

Dear Senators SIDDOWAY, Guthrie, Stennett, and  
Representatives COLLINS, Trujillo, Erpelding:

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

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No.  
35-0102-1601);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No.  
35-0102-1602);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No.  
35-0102-1603).

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 11/01/2016. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/30/2016.

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.



# Legislative Services Office

## Idaho State Legislature

Eric Milstead  
Director

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee  
**FROM:** Legislative Research Analyst - Kristin Ford  
**DATE:** October 13, 2016  
**SUBJECT:** State Tax Commission - Correction to earlier memo

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No. 35-0102-1601)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No. 35-0102-1602)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No. 35-0102-1603)

**This memo corrects a typographical error in the earlier memo dated Oct. 7, 2016, as to a code citation at the end of the narrative for the second docket. The citation should be "63-3622GG, Idaho Code" and not "63-3622G, Idaho Code."**

1. Docket No. 35-0102-1601 - Idaho Sales and Use Tax Administrative Rules

The State Tax Commission submits notice of rulemaking at IDAPA 35.01.02. This proposed rule provides that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards are exempt from sales tax under the production exemption contained in Section 63-3622D. Secondly, the proposed rule conforms the sales tax rules to HB 386 passed by the 2016 Legislature, amending the production exemption to include farming products' "removal from storage." Thirdly, the proposed rule conforms Tax Commission rules to reflect the passage of 2016 HB 347, exempting from taxation any hand tools costing \$100 or less which are directly used in the production of radio or television broadcasts, certain newspapers, agricultural irrigation, and logging. Fourth, the proposed rule conforms Tax Commission rule to the passage of 2015 HB 75 to exempt from the sales tax prescription eyeglasses, their component parts, and prescription contact lenses. Finally, the proposed rule conforms Tax Commission rule to the passage of 2016 HB 348 which added paddleboards and similar watercraft to the list of vessels that are not eligible for tax exemption when sold to nonresidents. According to the agency, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the May 4, 2016 edition of the Idaho Administrative Bulletin. The proposed rule appears to be within the agency's statutory authority under Sections 63-105, 63-3624(a) and 63-3039, Idaho Code.

2. Docket No. 35-0102-1602 - Idaho Sales and Use Tax Administrative Rules

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.02. This proposed rule provides that the sale, lease, purchase or use of fixed-wing aircraft primarily used as an air tactical group supervisor platform under contract with a governmental entity for wildfire activity is exempt from sales tax. The rule conforms Tax Commission rules to the passage of 2016 HB 540. According to the agency, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the July 6, 2016 edition of the Idaho Administrative Bulletin. The proposed rule appears to be within the agency's statutory authority under Sections 63-105, 63-3624(a) and 63-3622GG, Idaho Code.

### 3. Docket No. 35-0102-1603 - Idaho Sales and Use Tax Administrative Rules

The State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.02. This proposed rule updates the citation to the federal Older Americans Act to the 2006 reauthorization act by Congress. This action also conforms the State Tax Commission rule with the passage of 2015 HB 11, making the same update to Section 63-3622J, Idaho Code. According to the agency, negotiated rulemaking was not conducted due to the simple nature of the changes. The proposed rule appears to be within the agency's statutory authority under Sections 63-105, 63-3624(a) and 63-3622J, Idaho Code.

cc: State Tax Commission  
Sherry Briscoe

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1601**  
**NOTICE OF RULEMAKING - PROPOSED RULES**

**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(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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 079 - Production Exemption

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

The passage of House Bill 386 during the 2016 Idaho legislative session amended the production exemption for farming operations to include the term "removal from storage" of agricultural commodities. Rule 079.04 states that the production process ends when the product is placed in storage--however temporary--ready for shipment, or when it reaches the final form in which it will be sold at retail, whichever occurs last. The new legislation extends this, but only for farming operations. A reference was added in this section that points to Rule 083 for the production process beginning and end for farming.

- Rule 080 - Lumber Manufacturing
- Rule 081 - Underground Mining
- Rule 082 - Aboveground, Open Pit, Mining

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

Rule 083 - Farming And Ranching

The passage of House Bill 386 during the 2016 Idaho legislative session amended the production exemption for farming operations to include the term "removal from storage" of agricultural commodities. The proposed rule incorporates the statutory change.

The proposed rule clarifies that equipment and supplies used in performance of a quality control function which is an integral and necessary step in maintaining specific product standards is exempt. The proposed rule states longstanding policy on taxation of these items.

- Sales Tax Rule 096 - Irrigation Equipment And Supplies
- Sales Tax Rule 102 - Logging

The passage of House Bill 347 during the 2016 Idaho legislative session removes the exclusion of hand tools with a unit cost of less than \$100 from the exemptions found in Idaho Code Sections 63-3622S, 63-3622T, 63-3622W, and 63-3622JJ. The proposed rule changes remove this exclusion from the associated rules.

Rule 096 – Irrigation Equipment And Supplies (63-3622W) removes hand tool exclusion from rule.

Rule 102 – Logging (63-3622JJ) removes hand tool exclusion from rule.

Rule 133 – Radio And Television Broadcast Equipment (63-3622S) contains no reference to the hand tool exclusion. No change.

Rule 127 – Free Distribution Newspapers (63-3622T) contains no reference to the hand tool exclusion. No change.

**Sales Tax Rule 100, Prescriptions**

The passage of House Bill 75 during the 2015 Idaho legislative session amended 63-3622N to exempt prescription eyeglasses, their component parts, and prescription contact lenses in two parts.

The proposed rule incorporates parts one and two of the statutory changes.

Part one - exempts prescription eyeglasses and their component parts on and after July 1, 2015.

Part two - exempts prescription contact lenses on and after July 1, 2016.

**Sales Tax Rule 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**

The passage of House Bill 348 during the 2016 legislative session added paddleboards and similar watercraft to the list of vessels that are not eligible for tax exemption when sold to nonresidents. The proposed rule incorporates the statutory changes.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, pages 56-57](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marni Odermann 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 26, 2016.

DATED this 1 day of September 2016.

Marni Odermann  
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) 334-7846

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1601**  
**(Only Those Sections With Amendments Are Shown.)**

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

Sections 63-3622 & 63-3622D, Idaho Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d.** Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)
- e.** Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)
- f.** Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)
- g.** Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)
- h.** Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)
- i.** Equipment used primarily to fabricate production equipment. (7-1-93)
- j.** Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ( )

**04. Production Process Beginning and End.** The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. See Rule 083 of these rules regarding farming. (7-1-93)( )

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

- a.** Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)
- b.** Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)
- c.** Office equipment and supplies. (7-1-93)
- d.** Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)
- e.** Equipment and supplies used in selling and distribution activities. (7-1-93)
- f.** Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)
- g.** Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)
- h.** Transportation equipment and supplies. (7-1-93)
- i.** Aircraft of any type and supplies. (7-1-93)
- j.** Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)
- k.** Other incidental items not directly used in production. (7-1-93)

**l.** Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

**m.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATVs), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

**n.** Parts to repair recreation-related vehicles. (7-1-93)

**o.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

**06. Real Property.** The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. The production exemption does not apply to equipment and materials primarily used to improve real property. (3-20-14)

**07. Change in Primary Use of Property.** If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

**08. Transportation Activities.** Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

**a.** Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

**b.** Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

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

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

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

**080. LUMBER MANUFACTURING (RULE 080).**

Section 63-3622D, Idaho Code

This rule is intended to illustrate the application of the production exemption to the lumber manufacturing industry. The provisions of this rule are based upon the usual methods of doing business used in the industry generally. Factual differences in the manner in which a specific taxpayer may conduct its business can result in determinations different



from those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules will control. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. This rule is limited in application to the manufacturing of rough and finished lumber and does not encompass the manufacturing of plywood, particleboard, veneer, or paper products. (3-15-02)

- 01. Nontaxable Activities.** Generally considered as nontaxable activities are the following: (7-1-93)
- a.** Log receiving including log loaders, cranes, and front end loaders. (7-1-93)
  - b.** Log deck/log pond including log loading equipment and boats moving logs from the storage area to the debarker; sprinkler equipment when used for prevention of product deterioration; and devices used to detect metal in logs. (7-1-93)
  - c.** Debarking equipment used to strip bark from logs including conveyor equipment for moving debarked logs further into the mill or for conveying bark when bark is used as boiler fuel or when conveying bark to a further processing stage. (7-1-93)
  - d.** Chipper, used to produce chips including chip storage bins and pneumatic conveyors. (7-1-93)
  - e.** Mill deck, as used for grading and cutting to length. (7-1-93)
  - f.** Headrig/shotgun, as used for sawing logs. (7-1-93)
  - g.** Edger, as used for edging rough lumber. (7-1-93)
  - h.** Trimmer, as used for trimming to length. (7-1-93)
  - i.** Resaw, as used for producing the proper thickness. (7-1-93)
  - j.** Green chain, as used to determine according to size and species the amount of time required in the dry kiln. (7-1-93)
  - k.** Dry kiln, as used to reduce moisture content. This exemption encompasses fire brick, steam pipe and fans inside the kiln but does not include improvements to real property. (7-1-93)
  - l.** Unstackers. (7-1-93)
  - m.** Planers, as used for finishing, grading and grade stamping of specialty products. (7-1-93)
  - n.** Boiler when used for the generation of steam used to operate production equipment. (7-1-93)
  - o.** Powerhouse when used to generate power used to operate production equipment. (7-1-93)
  - p.** Waste collection, as used for the collection of waste products for use as fuel for the boiler, generally referred to as hog fuel. (7-1-93)
  - q.** Lumber wrap and steel strapping used for packaging material. (7-1-93)
  - r.** Pollution control equipment when required by a state or federal agency. (7-1-93)
  - s.** Equipment used primarily to install exempt equipment. (7-1-93)
  - t.** Equipment used primarily to fabricate exempt equipment. (7-1-93)
  - u.** Safety equipment and supplies required by a state or federal agency and used in a production area. (7-1-93)

**v. Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards.** ( )

- 02. Taxable Activities.** Generally considered as taxable activities are the following: (7-1-93)
- a.** Saw filing activities using saw filing equipment and saw filing supplies. (7-1-93)
  - b.** Shipping, including loading equipment and strapping, seals, and binders used in shipping activities to secure lumber on railroad cars, trucks, etc. (7-1-93)
  - c.** Cleanup. (7-1-93)
  - d.** Equipment used to repair or maintain production equipment. (7-1-93)
  - e.** Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)
  - f.** Safety equipment and supplies used in an area where no manufacturing occurs such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)
  - g.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)
- 03. Exemption Certificate.** Persons engaged in lumber manufacturing who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See Rule 128 of these rules. (3-15-02)

**081. UNDERGROUND MINING (RULE 081).**

Sections 63-3605B and 63-3622D, Idaho Code

This rule is meant to show how the production exemption applies to the underground mining industry. This rule is based on the usual methods of doing business. Differences in the way a specific taxpayer conducts his business can result in determinations different from those in this rule. In cases not covered by this rule, the general principles in Rule 079 of these rules apply. Determinations of taxability are based on the primary use of equipment. (3-15-02)

- 01. Nontaxable Purchases.** The following are generally considered nontaxable: (7-1-93)
- a.** Development of known ore deposits, including diamond drilling and other activities to develop levels, laterals, crosscuts, drifts, stopes, raises and shafts. (7-1-93)
  - b.** Support materials, including, timber, concrete, rock bolts, shotcrete, matting, and equipment used to install them. (7-1-93)
  - c.** Drilling of blast holes to facilitate the extraction of ore including pneumatic rock drills and compressors used to supply compressed air to operate pneumatic rock drills. (7-1-93)
  - d.** Blasting to facilitate the extraction of ore using explosives, caps, fuses, etc. (7-1-93)
  - e.** Slushing/mucking to convey broken ore and waste to passes and chutes using scrapers, slushers, muckers, hoists and loaders, and backhoes used to recover both ore and waste. (7-1-93)
  - f.** Hauling, horizontal transportation, to transport ore, waste, men or materials from chutes into cars and the movement of the cars to shaft stations using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
  - g.** Haulage, vertical transportation, to hoist ore, waste, men or materials in skips, using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)
  - h.** Transportation to the surface to load the ore, waste, men or materials into main haulage cars for transportation using locomotives, haulage cars, track and track spikes, fuel batteries used to power locomotives, and

- conveyors and conveyor belts. (7-1-93)
- i.** Backfilling to pump tailings back underground as hydraulic sandfill to backfill mined-out areas using, pumps, sumps, pipe, and concrete. (7-1-93)
  - j.** Personal equipment including hard hats, miners' lights, belts, and batteries. (3-25-16)
  - k.** Sampling/assaying for quality control purposes. (7-1-93)
  - l.** Safety equipment and supplies required by a state or federal agency when used directly in a mining area. (7-1-93)
  - m.** Equipment used primarily to install production equipment. (7-1-93)
  - n.** Equipment used primarily to fabricate production equipment. (7-1-93)
  - o.** Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ( )
- 02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)
- a.** Diamond drilling activities used for exploration. (7-1-93)
  - b.** Air ventilation and conditioning if an improvement to real property including fans, motors, vent ducts; coolers; and air doors. (7-1-93)
  - c.** Water lines and pumps used to remove water from the mine if improvements to real property. (7-1-93)
  - d.** Safety equipment and supplies used somewhere other than a mining area, such as an office, or not required by a state or federal agency even if used in a mining area. (7-1-93)
  - e.** Maintenance and cleanup using backhoes, except when the primary use is to recover ore or waste; equipment used to repair or maintain mining equipment; battery maintenance equipment including battery chargers, and shop supplies and other materials or supplies which do not become a component part of production exempt equipment. (7-1-93)
  - f.** Sampling/assaying for purposes other than quality control. (7-1-93)
  - g.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)
- 03. Exemption Certificate.** To claim this exemption underground miners must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

**082. ABOVEGROUND, OPEN PIT, MINING (RULE 082).**

Sections 63-3605B and 63-3622D, Idaho Code

This rule is meant to show how the production exemption applies to the aboveground, open pit, mining industry. This rule is based on the usual methods of doing business in the industry. Differences in the way a specific taxpayer conducts his business can result in determinations different than those stated in this rule. In cases not covered by this rule, the general principles stated in Rule 079 of these rules apply. Determinations of taxability are made based on primary use of the equipment. This rule applies only to aboveground mining activities commonly referred to as open pit mining. (3-15-02)

- 01. Exempt Purchases.** The following are generally considered nontaxable: (7-1-93)
- a.** Drilling and blasting, to loosen overburden for removal or, to define limits of existing ore bodies using track drills, rotary drills, and compressors to operate them, drill rods, drill bits, explosives, caps, fuses, etc., for

this purpose. (7-1-93)

**b.** Ore and overburden extraction and removal using front end loaders, track loaders, power shovels, backhoes, scoop loaders, and similar equipment used to extract and load ore or strip and load overburden. (7-1-93)

**c.** Hauling of ore and overburden to stockpiles, loading sites, or disposal sites on the mine site using scrapers, carryalls, and off-highway trucks and trailers. (7-1-93)

**d.** Ore sorting, grading, sizing, and crushing operations, including unloading from transport devices using bulldozers, front end loaders, crushers, conveyors, and similar equipment. (7-1-93)

**e.** Pollution control equipment required by a state or federal agency. See Section 63-3622X, Idaho Code. (7-1-93)

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

**g.** Equipment used primarily to fabricate or install production equipment. (7-1-93)

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

**i.** Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ( )

**02. Taxable Purchases.** The following are generally considered taxable: (7-1-93)

**a.** Exploration, where the primary purpose is to discover new ore bodies using equipment, including rotary drills, drill rigs, blasting equipment, seismic equipment, cats, bulldozers, and other materials and supplies, primarily used for such activities. (7-1-93)

**b.** Real property improvements, construction, and maintenance activities, including materials and equipment used primarily for constructing or maintaining buildings, fences, railroads, concrete pads and footings, and roads. Equipment, including cranes, concrete equipment, and post hole diggers primarily used for such purposes. Materials and supplies, including lumber, steel, roofing, trusses, fence posts, gates, and wire; and concrete, rebar, and remesh. (7-1-93)

**c.** Maintenance and cleanup activities, including those where the primary purpose is to maintain equipment and facilities or cleanup grounds and roads, except where cleanup activities are done primarily to recover ore. Shop or other equipment used primarily to repair, clean, or maintain production equipment, including welders, lathes, shop tools, hoists, cranes, mechanics' trucks, oiling trucks and trailers, steam cleaners, and testing equipment. Shop and other materials and supplies which will not become a component part of production equipment. (7-1-93)

**d.** Land reclamation activities, including activities where mined ore pits or panels are filled in, shaped, and reseeded, including seed or seedlings, fertilizers, soil conditioners, soil, and bulldozers, scrapers, and seed drills primarily used for this purpose; however, equipment primarily used for ore and overburden extraction and loading is exempt, even though this equipment is also used in land reclamation. (7-1-93)

**e.** Transportation of personnel and materials, including transportation to and from worksites or about the mine in general using buses, people movers, trailers, trucks, or similar equipment. (7-1-93)

**f.** Equipment and supplies used in transportation activities where ore or overburden is moved between geographically separated mine sites, processing plants or disposal sites, if 1) a substantial break in the production activities occurs, and 2) the activity does not sort, grade, size, crush, or in some other way further process the ore. Transportation activities include loading, transporting, unloading, and stockpiling. A substantial break in the production activities occurs when the product is transported between geographically separated production sites by means of public roads, waterways, airways, railways, or any other public means. The production facility to which the

product is transported is a separate processing facility, and the equipment and supplies used to transport the product are subject to tax. Examples of taxable equipment include: trucks and trailers, whether licensed or unlicensed; railroad equipment; barges and other watercraft; pipelines; conveyors; front end loaders; and bulldozers. If the means of transport to processing plants, smelters, etc., does not constitute a substantial break in the process, such as a slurry line directly from the mine to the plant, then the loading and unloading activities are not taxable. (7-1-93)

**g.** Personnel support activities, including facilities, equipment, and supplies for eating, sleeping, and recreation. Examples include eating trailers, utensils and food, clothing provided to employees at no charge, and pool tables, beds, and linen. (7-1-93)

**h.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

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

**083. FARMING AND RANCHING (RULE 083).**

Sections 63-3603, & 63-3622D, Idaho Code

This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in Rule 079 of these rules. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (3-15-02)

**01. In General.** Farming includes custom farming and the operation of a farm or ranch, and includes stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges, and orchards operated with the intention of making a gain or profit. Farming does not include operation of ranches or stables where the sole purpose is showing or racing horses, or the breeding of show or race horses. (7-1-93)

**02. Property Primarily and Directly Used.** As applied to the business of farming, the exemption applies to all tangible personal property which is primarily and directly used to conduct the farming business, and which is necessary or essential to the operation, except those categories of property listed in other sections of this rule. (7-1-93)

**03. Directly Used.** The term "directly used or consumed in or during" farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including the planting, growing, harvesting, and initial storage and removal from storage of crops and other agricultural products, and movement of crops and produce from the place of harvest to the place of initial storage. (7-1-93)( )

**04. Transportation Activities.** Equipment used to move farm produce to initial storage is exempt, even though it may be mounted on a vehicle which is required to be licensed and is taxable. Equipment qualifies for this exemption if: (7-1-93)

**a.** It is readily removable from the vehicle on which it is mounted; (7-1-93)

**b.** It is separately stated on the vendor's invoice; and (7-1-93)

**c.** It is sold to a qualified farming operation and is supported by a valid exemption claim form. (7-1-93)

**05. Disinfectants Used in the Dairy Industry.** Effective January 1, 1990, disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats, or other milking equipment are exempt. (7-1-93)

**06. Safety Supplies.** Safety supplies required by a state or federal agency and directly used in a farming operation are exempt from sales or use tax. (7-1-93)

**07. Plants.** Plants, such as orchard trees and grape vines, are exempt. (7-1-93)

**08. Quality Control.** Equipment and supplies used in the performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ( )

**089. The Farming Exemption Does Not Include:** (9-1-93)

**a.** Property purchased to meet the personal needs of a farmer, his family, or employees. Examples of items that are excluded from the exemption include, but are not limited to, hand soap, toothpaste, shampoo, blankets, sheets, pillowcases, towels, washcloths, irrigation boots, coveralls, gloves, other clothing, and grocery items. (7-1-93)

**b.** Food and supplies purchased for barnyard and household pets, such as cat and dog food, are subject to the tax. Even though a dog may occasionally be used for herding livestock or a cat may control mice in the barn, the supplies purchased for their care and maintenance do not qualify for the production exemption. Only when a dog's SOLE purpose is the herding or protection of a rancher's livestock may the food and supplies for the dog be purchased tax exempt under the production exemption. (7-1-93)

**c.** Livestock trailers which may be attached to motor vehicles used to transport horses, cattle, sheep, or other farm animals on public roads are transportation equipment and are subject to sales or use tax. (7-1-93)

**d.** Motor vehicles required to be licensed are subject to sales or use tax even when used exclusively in a farming operation. Motor vehicles purchased, but not licensed, by a farmer for use exclusively in an off-road production activity, such as a feed truck, are not subject to sales or use tax. (7-1-93)

**e.** Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

**0910. Exemption Certificate.** Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See Rule 128 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**096. IRRIGATION EQUIPMENT AND SUPPLIES (RULE 096).**

Section 63-3622W, Idaho Code

**01. Agricultural Irrigation.** The Sales Tax Act exempts all irrigation equipment and supplies which are used directly for agricultural irrigation, ~~except hand tools with the unit price of less than one hundred dollars (\$100). The hand tool exception includes such property as shovels and similar tools.~~ To qualify for the exemption, the irrigation equipment or supplies must be used directly and primarily for agricultural irrigation purposes. If the use of the particular equipment or supplies is only incidental or only indirectly related to the agricultural irrigation process, the exemption will not apply. Examples include: (7-1-93)( )

**a.** An off-highway motorbike or all-terrain vehicle, ATV, used to transport men or equipment is indirectly related to the irrigation process. (7-1-93)

**b.** Irrigation boots worn to protect the irrigator are incidental to the process and subject to the tax. (7-1-93)

**02. Nonagricultural Irrigation Equipment or Supplies.** Irrigation equipment or supplies used for any purpose other than agriculture are not exempt. For example, irrigation pipelines or sprinkler systems used on a golf course are taxable. (7-1-93)

**03. Real Property Improvements.** The exemption applies regardless of whether the equipment becomes a part of real estate. It is not necessary to distinguish between pipeline which retains its identity as tangible personal property and pipeline which may become incorporated into real property such as buried mainline pipe. (7-1-93)

**04. Title to Equipment.** The exemption applies regardless of whether the equipment is installed by a farmer, a contractor, or a subcontractor. The incidence of tax will not turn upon the determination of whether title to the irrigation equipment passed at the time of sale or subsequent to installation. (7-1-93)

**05. Exemption Certificate.** A purchaser's right to the exemption shall be documented by the use of an exemption certificate in the manner prescribed by Rule 128 of these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. PRESCRIPTIONS (RULE 100).**  
Section 63-3622N, Idaho Code

**01. In General.** Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, eyeglasses, contact lenses, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-99)(    )

**a.** Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

**b.** Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, dentist, orthodontist, audiologist, or hearing aid dealer or fitter. Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(b), Idaho Code, will not qualify for the exemption. (5-8-09)

**c.** Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

**d.** Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

**02. Seller Must Document Exempt Sale.** The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

**a.** Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

**b.** Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

**03. Purchases by Practitioners.** A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (3-15-02)

**04. Purchases by Nursing Homes and For Profit Hospitals.** The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

- a. The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)
- b. The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)
- c. An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule 128 of these rules. (3-15-02)

**05. Sale of Eyeglasses, Removable Contact Lenses, and Other Related Products ~~by Optometrists, Oculists, and Ophthalmologists~~.** The sale of non-prescription eyeglasses, removable non-prescription contact lenses and other related products, such as carrying cases, non-prescription sunglasses, and cleaning solutions ~~by optometrists, oculists, or ophthalmologists~~ is subject to the sales tax, ~~regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser.~~ (6-23-94)(    )

a. ~~Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient.~~ The sale of eyeglasses and their frames, lenses, nose pieces, hinges, and related eyeglass component parts required as part of a finished pair of eyeglasses sold under a prescription is exempt from sales tax on and after July 1, 2015. (7-1-93)(    )

b. ~~Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost.~~ The sale of prescription contact lenses on and after July 1, 2016, is exempt from sales tax. (7-1-93)(    )

**06. Dental and Orthodontic Appliances.** The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. LOGGING (RULE 102).**  
Section 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)~~

**kg.** 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)

**ih.** 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)

**(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).**  
Sections 63-3606B & 63-3622R, Idaho Code

**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 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 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. (4-11-15)

**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.** A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

**05. Military Personnel.** (4-11-15)

**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. (4-11-15)

**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. (4-11-15)

**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 six hundred dollars (\$600) tax due Idaho. The assessor will collect three hundred dollars (\$300) tax. (4-11-15)

**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 of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles, off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: (3-25-16)

i. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, 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 (3-25-16)

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, 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. (3-25-16)

**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, ~~paddleboards~~, ~~or~~ inflatable boats, ~~or similar watercraft~~ regardless of length when sold without a motor. (~~5-3-03~~)(    )

**d.** For purposes of Subsection 107.10 of this rule, ATV, UTV, and specialty off-highway vehicle have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)

**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, ~~paddleboards~~, ~~or~~ inflatable boats, ~~or similar watercraft~~ unless such canoe, kayak, ~~paddleboard~~, ~~or~~ inflatable boat, ~~or similar watercraft~~ 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)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1602**  
**NOTICE OF RULEMAKING - PROPOSED RULES**

**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(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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:

Sales Tax Rule 037, Aircraft And Flying Services

The passage of House Bill 540 during the 2016 Idaho legislative session exempted the sale, lease, purchase, or use of fixed-wing aircraft primarily used as an air tactical group supervisor platform under contract with a governmental entity for wildfire activity. The proposed rule incorporates the statutory changes.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016, Idaho Administrative Bulletin, [Vol. 16-7, page 80](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marni Odermann 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 26, 2016.

DATED this 1 Day of September 2016.

Marni Odermann  
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) 334-7846

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1602**  
**(Only Those Sections With Amendments Are Shown.)**

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

Section 63-3622GG, Idaho Code

- 01. Definitions.** For the purposes of this rule, the following terms have the following meanings: (7-1-94)
- a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)
- b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)
- c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)
- d. Nonresident Individual.** An individual as defined by Section 63-3014, Idaho Code. (7-1-94)
- e. Nonresident Businesses and Other Organizations.** A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-4-13)
- f. Day.** For the purpose of this rule any part of a day is a day. (7-1-94)
- g. Transportation of freight or passengers for hire.** "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. (4-4-13)
- h. Common Carrier.** The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. (4-4-13)
- i. Public.** The public does not include: (4-4-13)
- i. Owners or operators of the aircraft; (4-4-13)
- ii. Employees of the aircraft owner or operator; (4-4-13)
- iii. Guests of the aircraft owner or operator; (4-4-13)
- iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; (4-4-13)



v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or (4-4-13)

vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. (4-4-13)

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

a. Primarily used to provide passenger or freight services for hire as a common carrier; (4-4-13)

i. Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time. (3-20-14)

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 50 = 110 hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. (3-20-14)

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

c. That is a fixed-wing aircraft primarily used as an air tactical group supervisor platform under a contract with a governmental entity for wildfire activity; or ( )

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

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

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (4-4-13)

**03. Sales of Aircraft Repair Parts to Nonresidents.** Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. (4-4-13)

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

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

**06. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting

services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (4-4-13)

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

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

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

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

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

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

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

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

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

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

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

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0102-1603**  
**NOTICE OF RULEMAKING - PROPOSED RULES**

**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(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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:

Sales Tax Rule 041, Food, Meals, Or Drinks.

The passage of House Bill 11 during the 2015 Idaho legislative session corrected the statute's reference to the Older Americans Act. The proposed rule incorporates the statutory changes made in 2015.

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

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Marni Odermann at (208) 334-7531 or [marni.odermann@tax.idaho.gov](mailto:marni.odermann@tax.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 1 day of September 2016.

Marni Odermann  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd, Plaza IV  
PO Box 36  
Boise, ID 83722-0410  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1603**  
**(Only Those Sections With Amendments Are Shown.)**

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

Section 63-3612(2)(b), 63-3621(p), & 63-3622J, Idaho Code

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

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

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

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

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

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

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

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

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

**05. Fraternities, Sororities, and Cooperative Living Group.** Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members

and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

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

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

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

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

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

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

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

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

**09. Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law ~~93-29~~ [109-365](#), are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (~~7-1-93~~)(      )

**10. Food or Beverage Tastings.** If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. (3-20-14)

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

**a.** Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

**b.** Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

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

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

**13. Free Giveaways to Employees.** It is common practice for a retailer to give away prepared food and beverage, including full meals, to its employees free of charge. Giveaways of this nature normally trigger a use tax liability for the retailer calculated on the value of the items given away. However, if the retailer is in the business of selling prepared food and beverage, giveaways of prepared food and beverage to its employees are not taxable. Retailers that would qualify include restaurants and grocery stores with a deli or similar section that sells prepared food. (3-25-16)

a. For purposes of this subsection, prepared food means food intended for human consumption that: (3-25-16)

i. Is heated when given away; or (3-25-16)

ii. Consists of two (2) or more ingredients combined by the retailer and given away as a single item; or (3-25-16)

iii. Is customarily served with utensils. (3-25-16)

b. For purposes of this subsection, prepared beverage means any beverage intended for human consumption. (3-25-16)