

Dear Senators JOHNSON, Bayer, Burgoyne, and
Representatives COLLINS, Kauffman, 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 Rule (Docket No.
35-0102-1803).

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 11/06/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/06/2018.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Division Manager - Kristin Ford

DATE: October 18, 2018

SUBJECT: State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1803)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to the Sales and Use Tax. The proposed rule amends the following rules:

1. Rule 018 is being amended to include in the definition of "Retailer" those out of state sellers that meet certain nexus requirements passed by the Legislature in 2018 and set forth in section 63-3611, Idaho Code.
2. Rule 041 is being amended to exempt from the use tax certain complimentary tastings of food and beverages.
3. Rule 077 is being amended to provide for a tax exemption for the percentage of the sales or use of personal property used at the Idaho National Laboratory that pertains to the U.S. Government's use of the facility as among other facility users that are not U.S. Government personnel or their contractors.
4. Rule 106 is being amended to revise the vehicle valuation for sales and use tax purposes when no bill of sale is available. This section, relating to private (nondealer) party sales, will provide guidance in the event of a bill of sale, low bill of sale, no bill of sale, trade-in, and barter/exchange, and to provide that factors such as the make, model, options, year, mileage and condition of the vehicle should be considered. The amendment to the rule also clarifies certain sales tax exemption certificate forms to be used in various situations.
5. Rule 117 pertains to sales tax refund claims. The amendment provides that the three year period of limitations applies unless a written claim is filed, along with a list of certain required information regarding the claimed refund. The proposed amendment also clarifies that a refund claimant must have first satisfied its outstanding tax liabilities before a refund can be made.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

6. Rule 128 pertains to resale exemptions. The proposed amendment to the rule provides guidance on the proper execution of approved exemption claim forms, and updates changes made to the exemption claim forms during 2018.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules -- Negotiated Rulemaking was published in the July 4, 2018 edition of the Idaho Administrative Bulletin. No fiscal impact is expected.

Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to section 105(2), 63-3624(a), 63-3611, 63-3619, 63-3621, and 63-3622BB, Idaho Code.

cc: State Tax Commission
Kimberlee Stratton

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1803

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5220(1)&(2), 63-105(2), and Section 63-3624(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

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 018 – The legislature amended the Idaho Sales Tax Act to provide a presumption that under certain conditions out-of-state retailers making sales to customers located in this state are retailers engaged in business in this state. These rules must be updated to reflect these changes. We are adding to the list of entities that are retailers, “out-of-state sellers that must overcome the presumption defined by Section 63-3611, Idaho code. We are also adding the statutory reference to the beginning of the rule.

Rule 041 – In 2014, the legislature added Subsection 63-3621(o), Idaho Code, extending exemption to the use of food or beverages donated to individuals or nonprofit organizations. The Tax Commission missed removing Subsection 041.12.c. of this rule when that change was made. The change moves Subsection 041.12.c from the examples of items subject to tax to Subsection 041.11d as an example of an item that is not subject to tax.

Rule 077 – The legislature amended the exemption for Research and Development at the INL by adding a new section. Section 070 of these rules must be revised to include the new language. We will add the new language to the rule and provide the statutory reference at the top.

Rule 106 – The Commission would like to look at making a change to the current NADA standard, “Clean Retail Value.” Currently, the rule states that in the absence of a bill of sale, we are to use the value established as the “clean retail price.” We would like to propose that an alternate NADA value be used. The value assessed should not be a penalty to an individual in the absence of a bill of sale, rather we want to collect the correct amount for the vehicle based upon its make, model, year, options, mileage, and condition. The proposed changes will also separate private party vehicles sales from retailers who are not dealers making vehicle sales. The private party section will be Subsection 106.05 of this rule, and will break the existing sections into the following subcategories to provide clarity about how these are reviewed and subsequently valued by the tax commission: bill of sale, low bill of sale, no bill of sale, trade in, barter/exchange. This rule is also being updated to reflect changes that have been made to exemption claim forms during 2018.

Rule 117 – A taxpayer has three years to request a refund of sales tax related to bad debt or that it has paid in error. A refund request submitted with the appropriate documentation stops the statute of limitations for the requester. The Tax Commission would like to clarify the language in the list of items that need to be provided with a refund request to ensure it is crystal clear exactly what should be submitted with a refund request at the time it is made. We will also add language that clarifies that the taxpayer must first “satisfy” any outstanding liability to request a refund.

Rule 128 – This rule provides description and guidance on the proper execution of approved exemption claim forms. This rule is being updated to reflect changes that have been made to exemption claim forms during 2018.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 175–176](#). Rule 029 was listed in the Notice of Intent for this docket, however, changes have been postponed. The Commission will not move forward with any changes to this rule at this time.

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 Leah Parsons, (208) 334-7531. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 3rd day of October, 2018.

Leah Parsons, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise ID 83722-0410
Phone (208)334-7531
Fax (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1803
(Only Those Sections With Amendments Are Shown.)

018. RETAILER DEFINED (RULE 018).

[Sections 63-3610 and 63-3611, Idaho Code](#)

01. Retailer. The term retailer includes a person doing a regularly organized retail business in tangible personal property and defined services and selling to the user or consumer, not for resale. Retailer includes commission salesmen, sales at auctions, [out-of-state sellers that must overcome the presumption defined in Section, 63-3611, Idaho Code](#), assignees for the benefit of creditors, receivers and any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers. (7-1-93)()

02. Retailers Selling Incidental Tangible Personal Property. A person may be a retailer within the meaning of the act although the sale of tangible personal property is incidental to his general business. For example, a plumbing contractor may sell some plumbing supplies as a sideline and thereby become a retailer within the meaning of this act. (7-1-93)

03. Farmers. Farmers who ordinarily sell their grain, livestock and other horticultural products for resale or processing are not subject to tax. However, when they sell to ultimate consumers or users, they must obtain a seller's permit and report sales tax on their taxable sales. (7-1-93)

04. An Agent as a Retailer. Where there is a written agreement between a principal and his agent, dealer or other third party, and such agreement stipulates that the agent, dealer or other third party will be responsible for collection, reporting and payment of sales tax generated by sales, the Tax Commission will treat the position of

the agent, dealer or third party as that of a retailer and impose on him the burden of collecting, accounting for, and paying the sales tax to the State Tax Commission. (7-1-93)

a. However, if for example, a milk route salesman, without such an agreement, makes regular deliveries, collects for the products, and sales tax is included in the total proceeds collected and remitted to the principal for proper crediting, accounting, discounts, etc., then it shall be the responsibility of the principal to relay the sales tax with proper reporting forms as prescribed by law. (7-1-93)

b. In some instances, such as the above, and the example of a newspaper delivery boy, the sales are actually made on behalf of the dairy and the newspaper company respectively. In the absence of any such written agreement, the Tax Commission will look to the principal as being responsible for the reporting and payment of the sales tax. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

041. FOOD, MEALS, OR DRINKS (RULE 041).
Sections 63-3612(2)(b), 63-3621(p), and 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 of the Older Americans Act, Public Law 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 ~~purchase~~ buyers who are not senior citizens. (3-29-17)()

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)

d. 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. ()

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)

e. ~~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)

(BREAK IN CONTINUITY OF SECTIONS)

077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL (RULE 077).

Section 63-3622BB, Idaho Code

01. ~~In-General~~ Exclusive Financing Exemption Under Section 63-3622BB(1), Idaho Code. The purchase of certain tangible personal property used in connection with certain activities at the Idaho National Laboratory (INL) is exempt from sales and use tax. To qualify for this exemption, the property must be tangible personal property primarily or directly used or consumed in research, development, experimental and testing activities, exclusively financed by the United States Government. (7-1-99)()

~~02~~a. Qualifying Activity. Research, development, experimental, and testing activity means any activity of an original investigation, for the advancement of scientific knowledge in a field of laboratory science, engineering or technology and does not have an actual commercial application. (7-1-93)

~~03~~b. Real Property. The exemption does not apply to real property or to tangible personal property which will become improvements or fixtures to real property. See Rules 012 and 067 of these rules. (7-1-99)

~~04~~c. Incidental Use of Property. This exemption does not extend to the incidental use of any tangible personal property which fails to meet the test of primary or direct use or consumption. (7-1-97)

~~a~~i. Areas of support which are considered incidental include: communications equipment; office equipment and supplies; janitorial equipment and supplies; training equipment and supplies; dosimetry or radiation monitoring equipment which lacks the capability of giving an immediate indication and would not result in an immediate evacuation of personnel or shutdown of equipment; subscriptions or technical manuals which provide technology not primarily used or directly connected to the research activity; and hot and cold laundry operations. (7-1-93)

~~b~~ii. Materials of common support which are considered incidental include: clothing for weather protection or of a reusable nature; hand tools which are not subject to contamination at the time of initial use; protective coverings which are protection from other than radiation or are of a reusable nature; and all safety equipment and supplies which do not protect from direct radiation exposure. (7-1-93)

~~05~~d. Property Directly Used or Consumed. Tangible personal property primarily or directly used or consumed in a research and development activity to perform quality assurance on research equipment is tax exempt. Items of a general support nature, such as coveralls, are taxable. (7-1-93)

~~06~~e. Parts for Equipment. The use of tangible personal property which becomes a component part of research equipment being calibrated within a calibration lab is tax exempt; whereas, the use of parts and equipment in calibrating or for the repair of other maintenance equipment is taxable. (7-1-97)

~~07~~f. Radioactive Waste. The initial containment or storage of radioactive waste is an exempt use. Any further processing or transporting of such waste not relating to a research and development activity is a taxable use. (7-1-97)

~~08~~g. Motor Vehicles. The purchase of any motor vehicle licensed or required to be licensed by the laws of this state is taxable. (7-1-97)

~~09~~h. Agreements with Contractors. The State Tax Commission may enter into agreements with contractors engaged in research at the INL prescribing methods by which the contractor or contractors may accrue use tax based on the accounting procedures required by the U.S. Department of Energy. (7-1-99)

02. Percentage of Tangible Personal Property Exemption Under Section 63- 3622BB(2), Idaho Code. If a facility is used by the United States or one of its management and operating contractors for research and development activities at the INL and also is used by a person or persons in addition to the United States or one of its management and operating contractors, there is exempted from the taxes imposed by this chapter a percentage of each sale or use of tangible personal property used or consumed at or for the benefit of the facility in the amount that the research and development activities of the United States or its management and operating contractors bear to the total use of the facility by all persons. The Tax Commission shall calculate, review, and verify the allocation provided

for in this section. ()

(BREAK IN CONTINUITY OF SECTIONS)

106. MOTOR VEHICLES SALES, RENTALS, AND LEASES (RULE 106).

Sections 63-3612, 63-3613, 63-3619, 63-3621, 63-3622K, and 63-3622R, Idaho Code

01. In General. The sale, lease, rental, or purchase of a motor vehicle is subject to sales and use tax. Retailers, lessors, and dealers are required to collect the tax. (7-1-93)

02. Forms. The forms required for sales and use tax collection and reporting include the following, with modifications that may be required from time to time: (7-1-93)

a. The title application form required by the Idaho Transportation Department. (7-1-93)

b. Form ST-104IC, Sales Tax Exemption Certificate – Interstate Commerce Vehicles. This form is used by qualifying interstate carriers claiming exemption under Section 63-3622R, Idaho Code. ()

c. Form ST-104-~~AV~~**NR**, Sales Tax Exemption Certificate - Vehicle/Vessel-. This form is used by persons nonresidents claiming exemption under Section 63-3622R, Idaho Code. (7-1-93)()

d. Form ST-133, Sales Tax Exemption Certificate-~~Transfer Affidavit~~ Family or American Indian Sales, used for gifts of motor vehicles, sales between family members, and sales to enrolled members of an Indian tribe within the boundaries of an Indian reservation. (7-1-93)()

e. Other forms that may be required by the Tax Commission or the Idaho Transportation Department. (7-1-93)

03. Vehicles Purchased from Idaho Dealers. When a dealer of new or used motor vehicles sells any motor vehicle for delivery in Idaho, he must collect sales or use tax at the rate in effect on the date the motor vehicle is delivered to the buyer, unless an exemption applies. He must also prepare a title application form and include the dealer's Idaho seller's permit number, gross sales price, trade-in allowance, net sales price, and total tax collected. A title application form which is completed by the dealer and displays Idaho sales tax collected is evidence that the buyer paid sales tax to the dealer. (7-1-93)

04. Vehicles Purchased from Out-of-State Dealers. Title applications for vehicles purchased from out-of-state dealers must be made according to Idaho Transportation Department instructions. Any trade-in allowance must be shown on the original bill of sale, voucher, or other receipt from the out-of-state dealer. If sales tax was correctly paid to a dealer in another state, a credit is allowed against sales or use tax payable to Idaho. See Rule 107 of these rules. (4-2-08)

05. Vehicles Purchased from ~~Nondealers~~ Private Parties. (7-1-93)()

a. Bill of Sale. Title applications for vehicles purchased from nondealers, who are not required to have an Idaho seller's permit, must be made according to Idaho Transportation Department instructions. The buyer must present a bill of sale or receipt as proof of the gross sales price. Canceled checks will not be accepted in lieu of a bill of sale. ()

b. Low Bill of Sale. A recent sales price is presumptive evidence of a vehicles value. For a bill of sale that shows a price below the value established as the "average trade-in price", tax is collected on the value established in the most recent National Automobile Dealers Association (NADA) Official Used Car Guide for the same make, model, options, year, mileage, and condition, unless the buyer provides information to support the recent sales price of the vehicle. ()

c. No Bill of Sale. In the absence of a bill of sale or documentation supporting the value of the

vehicle, sales tax is collected on the value established as the “~~clean retail average trade-in~~ price” in the most recent ~~National Automobile Dealers Association (NADA) Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company~~ for the same make, model, options, year, mileage, and condition. ()

d. ~~Where there is a sale by a nondealer, a Trade In.~~ A trade-in allowance is not allowed on a private party sale. See Rule 044 of these rules. The county assessor ~~or Idaho Transportation Department~~ must collect sales tax on the gross sales price and remit the tax to the Tax Commission. ()

e. Barter/Exchange. ~~BA~~ barter or exchange of ~~motor~~ vehicles or other property is taxed ~~are taxable~~ on the full value of ~~each the~~ vehicles or other property ~~which is the object of barter~~ involved in the exchange. In the absence of documentation supporting the value of the vehicle(s), Sales tax shall be collected is due on the value established as the “~~clean retail average trade-in~~ price” ~~stated for similar makes and models with comparable options~~ in the most recent NADA Official Used Car Guide for the same make, model, options, year, mileage, and condition. (4-2-08)()

06. Vehicles Purchased from Retailers. ()

ba. A retailer required to have an Idaho seller’s permit must collect the sales tax when selling a motor vehicle, even though he is not licensed as a motor vehicle dealer. The retailer must give the buyer the title to the motor vehicle, properly completing title transfer information on the title, including the retailer’s seller’s permit number as proof that Idaho sales tax was collected. The retailer must also give the buyer a bill of sale stating: the date of sale; the name and address of the seller; the complete vehicle description including the VIN, vehicle identification number (VIN), which must agree with the VIN on the title; the person to whom the vehicle was sold; the amount for which the vehicle was sold; and the amount of sales tax charged. (7-1-93)()

eb. A retailer is not relieved of the responsibility for collecting the tax unless he can provide satisfactory evidence to the Tax Commission that the buyer paid tax to the county assessor ~~or Idaho Transportation Department~~. If a retailer fails to collect the tax from the buyer, the county assessor ~~or Idaho Transportation Department~~ must collect the tax. (7-1-93)()

067. Vehicles Rented or Leased. (7-1-93)

a. A lease-purchase and lease with option to purchase have separate definitions and tax applications. See Rule 024 of these rules. A lease-purchase is subject to sales or use tax on the full purchase price at the time the vehicle is delivered to the lessee. A true lease and a lease with an option to purchase are subject to sales tax on each lease payment and on the buy-out or residual value when a lessee exercises his option to buy. The information in Section 106 deals with rentals, true leases, and leases with an option to buy. (4-2-08)

b. The lessor of a motor vehicle is a retailer and must collect sales tax from the lessee on any rental or lease payment on the date it is required to be made, at the tax rate in effect on that date. The lessor must also collect tax on any lessee’s exercise of an option to buy based on the full purchase price or residual, at the tax rate in effect on the date title is transferred to the lessee. (7-1-93)

c. The lessor may not rely on the county assessor or the ~~Idaho Transportation Department~~ to collect sales or use tax if the purchase option is exercised. (7-1-93)()

d. The lessor must collect sales tax on each lease payment received from the renter or lessee and remit the tax to the state. The sales tax is applicable whether the vehicle is leased or rented on an hourly, daily, weekly, monthly, mileage, or any other basis. (7-1-93)

e. If the lessor is responsible for maintaining the vehicle and this is stated in the lease or rental agreement, tax does not apply to his purchase of necessary repair parts. (7-1-93)

f. Out-of-state lessors must obtain a seller’s permit and comply with this rule. If the county assessor ~~or Idaho Transportation Department~~ cannot verify that the lessor is properly registered to collect the tax, title and registration will be denied. (7-1-93)()

g. When a vehicle is traded in as part payment for the rental or lease of another vehicle, a deduction is allowed before computing the sales tax. The methods of applying the trade-in value to the lease are found in Rule 044 of these rules. (4-2-08)

078. Cross-References. (7-1-93)

a. See Rule 024 of these rules. Rentals or leases of tangible personal property. (4-2-08)

b. See Rule 044 of these rules. Trade-ins, trade-downs, and barter. (4-2-08)

c. See Rule 099 of these rules. Occasional sales. (4-2-08)

d. See Rule 091 of these rules. Sales to ~~i~~American Indians. ~~(4-2-08)~~()

e. See Rule 101 of these rules. Motor vehicles and trailers used in interstate commerce. (4-2-08)

f. See Rule 107 of these rules. ~~Motor~~Vehicles ~~and Vessels - g~~Gifts, ~~m~~Military, ~~personnel, and exemptions~~ Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians. ~~(4-2-08)~~()

g. See Rule 108 of these rules. Motor vehicles manufacturer's, rental company's and dealer's purchase or use of motor vehicles. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

117. REFUND CLAIMS (RULE 117).

Sections 63-3612, 63-3613, 63-3619, 63-3626, 63-3629(c), 63-3631, 63-3045, 63-3045B, 63-3049 and 63-4408, Idaho Code

01. In General. Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, shall be in accordance with the provisions of this rule. (7-1-93)

02. Payment of Sales Tax by a ~~Purchaser~~ Buyer to a Vendor. When a ~~purchaser~~ buyer has paid sales tax to a vendor, and later determines that the sales tax was paid in error, the ~~purchaser~~ buyer shall request the refund from the vendor to whom the excess tax was paid. If the ~~purchaser~~ buyer can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Tax Commission. ~~(7-1-93)~~()

03. Payment of Sales or Use Tax Directly to the State. When a person holding a seller's permit or use tax account number has paid tax to the state, and later determines that the sales or use tax was paid in error, he may file a claim for refund directly with the Tax Commission. (7-1-93)

04. Bad Debts. Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by this Rule 117 and Rule 063 of these rules. ~~(5-3-03)~~()

05. Mathematical Errors. When the filer of sales or use tax returns determines that a mathematical error has been made on a previously filed return resulting in overpayment of the proper amount of sales or use taxes, he may file a claim for refund directly with the Tax Commission. (7-1-93)

06. Refund Claims ~~Form~~. Form TCR; (Sales Tax Refund Claim;) may be used to file for a refund from the Commission. Although this a form is available for this purpose, it is not required. A refund claim, however, must be in writing. ~~The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must state the amount of the refund; include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates; and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to~~

~~the retailer have been or will be refunded by the retailer to the purchaser.~~ and include the following information:

~~(4-2-08)~~()

- a. Full name, address, and phone number of the claimant: ()
- b. Claimant's seller's permit number or use tax account number if claimant has such a number: ()
- c. The amount of the refund claimed: ()
- d. A detailed statement of the reason the claimant believes refund is due: ()
- e. An itemized description of the specific goods or services to which the tax relates: ()
- f. The date on which the claimed excess taxes were paid: ()
- g. If the claimant is the retailer, a statement under oath that the amount of tax plus interest has been or will be refunded to the buyer; and. ()
- h. If the claim is for bad debt, detailed individual account information for each customer and each item purchased for which a refund is claimed. ()
- i. A refund claim must be filed within three years from the time the payment was made to the State Tax Commission. If a refund claim does not include the required information listed in Paragraphs 017.11.a. through h., as applicable, then the claim does not satisfy the requirement to file a written claim to stop the period of limitations provided in 63-3626(b)(1), Idaho Code, from running. A refund claim that does not include the required information will be denied and processed as set out in Subsection 017.11 of this rule. ()

07. Outstanding Liabilities. No claim for refund will be approved or issued ~~if~~ unless the claimant ~~has~~ first satisfies outstanding liabilities for ~~other~~ taxes administered by the Tax Commission. (5-3-03)()

08. Payment Under Protest. It is not necessary for a taxpayer to pay taxes under protest in order to subsequently be able to claim a refund of such taxes. (7-1-93)

09. Statute of Limitations. A claim for refund will not be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the State Tax Commission. (5-3-03)

10. Taxes Paid in Response to a Notice of Deficiency Determination. A claim for refund may not be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the State Tax Commission in conformance with a notice of deficiency determination must seek a refund by using the appeal procedures outlined in Rule 121 of these rules. (5-3-03)

11. Denial of a Refund Claim. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant ~~by return receipt requested delivery~~ by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall include a statement of the reasons for the denial. The notice of denial shall be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must file a petition for redetermination in the manner prescribed in Rule 121 of these rules. A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. (5-3-03)()

12. Interest on Refunds. See Rule 122 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).
Sections 63-3622, & 63-3622HH, Idaho Code

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

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

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

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

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

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

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

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

b. ~~Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101) on file from the purchaser. Form ST-111 must include the seller's~~

~~permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold.~~ (3-28-18)

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

~~d. Sales Tax Exemption on Lodging Accommodations Claimed by Employees Using A Qualifying Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or Idaho local government agency or other organization granted an exemption under Section 63-3622O, Idaho Code. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser.~~ (3-25-16)

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

~~f. Sales Tax Exemption Certificate—Vehicle/Vessel, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer.~~ (3-25-16)

~~g. Sales Tax Exemption Certificate—Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV.~~ (3-25-16)

~~h. Occasional Sale Exemption Claim—Office Trailer and Transport Trailer, Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption.~~ (3-25-16)

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

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

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

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

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

06c. Seller's Responsibility—~~Purchases for Resale~~. A seller is not liable for the collection of sales tax

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

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

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

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

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

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

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

05. Form ST-101, Sales Tax Resale and Exemption Certificate -- Claiming Exemptions. A Form ST-101 must be completed to claim the sales tax exemptions for the following categories. The buyer must identify the exempt category and specific area within the category for the exemption being claimed. If claiming to be production exempt, the taxpayer must identify the type of business and list the product produced. When claiming a contractor exemption, the invoice, purchase order or job number will be identified along with the city and state of the job location, project owner name, and the reason the project is exempt. ()

- a. Form ST-101 Exemption Categories: ()
- i. Production Exemptions: ()
- ii. Exempt Buyers: ()

- iii. Contractor Exemptions; and ()
- iv. Other Exempt Goods and Buyers ()

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

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

~~a.i.~~ A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a ~~purchaser~~ buyer claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: maintenance and janitorial equipment and supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in transportation activities, equipment or other property used to make repairs, tangible personal property that becomes a fixture, improvement, or component of real property, licensed motor vehicles, aircraft; and recreation-related vehicles as described in Section 63-3622HH, Idaho Code. (3-6-00)()

- ~~i.~~ ~~Maintenance and janitorial equipment and supplies;~~ (3-6-00)
- ~~ii.~~ ~~Office equipment and supplies;~~ (3-6-00)
- ~~iii.~~ ~~Selling and distribution equipment and supplies;~~ (3-6-00)
- ~~iv.~~ ~~Property used in transportation activities;~~ (3-6-00)
- ~~v.~~ ~~Equipment or other property used to make repairs;~~ (3-6-00)
- ~~vi.~~ ~~Tangible personal property which becomes a component of any real property or any improvement or fixture thereto;~~ (3-6-00)
- ~~vii.~~ ~~Licensed motor vehicles;~~ (3-6-00)
- ~~viii.~~ ~~Aircraft; and~~ (3-6-00)
- ~~ix.~~ ~~Recreational-related vehicles as described in Section 63-3622HH, Idaho Code.~~ (3-28-18)

~~b.~~ ~~Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck).~~ (3-25-16)

~~e.i.~~ A retailer cannot rely on an exemption certificate obtained from a ~~purchaser~~ buyer when the law does not provide an exemption from the tax for the ~~purchaser~~ buyer, such as a nonprofit organization not specifically

exempted by the sales tax law or a governmental agency of another state.

(3-6-00)()

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

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

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

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

g. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer must collect the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). ()

06. Tax Exemption Statements. In lieu of Form ST-101, retailers, when selling property that the buyer claims is entitled to the exemptions listed below, may stamp or imprint on the face of their sales invoices, or buyers may stamp or imprint on the face of their purchase orders a statement containing the language prescribed in this rule. ()

a. A tax exemption statement must be signed by the buyer and the name, address, and nature of business of the buyer is shown on the invoice. The signature on the statement must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this subsection. Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor. ()

~~**e.b.** Production or Logging Exemption. *In lieu of Form ST 101, retailers, A tax exemption statement can be used when selling property that the purchaser buyer claims is entitled to the production exemption, or the logging exemption. The statement can be made by either;* ()~~

~~**i.** *may having the seller stamp or imprint the following statement on the face of their sales invoices;* ()~~
or

~~**ii.** *purchasers may having the seller stamp or imprint the following statement on the face of their purchase orders, a certificate containing the following language: (3-4-10)()*~~

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

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

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

NATURE OF BUSINESS

BUYER'S SIGNATURE

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

~~**f.** *Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)*~~

~~**c.** Matter Used to Produce Heat by Burning. A tax exemption statement can be used when selling materials that the buyer claims will be used to produce heat by burning as defined in Rule 088 of these rules and for which no bulk delivery will be made. The statement can be made by either; ()~~

~~**i.** having the seller stamp or imprint the following statement on the face of their sales invoices, or ()~~

~~**ii.** having the buyer stamp or imprint on the face of their purchase order, a statement that contains the following language: ()~~

~~I certify that the matter I have purchased will be used in a furnace or similar device for the purpose of water heating, cooking, or raising or maintaining the temperature in an enclosed space, dwelling, or building.~~

BUYER'S SIGNATURE ()

07. Form ST-102, Use Tax Exemption Certificate -- New Resident or Nonresident Military. To claim exemption for vehicles, vessels, and aircraft that were personally owned and acquired while residing in another state and used primarily outside Idaho new residents and nonresident military individuals must complete Form ST-102. ()

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

09. Form ST-104HM, Sales Tax Exemption Certificate -- Lodging Accommodations. Form ST-104-HM is used to claim exemption for lodging accommodations paid for using a credit card company who will directly bill to and be paid by federal or, Idaho state, and local government agencies or other qualifying organizations granted exemption under Section 63-3622O, Idaho Code. This form should not be used for credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/buyer. ()

10. Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles. Form ST-104IC must be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, trailer or glider kit. ()

11. Form ST-104MV, Sales Tax Exemption Certificate -- Vehicle/Vessel. Form ST-104-MV, must be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, vessel, or trailer. This has been replaced with Forms, ST-104IC and ST-104NR. ()

12. Form ST-104NR, Sales Tax Exemption Certificate -- Vehicle/Vessel. Form ST-104NR, must be completed by each buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when a nonresident buyer is purchasing a qualifying vehicle, vessel, or trailer. ()

13. Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer. Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. ()

14. Form ST-111, Sales Tax Exemption Claim Form -- Grocer. Retailers of food products who have been granted record reduction authority by the State Tax Commission may accept the Form ST-111, from a buyer if the retailer has a properly executed Form ST-101 on file from the buyer. Form ST-111 must include the buyer's Idaho seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. ()

15. Form ST-133, Sales Tax Exemption Certificate -- Family or American Indian Sales. ()

a. Family Sale. Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code. ()

b. American Indian Sales. Form ST-133 must be completed when claiming an exemption from tax when selling a vehicle, vessel, or RV to a member of an American Indian tribe within the boundaries of an American Indian reservation. ()

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

change other than owners' equity. ()

17. Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit. Form ST-133GT must be completed to claim an exemption from tax when a vehicle, vessel, camper, trailer, or recreational vehicle is being transferred or received as a gift. ()

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

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

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

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

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

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