned Software.** Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. (3-6-00)( )

b. ~~Computers are.~~ **A computer is a** programmable machine~~s~~ or device~~s~~ having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)( )

02. ~~Computer Software, Storage Media and Transfer Media Defined.~~ (3-6-00)

~~a. Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location.~~ (3-6-00)

c. **Computer Hardware.** Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. ( )

d. **Computer Program.** A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. ( )

e. **Computer Software.** Computer software, or simply software, is defined as any of the following: ( )

i. A computer program; ( )

ii. Any part of a computer program; ( )

iii. Any sequence of instructions that operates automatic data processing equipment; or ( )

iv. Information stored in an electronic medium. ( )

f. **Custom Software.** Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. ( )

g. **Digital Product.** See definition for "Information Stored in an Electronic Medium" in Subsection

027.01.h. ( )

**h.** Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with “digital product.” ( )

**i.** Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user’s storage media at the user’s location but does not transfer storage media containing the software to the user. ( )

**j.** Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. ( )

**bk.** Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, optical media discs, diskettes, magnetic tape data storage, eards, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)( )

**032.** Computer Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)( )

**043.** Canned Software. ~~The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. When canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. If canned software is sold using a physical package but the package does not contain the canned software on storage media, it is not tangible personal property and the sale is not taxable. For example, if a printed key code is sold in a box that allows the user to download canned software and activate the canned software using the key code, the sale is not taxable.~~ (3-6-00)( )

**a.** ~~Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. If canned software is loaded on a user’s computer but has minimal or no functionality without connecting to the provider’s servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in Subsection 027.03 of this rule.~~ (3-6-00)( )

**b.** ~~Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 through 027.08 of this rule.~~ (3-6-00)( )

**c.** When a sale of canned software is taxable, Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)( )

**04. Remotely Accessed Computer Software.** Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. ( )

**05. Maintenance Contracts.** Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (3-30-07)( )

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades ~~or enhancements~~ is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; (3-30-07)( )

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades ~~or enhancements~~ and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (3-30-07)( )

iii. If the maintenance contract only provides ~~canned computer software~~ upgrades ~~or enhancements~~ delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; (3-30-07)( )

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

**c.** If an optional software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software updates on storage media, no portion of the contract is taxable unless the customer actually receives software updates on storage media. ( )

**06. Digital Products.** Digital music, digital books, and digital videos are tangible personal property regardless of the delivery or access method. Sales, leases, and rentals of these digital products are taxable. Whether the user has the right to stream or download these digital products, the sale, lease, or rental of these digital products is taxable. ( )

a. Other than digital music, digital books, or digital videos, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. ( )

b. Special rules apply to digital games. See Subsection 027.08 of this rule. ( )

**07. Digital Subscriptions.** Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions granting access to a database of digital music, digital books, or digital videos are taxable regardless of the method of access or delivery. ( )

a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable. ( )

b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may download content



from the database onto the user's storage media. ( )

**08. Digital Games.** Digital games are tangible personal property regardless of access or delivery method and, therefore, the sale of a digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still taxable. If a user pays a periodic charge to play a digital game that requires a constant connection over the internet to a remote server, the periodic charge is taxable. If a user pays a periodic charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is taxable. If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable. ( )

**069. Reports Compiled by a Computer.** The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

**a.** Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

**b.** Example: A company sells mailing lists which are stored on a computer disk transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)( )

**c.** Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

**d.** When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

**e.** Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

**10. Online or Remote Data Storage.** Charges to store data on storage media owned and controlled by another party is a nontaxable service. ( )

**0711. Training Services.** Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

**a.** When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

**b.** When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

**c.** When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

**0812. Custom Software.** The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

**a.** Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

**b.** If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

**c.** Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

**0913. Purchases for Resale.** Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

## IDAPA 35 - STATE TAX COMMISSION

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

DOCKET NO. 35-0102-1402

#### NOTICE OF RULEMAKING - PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

**Rule 022. Drop Shipments** - Though nothing has changed in how drop shipment transactions are taxed, the proposed changes should make it clearer to manufacturers, retailers, and customers what their responsibilities are related to sales or use tax.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 72 and 73](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist 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 22, 2014.

DATED this 29th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1402  
(Only those Sections being amended are shown.)

**022. DROP SHIPMENTS (RULE 022).**

Sections 63-3615A, 63-3619, 63-3620, 63-3621, & 63-3622, Idaho Code

**01. In General.** Drop shipments refer to shipments made by a seller to someone other than its purchaser. For example, a Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate purchaser and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer holds may or may not be required to have an Idaho seller's permit. If the Manufacturer sells directly to the Customer without the presence of a retailer, the Manufacturer is acting as a retailer and the transaction is not a drop shipment. (7-1-99)( )

**02. Privity of Parties to the Contract.** The Idaho sales tax is imposed upon sales transactions. Since there is not privity of contract sales transaction between the Manufacturer and the Customer, the Manufacturer will not be required to collect and remit sales tax on the purchase by from the Customer. (7-1-99)( )

**03. Sales Tax Responsibilities of the Permitted Manufacturer.** If the Manufacturer can have is required to have a valid Idaho seller's permit, it has sales tax responsibilities as to the sales transaction between itself and the Retailer. (7-1-99)( )

**a.** If the Retailer holds has an Idaho seller's permit, it will be necessary for the Retailer to provide the Manufacturer with a resale certificate evidencing its intentions to resell Product X. If the Retailer does not provide the resale certificate, then the Manufacturer must charge Idaho sales tax on the sale of tangible personal property sold to the Retailer and delivered in Idaho. If the Retailer provides a resale certificate, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the Idaho State Tax Commission together with a proper return. (7-1-99)( )

**b.** If the Retailer does not hold is not required to have an Idaho seller's permit, a resale certificate from the Retailer to the Manufacturer is unnecessary. If the Retailer has no nexus with the state of Idaho, it can accrue no sales tax liability and the sale between the Manufacturer and the Retailer is not subject to the jurisdiction of the Idaho State Tax Commission. The Manufacturer must obtain evidence of this fact in the form of a letter from the Retailer stating that they have no nexus in Idaho or by any other clear and convincing evidence. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. # The Customer will be required to file a use tax return and report and remit the use tax on the purchase of Product X. (7-1-99)( )

**04. Sales Tax Responsibilities of the Unpermitted Manufacturer.** If the Manufacturer does not have and is not required to have a valid Idaho seller's permit, it has no sales tax responsibilities as to the sales transaction between itself and the Retailer. ( )

**a.** If the Retailer has an Idaho seller's permit, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the state tax commission together with a proper return. ( )

**b.** If the Retailer is not required to have an Idaho seller's permit, the Retailer is under no responsibility to collect Idaho sales tax from the Customer. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and report and remit the use tax on the purchase of Product X. ( )

**c.** The matrix below outlines the sales tax responsibilities of the Manufacturer:

	<u>Retailer (Permitted)</u>	<u>Retailer (No Permit Required)</u>	<u>Customer</u>
<u>Manufacturer (Permitted)</u>	<u>Obtain ST-101 or Collect Tax</u>	<u>Obtain Letter of No Nexus or Collect Tax</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>
<u>Manufacturer (No Permit Required)</u>	<u>Do Not Collect Tax</u>	<u>Do Not Collect Tax</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>

( )

**05. Sales Tax Responsibilities of the Retailer.** If the Retailer is required to have a seller's permit, it is responsible for collecting sales tax from the Customer. If the Retailer is not required to have a seller's permit, it is not responsible for collecting sales tax form the Customer. The Customer is responsible to pay use tax to the State of Idaho if purchased from an unpermitted retailer. ( )

**a.** The matrix below outlines the sales tax responsibilities of the Retailer:

	<u>Manufacturer (Permitted)</u>	<u>Manufacturer (No Permit Required)</u>	<u>Customer</u>
<u>Retailer (Permitted)</u>	<u>Provide Valid Resale Certificate</u>	<u>None</u>	<u>Collect Tax from Customer</u>
<u>Retailer (No Permit Required)</u>	<u>Give Letter of No Nexus</u>	<u>None</u>	<u>Do Not Collect Tax from Customer / Use Tax Owed by Customer</u>

**046. Resale Certificate.** If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission if the rules set forth in Rule 128 of these rules are met.

(3-15-02)

## IDAPA 35 - STATE TAX COMMISSION

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

#### DOCKET NO. 35-0102-1403

#### NOTICE OF RULEMAKING - PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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. Contractors Improving Real Property - Subsection 013 is being amended to clarify what is covered by the out-of-state contract exemption and what is not. The statutory basis for the exemption is in Section 63-3622B, Idaho Code.

Rule 024. Rentals or Leases of Tangible Personal Property - Subsections 012.a and 012.b are being amended to achieve the original intent of only one lease type applying to a particular lease contract.

Rule 102. Logging - Subsection 07 is being amended to clarify that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

Rule 128. Certificates for Resale and Other Exemption Claims - The rule is being amended to require exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations. The forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed and the Tax Commission will have the information needed to verify the exemption claim.

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

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

The positive fiscal impact of the change to Rule 102 is an additional \$50,000 to the state general fund on an annual basis.

**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 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 126 and 127](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist 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 22, 2014.

DATED this 29th day of August, 2014.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1403**  
**(Only those Sections being amended are shown.)**

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

Sections 63-3609(a), 63-3621, 63-3615(b), 63-3622B, Idaho Code

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

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

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

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

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

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

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

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

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

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

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

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

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

**06. Purchases by Contractors.** Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They must pay the sales or use tax on their purchase of equipment, tools, and supplies. They must also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. (7-1-93)

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

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

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

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

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

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

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

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

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



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

**12. Land Leveling.** (4-7-11)

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

**b.** Notwithstanding the provisions of Rule 013 of these rules, contractors who crush rock are performing a nontaxable service if the rock is obtained on a construction site, and the crushed rock is used on the same site, for such purposes as backfill, land leveling, site preparation, or site cleanup. The use of such rock, backfill, or other related materials is not subject to tax; however, such a contractor is not primarily devoted to mining and his use of rock crushing equipment, or other equipment and supplies, does not qualify for exemption under Section 63-3622D, Idaho Code. (4-7-11)

**c.** The sale or use of crushed rock that is removed from a construction site and used elsewhere is taxable. See Rule 013 of these rules. (4-7-11)

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

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

**a.** Road and paving contractors, see Rule 013 of these rules. (3-15-02)

**b.** Contractor/retailers, see Rule 014 of these rules. (3-15-02)

**c.** Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

**02. Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week,

month, or on a mileage, or any other basis. The equipment owner who primarily rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a fair market rental value for the period during which he used his own equipment. (4-4-13)

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

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

**b.** A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies the equipment or property along with an operator, and the property supplied is of no value to the customer without the operator. (4-4-13)

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

**d.** If the equipment or property has value to the customer without an operator, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the operator. (4-4-13)

**e.** Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the operator, so the leasing company is not required to charge sales tax on the lease of the crane. (4-4-13)

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

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

**a.** If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, the equipment owner is the consumer of the equipment while it is used by the operator to perform a service contract. Accordingly, the equipment owner must pay use tax on the fair market rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (4-4-13)

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

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

**06. Maintenance of Rental Equipment.** If the owner who primarily rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (4-4-13)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. LOGGING (RULE 102).**

Sections 63-3605A & 63-3622JJ, Idaho Code

**01. In General.** The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

**02. Real Property.** The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

**03. Property Used in Logging Operations.** The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

**04. Logging Process Begins and Ends.** The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

**05. Logging Exemption.** Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a.** Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)
- b.** Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c.** Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d.** Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e.** Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

**06. Directly Used.** Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

- a.** The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)
- b.** The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)
- c.** The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)
- d.** The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (4-11-06)

**07. Not Included in Logging Exemption.** Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

**a.** Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

**b.** Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, ~~except when part of the operation of a tree farm.~~ (7-1-93)( )

**c.** Reforestation equipment and supplies, ~~except when part of the operation of a tree farm.~~ (7-1-93)( )

**d.** Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

**e.** Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

**f.** Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

**g.** Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

**h.** Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)

**i.** Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

**08. Election to Pay Sales Tax.** The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)

**a.** Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

**b.** Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

**09. Timber Production.** Activities and equipment excluded from the logging exemption in Section 63-3622JJ, Idaho Code, such as slash disposal, brush piling, or clearing, and reforestation equipment and supplies may qualify under the production exemption in Section 63-3622D, Idaho Code. See also Rule 079 of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

**a.** A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

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

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

**05. Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

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

**ii.** Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

**iii.** Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this

transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

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

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

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

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

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

**g.** Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (4-4-13)

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

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

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



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

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

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

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

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or other required exemption certificate has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (~~3-4-10~~) ( )

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

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



- viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)
- x. Recreational vehicles. (3-6-00)

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

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

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

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

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

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

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

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

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

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

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

**g.** Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the

products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

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

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

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

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

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

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

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production

exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

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

## IDAPA 35 - STATE TAX COMMISSION

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

DOCKET NO. 35-0102-1404

#### 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 63-2427, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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

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

Rule 010. DEFINITIONS - The definition for 'contractor improving real property' in subsection 04 is being amended to update obsolete terms by using the term 'speculative builder' in place of 'speculation contractor' and 'spec contractor.'

Rule 105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS - The rule is being updated to clarify that a single payment may be made to cover liabilities from multiple tax types.

Rule 107. VEHICLES AND VESSELS - This rule is being updated to reflect legislative changes related to the use tax exemption for new residents and military personnel and ensure that the rule in general aligns more closely with the statutory exemption.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated Rulemaking was not feasible because of the simple nature of the proposed rule 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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist 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 22, 2014.

DATED this 29th day of August 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1404  
(Only those Sections being amended are shown.)

**010. DEFINITIONS (RULE 010).**

**01. Admissions.** The term admissions includes the right or privilege to enter into a place including seats and tables reserved or otherwise and other similar accommodations and charges made therefor. (7-1-93)

**02. Aircraft.** The term aircraft means any contrivance now known or hereafter invented, used, or designed, for navigation of or flight in the air. (7-1-93)

**03. Cash Discount.** The term cash discount means a discount offered by a retailer to a purchaser as an inducement for prompt payment. (7-1-93)

**04. Contractor Improving Real Property.** A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or ~~speculation contractor~~, ~~speculative contractor~~ **builder**, who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property. (7-1-93)( )

**05. Fleet.** The term fleet shall mean one (1) or more vehicles registered under the International Registration Plan or a similar proportional registration system. (4-2-08)

**06. Hand Tool.** A hand tool is an instrument used or worked by hand. (7-1-93)

**07. Logging.** The term logging includes the harvesting of forest trees for resale by cutting, skidding, loading, thinning, or decking, regardless of whether the forest trees are owned by the person doing the harvesting. The term logging does not include harvesting timber for firewood. (7-1-93)

**08. Manufactured Home/Mobile Home.** The term manufactured home, previously known as a mobile home, means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this section except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5401, et seq. (7-1-93)

**09. Manufacturer's Discount Coupon.** The term manufacturer's discount coupon means a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer. (7-1-93)

**10. Manufacturer's Rebates.** The term manufacturer's rebate means a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer. (7-1-93)

**11. Mining.** The term "mining" means the extraction from the earth of minerals including coal, phosphate, sodium, molybdenum, asbestos, gold, silver, lead, zinc, copper, antimony, building stone, pumice, scoria, clay, diatomaceous earth, sand, gravel, quartz, limestone, and marble, and includes the further processing of such mineral. The term "mining" does not include the extraction from the earth of geothermal resources nor does it include the extraction of soil. (6-23-94)

**12. Modular Building.** The term modular building, previously known as a prefabricated building, means any building or building component, other than a manufactured home as defined, above, which is constructed

according to standards contained in the International Building Code, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, and is designed to be affixed to real property. (4-2-08)

**13. Office Trailer.** An office trailer is a structure which is built on a permanent chassis, is transportable in one (1) or more sections, and is designed for use as an office. (7-1-93)

**14. Orthopedic Appliances.** The term orthopedic appliance shall include those braces and other external supports prescribed by a practitioner for the purpose of correction or relief of defects, diseases, or injuries to bones or joints. (7-1-93)

**15. Prescription or Work Order.** The terms prescription or work order shall mean an order issued to, or on behalf of, a specific individual by a practitioner licensed by the state under Title 54, Idaho Code, to prescribe such items. (7-1-93)

**16. Real Property.** The term real property means land and improvements or fixtures to the land. (7-1-93)

**17. Tax Rate.** The terms "tax rate" or "rate" means the current tax rate as defined in Sections 63-3619 and 63-3621, Idaho Code. References to the tax rate in these rules may not reflect the current rate in effect. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

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

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

**b. Request to File Quarterly or Semiannually.** Retailers or persons who owe seven hundred-fifty dollars (\$750) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semiannually instead of monthly. (5-8-09)

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

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

**e.** Change in Filing Frequency. If the Tax Commission finds it necessary or convenient for the efficient administration of the Sales Tax Act, it may require taxpayers reporting taxable sales of less than twelve thousand dollars (\$12,000) per year to file annually. (5-8-09)

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

**03. Valid Return.** A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

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

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

**c.** A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

**d.** Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**08. Filing Dates--General Rule.** The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these



rules. This is the filing due date for all regular monthly, quarterly, semiannual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

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

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

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

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

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

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

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

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

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

**b.** For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)

**c.** A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

**04. New Residents.** A new resident of Idaho ~~or military personnel temporarily assigned to Idaho and their spouses~~ does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign ~~a Three Month Exemption Claim~~ Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (3-29-12)( )

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

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

**05. Military Personnel.** ( )

**a.** Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. ( )

**b.** Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (3-29-12)( )

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

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

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the ~~five~~ six hundred dollars (\$~~5~~600) tax due Idaho. The assessor will collect ~~two~~ three hundred dollars (\$~~2~~300) tax. (4-2-08)( )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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