REVENUE & TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 315 through 341.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7544.

DATED this 13th day of November 2009.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

Rule 075 is being amended to add the tax brackets for calendar year 2009, and remove the information for calendar year 2004 so only 5 years of historical data is retained in the rule. Idaho Code section 63-3024 establishes the tax rates for individuals, trusts and estates and requires adjusting the income tax brackets annually for the effects of inflation.

Rule 173 is being amended to include trusts and estates in the general discussion of the Idaho capital gains deduction and pass-through entities. It had been inadvertently left out from the rule.

Rule 201 is being amended to modify how a taxpayer can make the election to forego the net operating loss carryback by removing the option of attaching the federal election. This will eliminate confusion when a taxpayer has attached a federal return that includes the federal election but does not want to make the election for Idaho. The rule also clarifies that if a net operating loss is required to be carried back, if the statute of limitations has expired on the carryback year, a refund will not be allowed in the closed taxable year.

Rule 252 is being amended to provide nonresidents with general rules on how deductions should be calculated in computing Idaho adjusted gross income. This includes information for the following groups of deductions: 1) Deductions directly related to specific items of income or property, 2) Deductions allowed based on qualifying types of income, and 3) Deductions that do not relate to specific items of income or to the earning of qualifying income. Specific examples are also included.

Rule 273 is being amended to provide that the unemployment compensation for nonresidents is sourced to the state that paid it. By sourcing this income based on the state of the payor, the taxpayer will know with certainty whether or not the income is Idaho source.

Rule 450 is being amended so that the directions to taxpayers on how to make intercompany eliminations is consistent with requirements in Rules 600 and 641. Eliminating all intercompany transactions in some cases may not properly reflect the factors, so this provision is being modified.

Rule 570 is applicable to multistate corporations and is being amended to provide that commissions and fees related to the sale of another taxpayer's real property are sourced to the state where the property related to the commission and fees is located. This will be an easier determination for taxpayers and the Tax Commission than using costs of performance.

Rule 640 is being amended consistent with House Bill 3, which was passed by the 2009 Idaho Legislature. The bill amended Idaho Code section 63-3027B to clarify that one qualified corporation within the water's edge group who makes the election binds the other corporations to that election, including corporations added to the combined group in years after the initial election. The rule also clarifies the filing requirements of the election form and that a corporation that is not part of a unitary group cannot make the water's edge election.

Rule 641 is being amended to state that the filing of a protective 1120-F return by itself will not constitute the filing of a federal return for purposes of the water's edge combined report.

Rules 700 and 701 are being amended consistent with House Bill 232 as amended, which was passed by the 2009 Idaho Legislature. The bill amended Idaho Code section 63-3029 to allow a resident trust or estate an income tax credit for taxes paid to other states. Examples of the calculations for trusts and estates are being added to Rule 700. Rule 701 is being amended to add information addressing income subject to tax by both states with regard to estates and trusts.

Rule 711 is being amended to correct terms and delete obsolete information relating to the tax paid by an S corporation. A sentence clarifying the times when a lessee may claim the investment tax credit is also being added.

Rule 765 is being modified to note the reduction required to qualified investment for grants received from the rural Idaho economic development biofuel infrastructure matching grant fund.

Rule 771 is being amended to include the grocery credit amounts for 2009. These amounts are scheduled for increases each year as provided by Idaho Code section 63-3024A.

Rule 824 is being amended to correct terms and delete obsolete information relating to the tax paid by an S corporation.

Rule 874 is being amended to require all W-2s to be filed with the State Tax Commission by the last day of February. This will facilitate the state's ability to verify the information on the W-2 prior to issuing refunds.

Rules 940, 943, 944, and 945 are being amended consistent with House Bill 242, which was passed by the 2009 Legislature. The bill amended the Idaho Small Employer Incentive Act by extending the incentives through 2020.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or

increased: None.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

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 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
Section 63-3024, Idaho Code. (3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (5-8-09)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars ($30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars ($15,000). The tax amount would then be multiplied by two (2). (5-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~***a.*** *For taxable years beginning in 2004:*~~

~~***IF IDAHO TAXABLE INCOME IS***~~		~~***IDAHO TAX***~~	
~~***At least***~~	~~***But less than***~~	~~***Is***~~	~~***Plus***~~
~~*$0.00*~~	~~*$1,129.00*~~	~~*$0*~~	~~+ *1.6% of taxable income*~~
~~*$1,129.00*~~	~~*$2,258.00*~~	~~*$18.06*~~	~~+ *3.6% of the amount over $1,129.00*~~
~~*$2,258.00*~~	~~*$3,387.00*~~	~~*$58.70*~~	~~+ *4.1% of the amount over $2,258.00*~~
~~*$3,387.00*~~	~~*$4,515.00*~~	~~*$104.98*~~	~~+ *5.1% of the amount over $3,387.00*~~
~~*$4,515.00*~~	~~*$5,644.00*~~	~~*$162.55*~~	~~+ *6.1% of the amount over $4,515.00*~~
~~*$5,644.00*~~	~~*$8,466.00*~~	~~*$231.41*~~	~~+ *7.1% of the amount over $5,644.00*~~
~~*$8,466.00*~~	~~*$22,577.00*~~	~~*$431.78*~~	~~+ *7.4% of the amount over $8,466.00*~~
~~*$22,577.00 or more*~~		~~*$1,475.95*~~	~~+ *7.8% of the amount over $22,577.00*~~

~~*(4-6-05)*~~

~~***b***~~**a.** For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
$0.00	$1,159.00	$0	+ 1.6% of taxable income
$1,159.00	$2,318.00	$18.54	+ 3.6% of the amount over $1,159.00
$2,318.00	$3,477.00	$60.26	+ 4.1% of the amount over $2,318.00
$3,477.00	$4,636.00	$107.78	+ 5.1% of the amount over $3,477.00
$4,636.00	$5,794.00	$166.89	+ 6.1% of the amount over $4,636.00
$5,794.00	$8,692.00	$237.53	+ 7.1% of the amount over $5,794.00
$8,692.00	$23,178.00	$443.29	+ 7.4% of the amount over $8,692.00
$23,178.00 or more		$1,515.25	+ 7.8% of the amount over $23,178.00

(4-11-06)

~~***c***~~**b.** For taxable years beginning in 2006, as calculated on June 7, 2006:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
$0.00	$1,198.00	$0	+ 1.6% of taxable income
$1,198.00	$2,396.00	$19.17	+ 3.6% of the amount over $1,198.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
$2,396.00	$3,594.00	$62.30	+ 4.1% of the amount over $2,396.00
$3,594.00	$4,793.00	$111.43	+ 5.1% of the amount over $3,594.00
$4,793.00	$5,991.00	$172.53	+ 6.1% of the amount over $4,793.00
$5,991.00	$8,986.00	$245.62	+ 7.1% of the amount over $5,991.00
$8,986.00	$23,963.00	$458.30	+ 7.4% of the amount over $8,986.00
$23,963.00 or more		$1,566.59	+ 7.8% of the amount over $23,963.00

(3-30-07)

~~d~~c. For taxable years beginning in 2007, as calculated on May 17, 2007:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$0.00	$1,237.00	$0	+ 1.6% of taxable income
$1,237.00	$2,474.00	$19.79	+ 3.6% of the amount over $1,237.00
$2,474.00	$3,710.00	$64.31	+ 4.1% of the amount over $2,474.00
$3,710.00	$4,947.00	$115.02	+ 5.1% of the amount over $3,710.00
$4,947.00	$6,184.00	$178.10	+ 6.1% of the amount over $4,947.00
$6,184.00	$9,276.00	$253.55	+ 7.1% of the amount over $6,184.00
$9,276.00	$24,736.00	$473.08	+ 7.4% of the amount over $9,276.00
$24,736.00 or more		$1,617.13	+ 7.8% of the amount over $24,736.00

(4-2-08)

~~e~~d. For taxable years beginning in 2008, as calculated on March 12, 2008:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$1.00	$1,272.00	$0	+ 1.6% of taxable income
$1,272.00	$2,544.00	$20.35	+ 3.6% of the amount over $1,272.00
$2,544.00	$3,816.00	$66.15	+ 4.1% of the amount over $2,544.00
$3,816.00	$5,088.00	$118.30	+ 5.1% of the amount over $3,816.00
$5,088.00	$6,360.00	$183.17	+ 6.1% of the amount over $5,088.00
$6,360.00	$9,540.00	$260.77	+ 7.1% of the amount over $6,360.00
$9,540.00	$25,441.00	$486.55	+ 7.4% of the amount over $9,540.00
$25,441.00 or more		$1,663.19	+ 7.8% of the amount over $25,441.00

(5-8-09)

e. For taxable years beginning in 2009, as calculated on April 28, 2009:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	**But less than**	**Is**	**Plus**
$1	$1,321	$0	+ 1.6% of taxable income
$1,321	$2,642	$21.13	+ 3.6% of the amount over $1,321
$2,642	$3,963	$68.69	+ 4.1% of the amount over $2,642
$3,963	$5,284	$122.84	+ 5.1% of the amount over $3,963
$5,284	$6,604	$190.21	+ 6.1% of the amount over $5,284
$6,604	$9,907	$270.78	+ 7.1% of the amount over $6,604
$9,907	$26,418	$505.24	+ 7.4% of the amount over $9,907
$26,418 or more		$1,727.05	+ 7.8% of the amount over $26,418

(____)

(BREAK IN CONTINUITY OF SECTIONS)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (RULE 173).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. Qualified property held by an S corporation, ~~or~~ partnership, trust, or estate may be eligible for the Idaho capital gains deduction. The deduction is ~~*claimed*~~ allowed only on the return of an individual shareholder, ~~or~~ individual partner, or individual beneficiary. ~~*(3-20-97)*~~(____)

b. Partnerships, ~~*and*~~ S corporations, ~~*electing to*~~ trusts, and estates that pay the tax for an electing individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. ~~*(4-5-00)*~~(____)

02. Gross Income Limitations. To qualify for the Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation, partnership, trust, or estate, a shareholder, partner, or beneficiary must meet the gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. For example, if the property was breeding livestock, the shareholder, partner, or beneficiary must have more than one-half (1/2) of his gross income for the taxable year of the sale from farming or ranching operations in Idaho. (3-30-07)

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in

Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

04. Examples. (3-20-97)

a. XYZ Farms, a multistate partnership, sold three (3) parcels of farmland: one (1) in Idaho purchased seven (7) years ago, one (1) in Washington, and one (1) in Oregon. The sale of the Idaho property resulted in a forty thousand dollar ($40,000) gain, the sale of the Washington property resulted in a thirty thousand dollar ($30,000) gain, and the sale of the Oregon property resulted in a twenty thousand dollar ($20,000) loss, for a net gain of fifty thousand dollars ($50,000). The income and loss from the sale of the farmland is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each nonresident partner reports capital gain net income in determining taxable income for the year and may claim an Idaho capital gains deduction of six thousand dollars ($6,000), computed as follows: ($40,000 Idaho gain X 75% apportionment factor = $30,000 gain apportioned to Idaho X 1/3 interest = $10,000 attributable to each partner X 60% = $6,000 capital gains deduction allowable on each partner's nonresident return). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or eight thousand dollars ($8,000). After 2001, the capital gains deduction returns to sixty percent (60%) or six thousand dollars ($6,000). (3-30-07)

b. Assume the same facts as in Paragraph 173.04.a., of this rule, except that one (1) of the nonresident partners reported capital gain net loss on his federal return. Because the partner did not meet the criteria of reporting capital gain net income in determining taxable income as required by Section 63-3022H(1), Idaho Code, he would not be entitled to the Idaho capital gains deduction on his Idaho return. (5-8-09)

c. Assume the same facts as in Paragraph 173.04.a., of this rule, except that the Oregon property was sold at a ninety thousand dollar ($90,000) loss, resulting in capital gain net loss from the partnership. If a partner had other capital gains to report and reported capital gain net income on his federal income tax return, he would be entitled to part or all of the capital gains deduction computed on the Idaho property in Paragraph 173.04.a., of this rule, limited to the amount of the capital gain net income from all property included in taxable income by the partner. (5-8-09)

d. Assume the same facts as in Paragraph 173.04.a., of this rule, except that the farmland is determined to be nonbusiness income. Therefore, the forty thousand dollar ($40,000) gain from the sale of the Idaho farmland is allocated to Idaho. Assuming each partner had no other capital gains or losses except from the partnership, each partner may claim an Idaho capital gains deduction of eight thousand dollars ($8,000), computed as follows: ($40,000 gain allocated to Idaho X 1/3 = $13,333 partner's share X 60% = $8,000 Idaho capital gains deduction allowable on each partner's nonresident return). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars ($10,667). (5-8-09)

e. An Idaho resident partner must report all partnership income to Idaho. As a result, his share of partnership income, including any capital gain included in apportionable income, is

not limited by the apportionment factor of the partnership. Therefore, in the example in Paragraph 173.04.a., of this rule, a resident partner may claim an Idaho capital gains deduction of eight thousand dollars ($8,000) computed as follows: ($40,000 Idaho gain X 1/3 interest X 60% = $8,000). For taxable year 2001, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, computed to be ten thousand six hundred and sixty-seven dollars ($40,000 Idaho gain X 1/3 interest X 80% = $10,667). (5-8-09)

f. Gains that cannot be traced back to the sale of Idaho qualifying property do not qualify for the Idaho capital gains deduction. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).
Section 63-3022(c), Idaho Code. (7-1-99)

01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers. (3-20-97)

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

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

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

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

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

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

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

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

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

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

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars ($100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars ($100,000). (4-5-00)

b. Except as provided in Subsection 201.04.c., the net operating loss carryback shall be applied as follows: (4-5-00)

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

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

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.b. shall not apply and the net operating loss carryover shall be applied as follows: (5-3-03)

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

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

d. If the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback shall not result in a refund for the closed taxable year. ( )

05. Timing and Method of Electing to Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning ~~*prior to*~~ on or after January 1, 20~~*0*~~10. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: ~~*(3-30-01)*~~( )

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

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

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

b. ~~*Net operating losses incurred in taxable years beginning on or after January 1, 2001. The election must be made by the due date of the Idaho loss year return, including extensions. Once the completed Idaho return is filed, the extension period expires. The election shall be made by either a*~~Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss ~~*or following the requirements of Subsection 201.05.a*~~ shall not constitute an election for Idaho purposes. ~~*(3-30-01)*~~(____)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Subsection~~s~~ 201.05.a.~~ *and 201.05.b.*~~, it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.b. ~~*(3-30-01)*~~(____)

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

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

08. Conversion of C Corporation to S Corporation. A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. However, an S corporation subject to the tax on built-in gains is allowed to deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

252. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADJUSTMENTS ALLOWED IN COMPUTING IDAHO ADJUSTED GROSS INCOME (RULE 252).
Section 63-3026A(6), Idaho Code. (3-20-97)

01. ~~***Payments to an Individual Retirement Account (IRA)****. To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section*~~

~~*219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho compensation is determined pursuant to Rule 270 of these rules.*~~ **In General**. Deductions allowed in computing adjusted gross income shall be allowed in computing Idaho adjusted gross income unless specifically denied by Idaho law. The amount allowed shall be computed as provided in this rule. Each computation in this rule shall include the amounts reported for the taxable year unless otherwise indicated. ~~*(3-30-01)*~~( )

02. ~~***Payments to a Keogh Retirement Plan, Simplified Employee Pension (SEP) Plan, Self-Employment Tax, and Self-Employment Health Insurance***. *To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's self-employment income from Idaho sources by the taxpayer's total self-employment income. Multiply the self-employment deductions allowed for federal purposes by the percentage.*~~ **Deductions Directly Related to Specific Items of Income or Property**. If the deduction directly relates to a specific item of income or property, the allowable deduction shall be computed by dividing the amount of related income reported in Idaho income by the total of such related income reported in federal income. This percentage is multiplied by the deduction to arrive at the amount allowed as an Idaho deduction. If the deduction is related to property that did not generate income during the taxable year, the deduction shall be allowed in the proportion that the property to which the deduction relates was located in Idaho. Examples of some of these deductions include the following: ~~*(3-20-97)*~~( )

~~***03***~~**a.** Penalty on early withdrawal of savings. ~~*To determine t*~~The allowable ~~*adjustment, calculate a percentage*~~ deduction shall be computed by dividing the interest income of the time savings deposit subject to the penalty ~~*that is required to be*~~ included ~~*as*~~ in Idaho income by the total interest income of the time savings deposit~~*. Multiply*~~ included in federal income. This percentage is multiplied by the penalty deduction allowed for federal purposes~~*by the percentage*~~. ~~*(3-20-97)*~~( )

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

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

d. Jury duty pay remitted to an employer. ( )

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

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

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

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

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

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

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

04. Other Deductions. Deductions that do not relate to specific items of income or to the earning of qualifying income shall be allowed in the proportion that Idaho total income bears to total income. Such deductions include the following: ( )

04**a.** Alimony payments. ~~*The deduction for alimony payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* *(3-15-02)*~~( )

05**b.** Moving expenses. ~~*The deduction for moving expenses allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* *(3-15-02)*~~( )

~~***06. Payment to a Federal Medical Savings Account****. To determine the allowable adjustment, calculate a percentage by dividing the taxpayer's Idaho compensation by the taxpayer's total compensation. Multiply the deduction allowed for federal purposes by the percentage. For purposes of this rule, compensation means "compensation" as defined in Section 219(f)(1), Internal Revenue Code, and Treasury Regulation Section 1.219-1(c)(1). Idaho*~~

~~*compensation is determined pursuant to Rule 270 of these rules.* *(3-30-01)*~~

~~***07***~~**c.** Student loan interest payments. ~~*The deduction for student loan interest payments allowed for federal purposes is allowed for Idaho purposes in the proportion that Idaho total income bears to total income.* *(3-15-02)*~~(____)

d. Tuition and fees deduction. (____)

(BREAK IN CONTINUITY OF SECTIONS)

273. IDAHO COMPENSATION -- UNEMPLOYMENT COMPENSATION (RULE 273).
Section 63-3026A(3), Idaho Code. ~~*(5-8-09)*~~

~~***01. In General****. If an individual receives unemployment compensation benefits that are related to work performed in Idaho, all or part of the unemployment compensation benefits are Idaho source income, even though the unemployment compensation benefits may relate to services performed in Idaho in an earlier taxable year. If the unemployment compensation benefits are received for employment in Idaho and in one or more other states, the portion of the unemployment compensation benefits that constitutes Idaho source income shall be determined by multiplying the unemployment compensation benefits received by the proration of Idaho wages to total wages used in computing the unemployment compensation benefits.*~~ Unemployment compensation benefits are Idaho source income if the benefits are received by the taxpayer from the state of Idaho, even though the benefits may relate to wages earned in Idaho and another state. Unemployment compensation benefits received from another state shall not constitute Idaho source income even though the calculation of the benefits may be based in part on wages earned in Idaho. ~~*(5-8-09)*~~(____)

~~***02. Example****. John, a nonresident of Idaho, worked in Idaho and Oregon during 2007, earning forty-five thousand dollars ($45,000), of which fifteen thousand dollars ($15,000) was for personal services provided in Idaho. On January 1, 2008, John was laid off by his employer. During 2008, he received unemployment compensation benefits totaling twelve thousand dollars ($12,000) from the state of Oregon. These benefits were based on his total wages of forty-five thousand dollars ($45,000) received during 2007. Because part of the unemployment compensation benefits received by John in 2008 related to his work in Idaho, John has Idaho source income from the unemployment compensation benefits. To determine the amount of Idaho source income John received, he must compute the percentage of Idaho wages to total wages that was used to compute the unemployment compensation benefits and apply that percentage to the amount of unemployment compensation benefits he received. This computation must be made even though John did not perform personal services in Idaho in 2008, the year the unemployment compensation benefits were received. The unemployment compensation taxable to Idaho is four thousand dollars ($4,000) computed as follows: ($15,000 Idaho wages divided by total wages of $45,000 = 1/3 X unemployment compensation received of $12,000 = $4,000 of Idaho source income).* *(5-8-09)*~~

(BREAK IN CONTINUITY OF SECTIONS)

450. APPORTIONMENT FORMULA (RULE 450).
Section 63-3027(i), Idaho Code. (3-20-97)

01. Apportionment Factors. All of a taxpayer's business income shall be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(i), Idaho Code. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. (3-20-97)

02. Intercompany Transactions. ~~*All i*~~Intercompany transactions shall be eliminated ~~*when computing*~~ to the extent necessary to properly compute the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. ~~*(3-20-97)*~~(____)

03. Rounding. The individual factors and the average apportionment factor shall be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. (3-20-97)

04. Verification of Factors. The taxpayer shall make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES -- SALES FACTOR (RULE 570).
Section 63-3027(s), Idaho Code. (3-20-97)

01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. Gross Receipts from Intangibles. (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the gross receipts shall be included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. (4-11-06)

b. If business income from intangible property cannot readily be attributed to any

particular income producing activity of the taxpayer, the gross receipts shall be excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest shall be excluded from the denominator and numerator of the sales factor. (4-11-06)

c. Subsection 570.02 of this rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. (4-11-06)

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03 of this rule, each treasury function shall be considered separately. (4-11-06)

a. For purposes of Subsection 570.03 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. (4-11-06)

b. For purposes of Subsection 570.03 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-11-06)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the

taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 of this rule does not operate to classify those sales as attributable to a treasury function. (4-11-06)

04. Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property. Notwithstanding the provisions of Rule 550 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property shall be sourced to the state where the real property is located. (____)

(BREAK IN CONTINUITY OF SECTIONS)

640. WATER'S EDGE -- MAKING THE ELECTION (RULE 640).
Section 63-3027B, Idaho Code. (3-20-97)

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. (3-20-97)

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined ~~*report*~~ group for Idaho income tax purposes. If a corporation is not part of a unitary group for which a combined report is required, the corporation cannot make the water's edge election. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. ~~*(3-20-97)*~~(____)

a. The election ~~*can*~~ may be made for a year beginning on or after January 1, 1993. The election must be filed with the original tax return for the first year of the election. If the water's edge group changes in a subsequent year through the acquisition or disposition of a corporation with an Idaho filing requirement, a copy of the election shall be attached to the tax return for such taxable year and the changes to the water's edge group shall be noted on the form. See Rule 643 of these rules for Change of Election. ~~*(3-20-97)*~~(____)

b. ~~*All taxpayers required to file an Idaho return and included in the water's edge combined group must make the election.*~~ Any corporation included in the unitary group that files with Idaho a consent to the reasonable production of documents may make the election on behalf of the group. An election made by any member of a unitary group binds all other members regardless of any changes in the unitary group in later taxable years. (____)

c. The election must be made on a form provided by the Tax Commission~~*. If the*~~

~~*group makes a joint election,*~~ and include a list of each corporation required to file ~~*must be provided*~~ an Idaho income tax return. ~~*A joint*~~ The election must be signed by an individual authorized to bind all companies to the election. ~~*(3-20-97)*~~(____)

~~**e**~~**d.** Idaho taxpayers having a valid water's edge election shall compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-20-97)

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

641. WATER'S EDGE -- ELEMENTS OF A COMBINED REPORT (RULE 641).
Section 63-3027B, Idaho Code. (3-20-97)

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group shall be eliminated to the extent necessary to properly reflect combined income. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included in the computation of the income of the water's edge combined group. (4-2-08)

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group shall be determined pursuant to Section 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the group shall be eliminated to the extent necessary to properly compute the apportionment factors of the water's edge combined group. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation shall be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, shall be included in the sales factor computation. (4-2-08)

03. Foreign Corporations Filing Protective Returns. A foreign corporation filing a protective Form 1120-F return shall not be deemed to be filing a federal income tax return for purposes of taking into account the income and apportionment factors of affiliated corporations in a unitary relationship with the taxpayer solely on the basis of filing this federal return. If subsequent to the filing of the protective 1120-F return it is determined that the foreign corporation had income effectively connected with the United States and was required to file a federal income tax return, the income and apportionment factors of the foreign corporation shall be required to be included in the combined report of the unitary group for such taxable year and an Idaho return or amended return may be required. (____)

(BREAK IN CONTINUITY OF SECTIONS)

700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- IN GENERAL (RULE 700).
Section 63-3029, Idaho Code. (3-30-07)

01. Taxpayers Entitled to the Credit. The credit for taxes paid to another state shall be allowed ~~*only*~~ to qualifying individuals, estates, and trusts. ~~*(5-8-09)*~~( )

a. The credit is allowed to resident individuals who are domiciled in Idaho at the time the income was earned in another state. (5-8-09)

b. The credit is allowed to part-year resident individuals who were domiciled or residing in Idaho at the time the income was earned in another state. (5-8-09)

c. The credit is allowed to an estate or trust that is an Idaho resident at the time the income was earned in another state. ( )

~~**e**~~**d.** Income earned in another state shall be determined under Section 63-3026A, Idaho Code, and related rules. (5-8-09)

02. Taxes Eligible for the Credit. The credit for taxes paid to another state is allowed for the amount of income tax imposed by another state on a qualifying individual, an S corporation, partnership, limited liability company, estate, or trust of which the individual is a shareholder, partner, member or beneficiary. For taxes paid to another state by a pass-through entity, the credit is allowed to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state. ~~*(5-8-09)*~~( )

03. Taxes Not Eligible for the Credit. If ~~*A*~~any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit shall not be allowed for income taxes imposed by another state on income not taxed by Idaho. ~~*(7-1-98)*~~( )

04. Credit Calculated on a State-by-State Basis. The credit and credit limitations shall be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (7-1-98)

05. Income Tax Payable to Another State. The income tax payable to another state shall be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (3-30-07)

06. Limitations. The credit for taxes paid to another state shall be limited as follows: (3-30-07)

a. The credit allowed may not exceed the amount of tax actually paid to the other

state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, estate, or trust.
~~*(3-30-07)*~~(____)

b. If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit shall reduce the income tax paid by the pass-through entity. For example, an individual domiciled in Idaho is required to pay tax in another state due to his interest in an S corporation operating in that state. In addition to the individual's tax paid to the other state, the S corporation is required to pay an income tax to that state, of which four hundred dollars ($400) is attributable to the Idaho resident. The individual's income tax to the other state totals three hundred dollars ($300), but he is entitled to a three-hundred sixty dollar ($360) refundable corporate tax credit due to his share of the tax paid by the pass-through entity, resulting in a net refund of sixty dollars ($60). In computing the tax actually paid to the other state, the tax paid by the pass-through entity must be reduced by the net refund received by the individual ($400 - $60 = $340). The credit for tax paid to the other state is limited to three hundred forty dollars ($340). (3-30-07)

c. The credit may not exceed the proportion of the tax otherwise due to Idaho that ~~*the amount of*~~ the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. (____)

i. For example, if the adjusted gross income derived in another state is twelve thousand dollars ($12,000) after taking into account the Idaho additions and subtractions required by the Idaho Income Tax Act, and the individual's total adjusted gross income similarly modified equals fifty thousand dollars ($50,000), the credit cannot exceed twenty-four percent (24%) of the tax paid to Idaho ($12,000/$50,000 = 24% x tax paid to Idaho). ~~*(3-30-07)*~~(____)

ii. See Rule 701 of these rules for information related to part-year residents. (____)

d. The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust.(____)

i. Federal total income of the estate or trust derived from sources in the other state shall be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state shall be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. (____)

ii. For example, if a trust sells Oregon property at a gain of thirty-six thousand dollars ($36,000), which is the only income derived from sources in the other state, and the trust's federal total income is ninety thousand dollars ($90,000), the credit cannot exceed forty percent (40%) of the tax paid to Idaho ($36,000/$90,000 = 40% x tax paid to Idaho.) (____)

07. Rounding. For taxable years beginning in or after 2007, the proration calculated

under Section 63-3029, Idaho Code, shall be calculated four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($10,000/$15,000 = .66666 = .6667 = 66.67%). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($10,000/$30,000 = .33333 = .3333 = 33.33%). The percentage may not exceed one hundred percent (100%) nor be less than zero (0). (4-2-08)

701. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY -- PART-YEAR RESIDENTS (RULE 701).
Section 63-3029, Idaho Code. (3-30-07)

01. Income Subject to Tax by Both States. (____)

a. Individuals. For purposes of the credit for income taxes paid to another state, income subject to tax by both states shall mean the total amount of income a ~~*taxpayer*~~ an individual receives from sources outside of Idaho during the portion of the year he is domiciled or residing in Idaho. ~~*Both the source state and Idaho must impose an income tax on this income.*~~ Income received during the portion of the year when the ~~*taxpayer*~~ individual was not domiciled or residing in Idaho does not qualify. ~~*(5-8-09)*~~(____)

b. Estates and Trusts. If an estate or trust is determined to be a part-year resident, income subject to tax by both states shall mean the total amount of income the estate or trust receives from sources outside of Idaho during the portion of the year the estate or trust is a resident of Idaho. Income received during the portion of the year when the estate or trust was not a resident of Idaho does not qualify. (____)

c. Both the source state and Idaho must impose an income tax on the income for the income to be subject to tax by both states. (____)

02. Examples. The following examples assume the taxpayer earned only wage income. (3-30-07)

a. Taxpayer A was domiciled in California and worked in that state from January through June. In July he moved to Idaho and changed his domicile from California to Idaho. He worked in Idaho the rest of the year. California will tax only the wages earned in California and Idaho will tax only the wages earned in Idaho. Because no income is subject to tax by both states, no credit for income taxes paid another state is allowed. (3-30-07)

b. Taxpayer B was domiciled in Oregon from January through June. On July 1 he moved to Idaho and changed his domicile from Oregon to Idaho. He resided in Idaho the rest of the year. He worked in Oregon for the same employer the entire year. Oregon will tax all the wages earned during the year since they were earned in Oregon. Idaho will tax only the wages he earned in Oregon while residing in Idaho. As a result, only one-half (6 months / 12 months = 1/2) of his wages qualify for credit purposes as being subject to tax by both Idaho and Oregon. (3-30-07)

c. Taxpayer C was domiciled in California. He resided and worked in California from January through June. On July 1 he moved to Idaho, but did not change his domicile to Idaho as

he intended to return to his home in California once his job assignment in Idaho was completed. California will tax all his income earned during the year since he is domiciled in California. Idaho will tax only the income he earned while residing in Idaho. Taxpayer C will not receive a credit for income taxes paid to California on his Idaho wages because this income is not earned in another state. If Taxpayer C received other income while residing in Idaho that is taxed by Idaho but sourced to another state, such as gains on the sale of stock, he may be entitled to a credit for taxes paid on this income. (5-8-09)

711. IDAHO INVESTMENT TAX CREDIT -- TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).
Section 63-3029B, Idaho Code. (3-20-97)

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

02. Conversion of C Corporation to S Corporation. (3-20-97)

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains~~, *net capital gains,*~~ and excess net passive income. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. ~~*(3-20-97)*~~(____)

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

a. The distribution to members is made as provided in Rule 785 of these rules. (3-15-02)

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

04. Leased Property. Generally the credit for qualified investments in leased property

is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. ~~(3-20-97)~~( )

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

765. BIOFUEL INFRASTRUCTURE INVESTMENT TAX CREDIT -- IN GENERAL (RULE 765).
Section 63-3029M, Idaho Code. (4-2-08)

01. Credit Allowed. The biofuel infrastructure investment tax credit allowed by Section 63-3029M, Idaho Code, may be earned during taxable years beginning on and after January 1, 2007, and before December 31, 2011. It applies to qualified investment placed in service after July 1, 2007. (4-2-08)

a. Qualified investment placed in service on or before July 1, 2007, does not qualify for the biofuel infrastructure investment tax credit. The investment may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if pumps to be used for biofuel are placed in service in Idaho on May 15, 2007, the biofuel pumps do not qualify for the biofuel infrastructure investment tax credit since they were not placed in service after July 1, 2007. The biofuel pumps will qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-2-08)

b. Qualified investment placed in service after July 1, 2007, during a taxable year beginning before January 1, 2007, does not qualify for the biofuel infrastructure investment tax credit. The investment may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if pumps to be used for biofuel are placed in service in Idaho on August 1, 2007, during a taxable year that begins on October 1, 2006, the biofuel pumps do not qualify for the biofuel infrastructure investment tax credit since they were not placed in service in a taxable year beginning on or after January 1, 2007, and before December 31, 2011. The biofuel pumps will qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (4-2-08)

02. Qualified Investment. For purposes of the biofuel infrastructure investment tax credit, qualified investment includes the following: (4-2-08)

a. New fueling infrastructure dedicated to the purpose of selling or offering for sale biofuel. New fueling infrastructure shall mean investment in fueling infrastructure that: (4-2-08)

i. Is constructed or erected by the taxpayer, or (4-2-08)

ii. Is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new infrastructure. (4-2-08)

b. Costs to upgrade existing fueling infrastructure that was previously incompatible to enable it to offer biofuel. Such costs include expenses related to the cleaning of existing fuel storage tanks, trucks, or other equipment for the purpose of providing biofuels. (4-2-08)

c. Fueling infrastructure means necessary tanks, piping, pumps, pump stands, hoses, monitors, blending equipment, meters, rack injection systems, or any other equipment and the costs to install the equipment that is necessary for a fuel distributor or a retail fuel outlet to offer biofuel for sale. (4-2-08)

03. Reduction to Qualified Investment for Biofuel Infrastructure Grants. Each taxpayer who receives a biofuel infrastructure grant as allowed by Section 42-1806, Idaho Code, shall reduce the amount of qualified investment computed under Section 63-3029M, Idaho Code, by the amount of the biofuel infrastructure grant received during the taxable year. ( )

0~~3~~4. Limitations. Regardless of whether the biofuel infrastructure investment tax credit available in a taxable year results from a carryover earned in prior years, credit earned in the current year, or both, the biofuel infrastructure investment tax credit allowable in any taxable year shall be limited as follows: (4-2-08)

a. Tax liability. The biofuel infrastructure investment tax credit claimed during a taxable year may not exceed the lesser of: (4-2-08)

i. Fifty percent (50%) of the tax; or (4-2-08)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that my be claimed before the biofuel infrastructure investment tax credit. See Rule 799 of these rules for the priority order for nonrefundable credits. (4-2-08)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the biofuel infrastructure investment tax credit is limited by the provisions of Section 63-3029F, Idaho Code. (4-2-08)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (4-2-08)

0~~4~~5. Carryovers. The carryover period for the biofuel infrastructure investment tax credit is five (5) years. (4-2-08)

0~~5~~6. Taxpayers Entitled to the Credit. The biofuel infrastructure investment tax credit is allowed to fuel distributors and retail fuel dealers. Rule 711 of these rules shall apply to the biofuel infrastructure investment tax credit, except that limitations referenced in Subsection 711.01 of these rules shall be those limitations as provided in Section 63-3029M, Idaho Code. (4-2-08)

0~~6~~7. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (4-2-08)

0~~7~~8. Coordination With Investment Tax Credit and Property Tax Exemption in Lieu of the Investment Tax Credit. (4-2-08)

a. A taxpayer who elects to claim the biofuel infrastructure investment tax credit on qualified investment may not claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. A taxpayer may, however, claim the investment tax credit on property for which he is not claiming the biofuel infrastructure investment tax credit. (4-2-08)

b. A taxpayer who elects to claim the property tax exemption in lieu of the investment tax credit allowed by Section 63-3029B, Idaho Code, may not claim the biofuel infrastructure investment tax credit on the same property. (4-2-08)

c. A taxpayer may claim the investment tax credit, the property tax exemption in lieu of the investment tax credit, and the biofuel infrastructure investment tax credit in the same taxable year. However, only one (1) of the incentives may be claimed on any one (1) property. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Residents. (5-8-09)

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

TAX YEAR	IDAHO TAXABLE INCOME $1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN $1,000
2009	$60	$40
2008	$50	$30

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

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars ($20). An additional twenty dollar ($20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar ($20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. Circumstances Causing Ineligibility. A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Armed Forces. A member of the United States Armed Forces who is: (5-8-09)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

07. Spouse or Dependents of Members of the Armed Forces. A spouse or dependent of a nonresident member of the Armed Forces stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (5-8-09)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return shall claim the credit on his return. If the credit exceeds his tax liability, the resident shall receive a refund. (5-8-09)

b. An individual who is not required to file an Idaho income tax return shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (5-8-09)

c. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (5-8-09)

09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election shall be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

824. CORPORATE ESTIMATED PAYMENTS -- MISCELLANEOUS PROVISIONS (RULE 824).
Section 63-3036A, Idaho Code. (3-20-97)

01. Unitary Groups Filing Group Returns. (3-20-97)

a. Each corporation included in a group return that is required to make estimated payments shall separately compute its estimated tax. (3-20-97)

b. Estimated payments shall be made using the name and the federal employer identification number of the corporation whose name will be on the Idaho corporate income tax return. (3-20-97)

02. S Corporations. An S corporation is subject to Section 63-3036A, Idaho Code, limited to its tax~~*es*~~ on net recognized built-in gains~~*, capital gains,*~~ excess~~*ive*~~ net passive ~~*investment*~~ income~~,~~ and from recapture of ~~*investment*~~ Idaho income tax credits. ~~*(3-20-97)*~~( )

03. Tax-Exempt Organizations. A tax-exempt organization is subject to Section 63-3036A, Idaho Code, limited to its tax on unrelated business income. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).
Sections 63-3035 and 63-3036, Idaho Code. (4-6-05)

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted. (4-6-05)

02. Furnishing Forms W-2 to Employees. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after

termination of his employment. (4-6-05)

03. Filing Forms W-2 With the Tax Commission. ~~*(3-30-07)*~~

~~***a.***~~ On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (3-30-07)

~~***b.***~~ ~~*W-2s filed electronically shall be filed with the Tax Commission on or before March 31.*~~ ~~*(3-30-07)*~~

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission. (4-6-05)

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, shall file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (5-8-09)

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. (5-8-09)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

a. The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

b. The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars ($2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

940. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- DEFINITIONS (RULE 940).
Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005, as modified by 2006 legislation, and Rules 940 through 946 of these rules, the following definitions apply: (3-30-07)

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. (3-30-07)

02. New Plant and Building Facilities. New plant and building facilities are facilities where employees are physically employed. (3-30-07)

03. Investment in New Plant. Investment in new plant shall mean new plant and building facilities: (3-30-07)

a. That are constructed or erected by the taxpayer, or (3-30-07)

b. That are acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. (3-30-07)

c. That qualify for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. (3-30-07)

04. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. (3-30-07)

05. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. An employee within Idaho transferred to a qualifying position within the project site may qualify as a new employee if his previous position is filled by another employee creating a net new job in Idaho. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. (3-30-07)

06. Project Period. The project period is a period of time that begins and ends as follows: (3-30-07)

a. The project period may ~~*not*~~ begin on one (1) of the following dates, but not prior to January 1, 2006~~*. It shall begin the earlier of*~~: ~~*(3-30-07)*~~( )

i. The date of a physical change to the project site; or (3-30-07)

ii. The date new employees begin providing personal services at the project site. (3-30-07)

b. The project period shall end at the earlie~~*r*~~st of: ~~*(3-30-07)*~~( )

i. The conclusion of the project~~ *or*~~, ~~*(3-30-07)*~~( )

ii. Ten (10) years after the beginning of the project; or ( )

iii. December 31, 20~~1~~20. ~~(3-30-07)~~( )

07. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) contiguous site. (3-30-07)

08. Small Employer Investment Tax Credit. Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. (3-30-07)

09. Small Employer New Jobs Tax Credit. Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. (3-30-07)

10. Small Employer Real Property Improvement Tax Credit. Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. (3-30-07)

11. Small Employer Tax Incentive Criteria. Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 942 of these rules for more information. (3-30-07)

12. Small Employer Tax Incentives. Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

943. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 943). Sections 63-4403 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

a. The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 20~~1~~20. ~~(3-30-07)~~( )

b. The credit applies to qualified investments placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. (3-30-07)

02. Taxpayers Entitled to the Credit. The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (3-30-07)

03. Qualified Investments. (3-30-07)

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-4403, Idaho Code, and related rules to qualify as qualified investments. (3-30-07)

b. Qualified investments must be placed in service in Idaho, but may be located in or outside the project site to qualify. (3-30-07)

04. Limitations. The small employer investment tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

a. The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: (3-30-07)

i. Seven hundred fifty thousand dollars ($750,000); or (3-30-07)

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-30-07)

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-07)

05. Carryovers. The carryover period for the small employer investment tax credit is fourteen (14) years. (3-30-07)

06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investments in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. (3-30-07)

944. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 944).
Sections 63-4404 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

a. The small employer real property improvement tax credit allowed by Section 63-4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 20~~1~~20. ~~(3-30-07)~~(____)

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. (3-30-07)

02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (3-30-07)

03. Buildings and Structural Components of Buildings. (3-30-07)

a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: (3-30-07)

i. The buildings and structural components of buildings must be new as defined in Subsection 940.03 of these rules. Structural components placed in service as part of a renovation of an existing building do not qualify. (3-30-07)

ii. The buildings and structural components of buildings must be placed in service at the project site. (3-30-07)

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit. (3-30-07)

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: (3-30-07)

i. One hundred twenty-five thousand dollars ($125,000); or (3-30-07)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-30-07)

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-07)

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. (3-30-07)

945. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 AS MODIFIED BY 2006 LEGISLATION -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 945).
Sections 63-4405 and 63-4406, Idaho Code. (3-30-07)

01. Credit Allowed. (3-30-07)

a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2006 and before December 31, 20~~1~~20. ~~(3-30-07)~~(____)

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2005, but in a fiscal year beginning in 2005, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. (3-30-07)

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. (3-30-07)

02. Taxpayers Entitled to the Credit. The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. (3-30-07)

03. Calculating Number of Employees. (3-30-07)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-30-07)

i. The employee must have worked primarily within the project site for the taxpayer. (3-30-07)

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents ($24.04) per hour worked. (3-30-07)

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. (3-30-07)

iv. The employee must have been subject to Idaho income tax withholding. (3-30-07)

v. The employee must have been covered for Idaho unemployment insurance purposes. (3-30-07)

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. (3-30-07)

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-30-07)

b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-30-07)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-07)

04. Calculating the Number of New Employees. (3-30-07)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-07)

i. The number of employees for the prior taxable year; or (3-30-07)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-07)

b. The requirements as to who qualifies for the calculation of number of employees in Paragraph 945.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 945.04.a.i., and 945.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. (3-30-07)

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (3-30-07)

05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. (3-30-07)

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents ($24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents ($28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars ($1,500). (3-30-07)

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents ($28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents ($36.06) per hour worked, the credit for such new employee shall be two thousand dollars ($2,000). (3-30-07)

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents ($36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents ($43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars ($2,500). (3-30-07)

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents ($43.27) per hour worked, the credit for such new employee shall be three thousand dollars ($3,000). (3-30-07)

06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: (3-30-07)

a. The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-30-07)

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-30-07)

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. (3-30-07)

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. (3-30-07)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635 and 63-3039 Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 342 through 358.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rules, contact Jim Husted (208) 334-7544.

DATED this 13th day of November 2009.

Jim Husted
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, 63-3624, 63-3635, and 63-3039.

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 21, 2009.

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

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

Rule 012 is being amended to state specifically that contractors who install materials into real property are consumers of the property. Also to add a specific statement that material suppliers who do not install building materials are retailers and are required to collect sales tax on the sales price of the materials.

Rule 037 is being amended to provide the definition of "transportation of freight or passengers" and to adopt the statutory language requiring that the aircraft buyer must provide services indiscriminately to the public and that the aircraft is used to transport people or property from one location on the ground or water to another. This will bring the rule into conformity with the changes that HB 10 made to Section 63-3622GG, Idaho Code, in 2009.

Rule 094 is being amended to strike the words "zoos and museums" as admissions to nonprofit zoos and museums are exempt from tax under Section 63 3622O(1)(l), Idaho Code.

Rule 107 is being amended to strike the tire pressure requirement for ATVs and to clarify that the new resident exemption applies not only to motor vehicles but to privately owned aircraft and off-road vehicles. This brings the rule into conformity with the 2009 legislative changes that HB 10 made to Section 63-3621, Idaho Code, and SB 1098 made to Section 49-102, Idaho Code.

Rule 128 is being amended to state that the seller has no duty or obligation to collect sales or use taxes in regard to any sale for which he has a valid certificate regardless of whether the purchaser properly or improperly claimed the exemption, unless the sale can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. The amendment would include a definition of "taxable as a matter of law" to provide guidance both to retailers and the Commission's staff. Also, to provide examples of valid certificates and examples of certificates that are filled out incorrectly.

Rule 136 is being amended to state that after a developer has identified the location and boundaries of the center, identified the qualifying retailers, and has met the expenditure

requirements the Commission will start depositing 60% of the sales tax revenue from the center into the Demonstration Pilot Project Fund. Also to change the language and expenditure requirements to conform to the new statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).

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

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

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

c. The terms **"**contractor**"** and **"**subcontractor**"** are not applicable to persons who

merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. ( )

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

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

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

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

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

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

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

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

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

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

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

08. Custom-Made Goods. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he

must pay sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (7-1-93)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

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 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. (3-20-04)

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. ~~*For the purposes of this rule,*~~ "~~t~~Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. ~~*(3-30-07)*~~(____)

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

a. Primarily used to transport passengers or freight for hire; (2-18-02)

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

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

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

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. 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)

04. 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)

05. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not

primarily engaged in the transportation of freight. (4-11-06)

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

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

06. 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)

07. 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)

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

09. 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)

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

(BREAK IN CONTINUITY OF SECTIONS)

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (RULE 094).

01. In General. This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. (7-1-93)

02. Extent of Exemptions. The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. (7-1-93)

03. Political Subdivisions. Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. (7-1-93)

04. Purchases by Contractors. Contractors are consumers under Idaho tax law. Purchases made by contractors are subject to tax even though they are to be applied to use on a state or political subdivision construction project. (7-1-93)

05. Sales by Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. (7-1-93)

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious

weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See ISTC Rule 058. (7-1-93)

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, and fund raising events ~~*and admission to zoos or museums operated by any political subdivision*~~. ~~*(7-1-93)*~~( )

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See ISTC Rule 030. (7-1-93)

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. (7-1-93)

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. (7-1-93)

f. The examples cited above are not inclusive. (7-1-93)

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. (7-1-93)

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are subject to the tax if delivery occurs in this state. (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).

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 ~~*back of the*~~ title may be marked as a gift and signed by the donor. ~~*(2-18-02)*~~(____)

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 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. (3-30-07)

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects, ~~*and privately owned motor*~~ vehicles, vessels, and aircraft if they are personally owned and he acquired them while he resided in another state and used them 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 in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. ~~*(2-18-02)*~~(____)

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

b. Exclusion from the tax applies only to ~~*motor*~~ vehicles and aircraft owned by an individual. A privately owned ~~*motor*~~ vehicle or aircraft is one that is owned by, and titled to, a private individual or individuals. ~~*(3-6-00)*~~(____)

05. Military Personnel. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

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

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

b. Example: A resident of another state buys a vehicle in that state for ten thousand dollars ($10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars ($300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars ($500) tax due Idaho. The assessor will collect two hundred dollars ($200) tax. (4-2-08)

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

(4-2-08)

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

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

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

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

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

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

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

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

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the

tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

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

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

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

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

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

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

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

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, ~~*and traveling on low pressure tires of ten (10) psi, or less,*~~ has handlebar steering**,** and a seat designed to be straddled by the operator. ~~*(5-8-09)*~~( )

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

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

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

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition

of either "trailer" or "utility trailer" found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term "trailer" includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless ~~*an exemption is established. T*~~the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax~~*is upon the seller*~~. The seller may overcome the presumption by ~~*obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When*~~ establishing the facts giving rise to the exemption. If the seller obtains a valid certificate ~~*is obtained*~~ from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is

taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. ~~*(3-6-00)*~~(____)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622~~*NN*~~UU, Idaho Code, completing, and providing the required form to the seller. ~~*(3-6-00)*~~(____)

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

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

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

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

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in ~~*this*~~ these rules~~ *or on the form in question*~~. ~~*(3-6-00)*~~(____)

a. To claim a resale exemption~~ *on or after July 1, 2000*~~, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. ~~*Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions.*~~ The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. ~~*(3-6-00)*~~(____)

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. (____)

ii. Example. A lawn and garden store occasionally sells bar-b-que 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. ( )

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. ( )

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

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

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

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

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

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-6-00)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer

or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

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

~~***j.*** *Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax-free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language:* *(3-6-00)*~~

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

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

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

_____

~~*NATURE OF BUSINESS*~~

_____

~~*BUYER'S SIGNATURE*~~

~~*The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection.* *(3-6-00)*~~

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

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101~~, *or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000,*~~ if the customer intends to resell the items in the regular course of business. ~~*The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer.*~~ The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. ~~*(3-6-00)*~~(____)

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

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. ~~*(3-6-00)*~~(____)

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

07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received~~, *or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000,*~~ if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. ~~*(3-6-00)*~~(____)

a. A retailer must collect tax on the sale of any goods that are specifically excluded

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

i. Hand tools with a unit price not in excess of one hundred dollars ($100); (3-6-00)

ii. Maintenance and janitorial equipment and supplies; (3-6-00)

iii. Office equipment and supplies; (3-6-00)

iv. Selling and distribution equipment and supplies; (3-6-00)

v. Property used in transportation activities; (3-6-00)

vi. Equipment or other property used to make repairs; (3-6-00)

vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)

viii. Licensed motor vehicles; (3-6-00)

ix. Aircraft; and (3-6-00)

x. Recreational vehicles. (3-6-00)

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

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

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

e. Nor can a retailer rely on an exemption certificate when the limited language of the

law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

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

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

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

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

_____
NATURE OF BUSINESS

_____
BUYER'S SIGNATURE

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

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

08. Purchaser's Responsibility. A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must

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

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

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

0~~8~~9. Timely Acceptance of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established~~*, by clear and convincing evidence,*~~ that a sales tax transaction is exempt from tax. ~~*For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is highly probable. Evidence which indicates that it is more likely than not the fact is true is not sufficient to establish clear and convincing evidence.*~~ ~~*(3-6-00)*~~(____)

b. Example: A retailer sells goods to a customer without charging the sales tax but

does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is ~~*clear and convincing*~~ evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer ~~*is in a business which sells the type of goods purchased from the retailer. Even if it is more likely than not that the customer intended to resell the goods, the retailer has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale*~~ bought the goods for resale. The retailer is liable for the tax on the sale. ~~*(3-6-00)*~~(____)

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 ~~*clear and convincing evidence*~~ 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. ~~*Although it is more likely than not that the customer is a farmer, the retailer has not provided clear and convincing evidence that the hay was purchased for use in a farming operation.*~~ The retailer is liable for the tax on the sale. ~~*(3-6-00)*~~(____)

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)

(BREAK IN CONTINUITY OF SECTIONS)

136. REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS (RULE 136).

01. Rebate of Sales Tax. Section 63-3641, Idaho Code, provides for a rebate of sales taxes to be paid to real estate developers who build a qualifying retail complex at a cost of four million dollars ($4,000,000) or more and who expend more than ~~*eight*~~ six million dollars ($~~*8*~~6,000,000) for the installation of a highway interchange or for ~~*freeway interchange*~~ improvements on a~~*n interstate*~~ highway. For the purposes of this rule, the term "qualifying shopping center" shall mean a qualifying retail complex as specified by Section 63-3641, Idaho Code. ~~*(4-2-08)*~~(____)

02. Qualifying Shopping Center Location. Qualified ~~*R*~~retailers that are located in a qualifying shopping center must apply for a separate sellers' permit and ~~*file a separate sales tax return for that location*~~ report sales separately for that location. For instance, if a retailer has multiple stores in Idaho, it must file a separate return for any store located in a qualifying shopping center. A retailer who ceases operation in a qualifying shopping center must notify the

Tax Commission and cancel the sellers' permit for that location. ~~*(4-2-08)*~~(____)

03. Confidential Information. Information about an individual store's sales or aggregate sales for stores located in a qualifying shopping center is confidential and may not be released to the public. (4-2-08)

04. Developer Responsibilities. The developer of a qualifying shopping center must provide the names and taxpayer identification numbers of the stores located in the shopping center to the Tax Commission. The developer must also notify the Tax Commission whenever a new retailer begins operation or when a retailer ceases operations in a qualifying shopping center. (4-2-08)

05. Certifying Expenditures Prior to Rebate Payment. No rebate will be paid unless the Idaho Department of Transportation or an appropriate political subdivision of the state of Idaho has certified as to the amounts actually expended and that the expenditures were made for the purpose of constructing ~~*a highway interchange or for freeway interchange*~~ approved transportation improvements. ~~*(4-2-08)*~~(____)

06. Disposition of Revenue from a Qualifying Shopping Center. Once the Commission has accepted a valid claim from a developer of a qualifying shopping center, the Commission will deposit sixty percent (60%) of the sales and use tax reported by qualifying retailers in the demonstration pilot project fund. No tax revenue will be deposited into the fund unless the developer provides certification of the amount expended from the Idaho Transportation Department or an appropriate political subdivision. (____)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105 and 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 359 through 387.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rules, contact Alan Dornfest (208) 334-7544.

DATED this 13th day of November, 2009.

Alan Dornfest
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

Rule 006 updates references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity and updates the dates of guides and standards used as reference.

Rule 126 amends the property tax certification program to clarify that candidates must pass at least two of the appraisal courses listed in the rule. The certification requirement for the property tax appraiser candidate is not clear in existing Rule 126.

Rule 217 is being restored to address market value without reference to section 42 low income properties. Assessment procedures for section 42 low income housing properties are being written in Rule 220.

Rule 220 is new rule that explains how to appraise section 42 properties including the role of the Tax Commission in the gathering of information and the cap rate determination.

Rule 225 is being amended to require the Tax Commission to notify the urban renewal agency of the pending dissolution of a revenue allocation area.

Rule 302 is being amended to explain that eligibility has to have been established if the property declaration list (application for exemption) has been filed the previous year and requires the affidavit to include the aggregate value of the personal property so that an amount to be paid by the state may be determined

Rule 317 makes January 1 the date for establishing market value for determining the occupancy value upon which the tax is based.

Rule 609 is being amended to require the Assessor to notify the Tax Commission of those who have erroneously claimed the homeowner's exemption.

Rule 626 is being amended to provide the reporting process to be used by the taxpayer as a result of HB 83 which enables the taxpayer to file an affidavit rather than a personal

property declaration each year.

Rule 802 is being amended to state that when a taxing district annexes parcels, the annexation value may be included on the new construction roll, but the new construction roll can not include the value of new construction that has been included in the annexation value.

Rule 988 is being amended to require that the personal property declaration form be filed for taxpayers who are eligible for and expect to receive the benefit of the QIE.

Rule 989 is being amended to define the due date as irrespective of any income tax extensions that may have been granted.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7544.

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 28, 2009.

DATED this 21st day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in

Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

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

a. "Standard on Ratio Studies" published in 2007 by the International Association of Assessing Officers. This document can be electronically accessed at http://www.iaao.org/documents/index.cfm?Category=23 which was last accessed and verified on ~~*July*~~ June 18, 200~~*8*~~9. ~~*(5-8-09)*~~(____)

b. "Recreation Vehicle Guide of the National Automobile Dealers Association" published in 200~~*8*~~9 for the September through December period by the National Appraisal Guides Incorporated. ~~*(5-8-09)*~~(____)

c. "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" published in 200~~*8*~~9 for the September through December period by the National Appraisal Guides Incorporated. ~~*(5-8-09)*~~(____)

d. "Official Railway Equipment Register" published for the last three (3) quarters in 200~~*8*~~9 and the first quarter in 20~~*09*~~10 by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. ~~*(5-8-09)*~~(____)

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

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

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

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

i. "Manual of Instructions for the Survey of the Public Lands of the United States" published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).
Section 63-105A, Idaho Code. (5-8-09)

01. Application for Certification. The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

a. After the applicant has completed the requirements of Subsection 126.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: (5-8-09)

i. The name and address of the applicant, (5-8-09)

ii. The applicant's employer, and (5-8-09)

iii. The courses completed. (5-8-09)

b. The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. (5-8-09)

c. The education director shall make available information regarding the certification process and the application form to students attending the courses referenced in Subsection 126.02 of this rule. (5-8-09)

02. Certification Requirements. An applicant for certification must ~~*have*~~ pass~~*ed*~~ at least two (2) appraisal courses: Commission Course No. 1 or the International Association of Assessing Officers' (IAAO) Course 101; and IAAO Course No. 102 or IAAO Course 201 or IAAO Course 300 or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. ~~*(5-8-09)*~~( )

a. Upon request to the education director, an applicant may receive credit for Commission Course No. 1 by passing an examination developed for this purpose. The education director shall set the time and place for the examination. (5-8-09)

b. Equivalent courses may be approved by the education director and the examination committee. (5-8-09)

c. With the exceptions of the county assessor, the members of the county board of equalization, and the State Tax Commissioners, all persons making decisions regarding final values for assessment purposes shall be certified property tax appraisers. (5-8-09)

03. Maintaining Property Tax Appraisal Certification. (5-8-09)

a. To maintain certification each appraiser must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each appraiser shall have completed thirty two (32) hours of continuing education during the previous two (2) years. (5-8-09)

b. When any certified property tax appraiser fails to meet the continuing education requirements, the examination committee shall place this person on a six (6) month probation. When any certified property tax appraiser fails to meet the continuing education requirements within this probationary period, the person shall forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. (5-8-09)

c. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification. (5-8-09)

04. Cross Reference. See Section 63-201. (1)(a), Idaho Code for the requirement that only assessors or certified property tax appraisers place value on any assessment roll. See Rule 125 of these rules for the description of the examination committee. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).
Section 63-208 Idaho Code. (3-30-07)

01. Market Value Definition. Market value is the most probable amount of United States dollars or equivalent for which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. (7-1-97)

a. The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. (7-1-97)

b. Personal property shall be valued at retail level. (7-1-93)

02. Appraisal Approaches. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: (3-30-07)

a. The sales comparison approach; (3-30-01)

b. The cost approach; and (3-30-01)

c. The income approach. (3-30-01)

03. Appraisal Procedures. Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. ~~*(3-30-07)*~~

~~***a.***~~ The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties~~*, except those described in Paragraph 217.03.b. of this rule,*~~ must use market rent, not contract rent. ~~*(3-30-07)*~~(____)

~~***b.*** *When considering all three approaches to value, the appraisal procedures, methods, and techniques, using the income approach to determine the market value for assessment purposes of low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits.*~~ ~~*(3-30-07)*~~

~~***04.*** ***Cross Reference****. For clarification of the income to include when using the income approach to value low-income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006).*~~ ~~*(3-30-07)*~~

(BREAK IN CONTINUITY OF SECTIONS)

220. RULES PERTAINING TO ASSESSMENT OF INTERNAL REVENUE CODE (IRC) SECTION 42 LOW-INCOME PROPERTIES (RULE 220).
Section 63- 205A Idaho Code. (____)

01. Definitions. The following definitions apply to the appraisal of IRC section 42 low-income properties as used in Section 63-205A, Idaho Code, and in this rule. (____)

a. Amount of Housing Tax Credits. The "Amount of Housing Tax Credits" is the Housing Tax Credits divided by the number of years of the term of the Tax Credit Regulatory Agreement. (____)

b. Asset Management Fee. "Asset Management Fee" is an annual fee paid to the limited partner for property management oversight, tax credit compliance monitoring, and related services. (____)

c. Audit Fee. "Audit Fee" is the fees and costs that may be charged by accountants for preparation and review of financial statements on behalf of the owner or investor. ( )

d. Compliance Fee. "Compliance Fee" is the fees and costs, if any, that may be charged by the Idaho Housing Financing Association (IHFA), or its agent, for review and inspection of the owner's records, or the physical inspection of the project, as are required by the Regulatory Agreement or federal law. ( )

e. Existing Section 42 Project. An "Existing Section 42 Project" is a Section 42 low-income project for which Housing Tax Credits were entirely distributed before January 1, 2009. ( )

f. Federal Project Based Assistance. "Federal Project Based Assistance" means: ( )

i. Rental assistance of any kind provided by the Department of Housing and Urban Development or other agencies of the United States federal government which allow for rental assistance payments to the owner on behalf of the project and not on behalf of any individual tenant; or ( )

ii. Apartment projects that have federal financing at below market terms at the time when the financing was put in place, which financing is transferable without change in terms and conditions to subsequent transferees; or ( )

iii. Apartment projects that receive financing from the federal Hope VI programs administered under 42 USC section 1437v. ( )

g. Financial Statements. "Financial Statements" are profit and loss statements, or equivalent reports, that include a detailed schedule showing income and expense line items, the project's rent roll showing the rent charged for each unit, and a copy of the IHFA's Annual Occupancy Report that is submitted annually by each project's owner or agent to the IHFA. ( )

h. General Partner Fee. "General Partner Fee" is the portion of cash flow that is paid to the general partner to compensate the general partner for managing the partnership's operating assets and coordinating the preparation of the required IHFA's, federal, state, and local tax and other required filings and financial reports. ( )

i. Housing Tax Credits. The "Housing Tax Credits" are the final total federal income tax credits as shown on the first year's form 8609 and allocated by the IHFA to the project either in an original allocation or a new allocation and reported to the Tax Commission by the IHFA. ( )

j. Tax Credit Regulatory Agreement. The "Tax Credit Regulatory Agreement" means the original agreement, or the extended agreement, between the section 42 project owner and the IHFA. ( )

02. **Appraisal Approaches**. The cost approach, the sales comparison approach, and

the income approach will be considered when appraising section 42 properties. The individual values produced by each approach will be correlated into a single property value. ( )

a. The Cost Approach. The cost approach shall be adjusted for any economic obsolescence caused by rent restrictions imposed by the Tax Credit Regulatory Agreement. Following are three (3) examples illustrating analysis of economic obsolescence. In these examples intermediate step calculation results are rounded to the nearest dollar. ( )

i. Example 1: This example illustrates analysis of economic obsolescence in a market that supports construction of market rent apartments. In this example, the annual difference between market rent and the restricted rent of a tax credit project is capitalized. Market rent must consider any adjustments due to physical characteristics of the subject.

Assumptions		
Number of Units	-	24
Age	-	3 Years
Monthly Market Gross Rent Per Unit	-	$550
Monthly Subject Gross Restricted Rent Per Unit	-	$475
Market Derived Capitalization Rate	-	7.00%

REPLACEMENT COST NEW (RCN)		**$1,401,961**
DEPRECIATION %		
PHYSICAL	8.00%	$112,157
FUNCTIONAL & ECONOMIC	See Below	$308,571
TOTAL DEPRECIATION		**$420,728**
DEPRECIATED REPLACEMENT COST		**$981,233**
LAND VALUE		$35,000
TOTAL COST APPROACH		**$1,016,233**

Example 1 Economic Obsolescence Calculation

Step		Description	Calculations
1	Monthly Market Gross Rent Per Unit		$550
2	Monthly Subject Gross Restricted Rent Per Unit		$475
3	Difference	Subtract Step 2 from Step 1	$550 - $475 = $75
4	Number of Units		24
5	Monthly Rent Loss	Multiply Step 3 by Step 4	$75 x 24 = $1,800
6	Annual Rent Loss	Multiply Step 5 by 12 Months	$1,800 x 12 = $21,600
7	Market Derived Capitalization Rate		7.00%
8	Economic Obsolescence	Divide Step 6 by Step 7	$21,600 / .07 = $308,571

( )

ii. Example 2: This example illustrates analysis of economic obsolescence in a market that does not support construction of market rate apartments. The difference between the subject gross restricted rent and the feasible gross monthly rent is capitalized, and the resulting calculation shows the total economic obsolescence. Feasible gross monthly rent is calculated by adding the physically depreciated cost plus land value and dividing it by a gross income multiplier, which is found by analyzing sales of similar market rate apartments. The result is the market rent required to support the cost of the subject apartment project.

Assumptions		
Number of Units	-	24
Age	-	3 Years
Monthly Market Gross Rent Per Unit	-	$550
Monthly Subject Gross Restricted Rent Per Unit	-	$475
Market Derived Capitalization Rate	-	7.00%

REPLACEMENT COST NEW (RCN)		**$1,401,961**
DEPRECIATION %		
PHYSICAL	8.00%	$112,157
FUNCTIONAL & ECONOMIC	See Below	$271,543

TOTAL DEPRECIATION	**$383,700**
DEPRECIATED REPLACEMENT COST	**$1,018,261**
LAND VALUE	$35,000
TOTAL COST APPROACH	**$1,053,261**

Example 2 Economic Obsolescence Calculation

Step		***Description***	***Calculations***
1	Physically Depreciated Cost Plus Land Value	Subtract Physical Depreciation From RCN and Add Land Value	$1,401,961 - $112,157 + $35,000 = $1,324,804
2	Market Gross Income Multiplier		8.5
3	Annual Feasible Gross Rent	Divide Step 1 by Step 2	$1,324,804 / 8.50 = $155,859
4	Monthly Feasible Gross Rent	Divide Step 3 by 24 Units	$155,859 / 24 = $6,494
5	Monthly Feasible Gross Rent Per Unit	Divide Step 4 by 12 Months	$6,494 / 12 = $541
6	Monthly Subject Gross Restricted Gross Rent Per Unit		475
7	Monthly Per Unit Rent Loss	Subtract Step 6 from Step 5	$541 - $475 = $66
8	Monthly Project Rent Loss	Multiply Step 7 by 24 Units	$66 x 24 = $1,584
9	Annual Project Rent Loss	Multiply Step 8 by 12 Months	$1,584 x 12 = $19,008
10	Capitalization Rate		0.07
11	Depreciation (Economic/Functional)	Divide Step 9 by Step 10	$19,008 / 0.07 = $271,543

(____)

iii. Example 3: This example illustrates that when subject gross restricted rents are at or above market gross rental rates, and the feasible gross rent per unit is less than the subject gross restricted rent, no economic obsolescence is found. (____)

Assumptions		
Number of Units	-	24
Age	-	15 Year
Monthly Market Rent Per Unit	-	$475
Monthly Subject Restricted Rent Per Unit	-	$475
Market Derived Capitalization Rate	-	7.00%

REPLACEMENT COST NEW (RCN)		**$1,401,961**
DEPRECIATION %		
PHYSICAL	20.00%	$280,392
FUNCTIONAL & ECONOMIC	See Below	$0
TOTAL DEPRECIATION		**$280,392**
DEPRECIATED REPLACEMENT COST		**$1,121,569**
LAND VALUE		$35,000
TOTAL COST APPROACH		**$1,156,569**

Step		***Calculations***
1	Physically Depreciated Cost Plus Land Value	$1,401,961 - $280,392 + $35,000 = $1,156,569
2	Market Gross Income Multiplier	8.5
3	Annual Feasible Gross Rent	$1,156,569 / 8.50 = $136,067
4	Monthly Feasible Gross Rent	$136,067 / 24 = $5,669
5	Monthly Feasible Gross Rent Per Unit	$5,669 / 12 = $472
6	Monthly Subject Gross Restricted Gross Rent Per Unit	$475
7	Monthly Per Unit Rent Loss	<$3>
8	Monthly Project Rent Loss	

Step		***Calculations***
9	Annual Project Rent Loss	
10	Capitalization Rate	0.07
11	Depreciation (Economic/Functional)	

( )

b. The Sales Comparison Approach. When available, sales of section 42 low-income properties that are similar and comparable shall be used. When non-section 42 comparable sales are used in this approach, the sales must be adjusted for the appropriate property attributes. ( )

c. The Income Approach. The application of the income approach shall include the following procedures and provisions: ( )

i. Market rents of section 42 properties and normalized expenses of section 42 properties must be used to determine net income unless the taxpayer fails to provide the Financial Statements in accordance with Subsection 220.03 of this rule. If the Financial Statements are not provided, the assessor may use market rents of non-section 42 properties and normalized expenses of non-section 42 properties to determine net income. If Financial Statements are not provided, the Amount of Housing Tax Credits shall not be added to the capitalized net income. ( )

ii. The Amount of Housing Tax Credits shall not be used in the appraisal of Existing Section 42 Projects. ( )

iii. The Amount of Housing Tax Credits shall, for the duration of the Tax Credit Regulatory Agreement, be included in the appraisal of section 42 properties that have received or will receive an allocation of Housing Tax Credits after January 1, 2009. ( )

iv. The Amount of Housing Tax Credits, when applicable to the appraisal, shall not be included in the net income capitalized to value but shall be added to the capitalized net income. ( )

v. The Tax Commission's determination of capitalization rates derived from sales shall not preclude the use by the assessor of other methods for determining the capitalization rate, provided however, such other methods are consistent with Section 63-205A, Idaho Code, and this rule. ( )

03. Financial Statements to be Provided by the Owners. The owners of section 42 properties shall, by April 1 of each year, provide to the Tax Commission the prior year's Financial Statements. Failure to provide the Financial Statements by April 1 shall result in the appraisal of the section 42 property as if it were an unrestricted rent, non-section 42 property. The Tax Commission shall forward to the assessor all Financial Statements received from the owners of section 42 properties and the information received from the IHFA by April 15. The assessor shall use the Financial Statements to develop normalized income and expense information to be used in

the appraisal of section 42 properties. ( )

04. Tax Commission to Provide Information on Section 42 Property Sales. The Tax Commission shall gather information from sale transactions of section 42 properties and shall compute the capitalization rate for each sale. The Tax Commission shall, for sales acquired during the immediate prior year, send capitalization rates and all information used to determine these rates to each county assessor by April 15. If information from three (3) or more comparable sale transactions of section 42 properties is sent to the assessors, the assessors will consider these sales' capitalization rates in their determination of the capitalization rate to be used in appraising the particular section 42 property or group of section 42 properties. ( )

05. Cross Reference. For an explanation of why income tax credits should be allowed in section 42 assessments, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). ( )

22~~0~~1. -- 224. (RESERVED).

225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).
Sections 31-1411, 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-3029B, and 63-3638, Idaho Code. (3-30-07)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)

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

ii. North arrow, bar scale, and title block. (3-15-02)

iii. District name and ordinance number or order date. (3-15-02)

iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)

v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)

vi. Variations from the requirements of Paragraph 225.01.h., of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (4-6-05)

i. Countywide taxing district. A countywide taxing district is a taxing district having the same boundaries as one (1) or more counties. (5-8-09)

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

a. A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)

b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)

c. A copy of the ordinance or order effecting the formation or alteration. (4-5-00)

d. For fire districts annexing territory within an existing fire district and/or city, a copy of the written approval from that existing fire district and/or city. (3-30-07)

e. In cases where newly created taxing district boundaries are countywide a copy of the ordinance or order effecting the formation which clearly states that the newly formed district is to be countywide shall fulfill the requirements of documents to be filed in Paragraphs 225.02.a., through 225.02.c., of this rule. (5-8-09)

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

a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3029B and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order. (4-6-05)

b. Upon receipt of the ordinance or order without an accompanying map of the

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

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

d. Within thirty (30) days of the date as of which an RAA has been in existence for twenty-three (23) years, the State Tax Commission will notify the urban renewal agency of the date by which the RAA will be considered dissolved. Such notice shall include a statement indicating that the RAA may remain in existence if necessary to pay off existing bonded indebtedness, provided that, within thirty (30) days of receipt of this notice, the urban renewal agency notifies the State Tax Commission of such bonded indebtedness. Failure to provide notice of the dissolution date by the State Tax Commission to the urban renewal agency does not negate the statutory requirement for the urban renewal agency to dissolve. (____)

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

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

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

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

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

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

07. Notification of Approval or Disapproval. The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall

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

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

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

10. Furnished By The State Tax Commission. The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of cities, taxing districts or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other tax code area maps. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Application for Exemption Required. Except as provided in Subsection 302.04 of this rule, ~~T~~the list of personal property required by Section 63-302, Idaho Code, shall serve as the taxpayer's application for the exemption provided by Section 63-602KK, Idaho Code. The following information must be provided by the taxpayer: ~~(5-8-09)~~(____)

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

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

02. Designation of Personal Property Eligible for Exemption. When required, ~~T~~the list of personal property required by Section 63-302, Idaho Code, shall include all taxable personal property including the personal property that may be found to be exempt under the provisions of Section 63-602KK, Idaho Code. ~~*The exemption provided by Section 63-602KK, Idaho Code, is not determined until the assessor has determined the market value of the property for assessment purposes and has designated listed items as eligible for this exemption.*~~
~~*(5-8-09)*~~( )

03. Failure to File the List. Except as provided in Subsection 302.04 of this rule, ~~T~~the taxpayer must file the list of taxable personal property as required by Section 63-302, Idaho Code. If the list is otherwise required and is not filed by the taxpayer, the assessor may list and assess the items to be taxed based on his best judgment and information available to him. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code. ~~*(5-8-09)*~~( )

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

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

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

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

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

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

f. A taxpayer with multiple parcels for which separate lists have been filed previously and otherwise subject to the filing requirements in Section 63-302, Idaho Code, may file the personal property affidavit provided that the total current market value of all otherwise

reportable personal property for all of the parcels owned by that taxpayer in a county does not exceed one hundred thousand dollars ($100,000). ( )

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

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).
Section 63-317, Idaho Code. (5-3-03)

01. Property Subject to Occupancy Tax. Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

02. ~~*Value*~~ Prorated Market Value ~~*Monthly*~~. The market value for occupancy tax purposes shall be the full market value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. ~~*(3-23-94)*~~( )

03. Notice of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

04. Examples for Calculation of Value Less Homestead Exemption (HO). The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): (3-30-07)

a. Example for prorated market value exceeding maximum amount of the homestead exemption~~*, as prescribed in statute*~~ for tax year 200~~*6*~~9. ~~*For years after 2006,*~~ Each year the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.

Full Market Value of Home	-	$300,000
Prorated Market Value for 11 Month Occupancy	-	$300,000 x 11/12 = $275,000
Taxable Value	-	$275,000 - $~~*75,000*~~ 104,471 (HO) = $~~*200,000*~~ 170,529

~~(3-30-07)~~(____)

b. Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home	-	$120,000
Prorated Market Value for 3 Month Occupancy	-	$120,000 x 3/12 = $30,000
Taxable Value	-	$30,000 - $15,000 (HO) = $15,000

(3-30-07)

05. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-30-07)

06. Allocation to Urban Renewal Agencies. Occupancy tax revenue shall be distributed to urban renewal agencies in the same manner as property taxes. The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. (5-8-09)

07. Property Qualifying for the Homestead Exemption on Occupancy Value. When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).
Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-30-07)

01. Homestead Exemption. The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

02. Idaho Annual Housing Price Index Change. Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the change in the Idaho annual housing price index published by the United States office of federal housing enterprise oversight. The following procedure shall be used: (3-30-07)

a. Step 1. Calculate the average Idaho housing price index of the four (4) most recently available quarters as of September 15. (3-30-07)

b. Step 2. Calculate the average Idaho housing price index of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (3-30-07)

c. Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)

d. Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (3-30-07)

03. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of this rule. (4-2-08)

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	$42,000	
Residential Improvement	$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	$62,000	Mr. Smith's interest
Homeowner's Exemption	$31,000	For Mr. Smith as owner occupant
Residential Improvement	$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest (land and improvement)	$54,500	Mr. Anderson's interest
Homeowner's Exemption	$27,250	For Mr. Anderson as owner occupant

(3-30-07)

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	$42,000	
Residential Improvement	$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	$51,500	For Mr. Smith
Residential Improvement	$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	$44,000	For Mr. Anderson

(3-30-07)

c. Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	$95,000	
Residential Improvement	$215,000	
Land and Improvement	$310,000	
Prorated ownership interest (land and improvement) ($310,000 X 66.67%)	$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2007 ($89,325 X 66.67%)	$59,550	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) ($310,000 X 33.33%)	$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2007 ($89,325 X 33.33%)	$29,775	Ms. Smith's Homeowner's Exemption

(4-2-08)

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	$65,000	
Residential Improvement	$195,000	
Land and Improvement	$260,000	
Prorated ownership interest (land and improvement) ($260,000 X 66.67%)	$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2007 is 50% up to $89,325)	$86,671	Mr. & Mrs. Doe's Homeowner's Exemption

Description	Value	Notes
Prorated ownership interest (land and improvement) ($260,000 X 33.33%)	$86,658	Mr. Person's interest
Homeowner's Exemption	$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(4-2-08)

04. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (4-11-06)

05. Notification of Erroneous Claims. When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination. (____)

(BREAK IN CONTINUITY OF SECTIONS)

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).
Sections 63-105(A), 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code.
~~*(5-8-09)*~~(____)

01. Effective Date. This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during ~~*the previous*~~ fiscal year 2008 by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 20~~*08*~~10, have exceeded the ~~*previous*~~ receipts for fiscal year 2008 by five percent (5%) or more, then this exemption would take effect on January 1, 20~~*09*~~11. Once this exemption takes effect, it will remain in effect continuously. ~~*(5-8-09)*~~(____)

02. Application Required to Establish Initial Eligibility for Exemption.
~~*(5-8-09)*~~(____)

a. In order to ~~*be eligible*~~ establish initial eligibility for this exemption, the taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code~~*, and, if applicable, the list required for transient personal property as required by Section 63-313, Idaho Code*~~. The filing of said list(s) shall constitute the filing of an application for exemption. The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later

deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code. ~~(5-8-09)~~(____)

b. Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer. (5-8-09)

03. Procedure During Years Following Year of Initial Eligibility for Exemption. (____)

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

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

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

0~~3~~4. Taxpayers' Election of Property Location. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed. ~~(5-8-09)~~(____)

0~~4~~5. Valuation Assessment Notice. The valuation assessment notice required by Section 63-308, Idaho Code, must show the gross value, the exempt value, and the net taxable value of the personal property. The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code.

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

0~~5~~6. Preliminary and Final Personal Property Tax Reduction Lists. (5-8-09)

a. Except as provided in Paragraph 626.06.e. of this rule, ~~T~~the preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption: ~~(5-8-09)~~(____)

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

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

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

iv. The assessed value of the property item(s) listed as equalized by the county board of equalization. ~~(5-8-09)~~(____)

b. This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code, or the affidavit permitted by Section 63-602KK, Idaho Code. ~~The owners of t~~Transient personal property will not be listed on the preliminary list. ~~(5-8-09)~~(____)

c. Except as provided in Paragraph 626.06.e. of this rule, ~~T~~the final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.0~~5~~6.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption: ~~(5-8-09)~~(____)

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

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

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

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

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

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

d. This final personal property tax reduction list ~~*shall*~~ may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK (3), Idaho Code. The final certified list shall be filed with the

Tax Commission not later than the third Monday of November of each year. ~~*(5-8-09)*~~(____)

e. If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs 626.06.a.ii., and 626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule. (____)

0~~6~~7. Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists. If an entry on the preliminary or final property tax reduction list is found to be erroneous, the Tax Commission shall disapprove as much of the claim as necessary and so notify the county clerk. (5-8-09)

0~~7~~8. Cross Reference. For more information on the lists ~~*of personal property that must be filed*~~ and affidavit option, see Rule 302 of these rules. For information on transient personal property see Rule 313 of these rules. ~~*(5-8-09)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).
Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

01. Definitions. (4-5-00)

a. "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current property roll. (3-30-07)

i. This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (3-30-07)

ii. The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (3-30-07)

iii. When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the

value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (3-30-07)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll in 2006. (4-2-08)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

02. New Construction Roll Listing. "Listing" shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit, and the separate listing must show the year or years of the new construction roll that would have been appropriate for this additional new construction. The taxing district has the burden of proving the new construction was omitted from any new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year's new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (4-2-08)

03. Manufactured Housing. "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

04. Partial New Construction Values. Except as provided in Subsection 802.05 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.05 of this rule, any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.05 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars ($10,000) as of January 1, 2004. The improvement was occupied February 2, 2004. Assume the ten thousand dollars ($10,000) value was on the 2004 new construction roll. Assume that in 2005 the improvement is assessed at ninety thousand dollars ($90,000). Assume there has been no inflation. The value that can be reported on the 2005 new construction roll is calculated as follows:

2005 Value	$90,000
2004 Value Already Reported on New Construction Roll	<$10,000>
2005 New Construction Roll Value (this improvement)	$80,000

(4-2-08)

05. Change in Status. (4-2-08)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. (5-8-09)

b. Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of a revenue allocation area under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the "incremental value as of December 31, 2006," shall be added to the appropriate year's new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year's new construction roll. (4-2-08)

06. ~~*Value of*~~ Limitation on Annexation ~~*to Exclude*~~ and New Construction Roll Value. ~~*When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction, outside revenue allocation areas. Except for new construction within a revenue allocation area, the value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area.~~* For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. ~~*(4-2-08)*~~( )

07. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

988. QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).
Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (4-6-05)

01. Definitions. The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. (3-20-04)

a. Year in which the investment is placed in service. "Year in which the investment is placed in service" means the calendar year the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. (4-6-05)

b. Operator's Statement. The "operator's statement" is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

c. Personal Property Declaration. A "personal property declaration" is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. (3-20-04)

d. Qualified Investment. "Qualified investment" means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator's statement and is designated as exempt from property tax for two (2) years on Form 49E. (3-20-04)

e. Qualified Investment Exemption. The "qualified investment exemption" (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code. (3-20-04)

02. Designation of Property for Which Exemption Is Elected. The owner shall designate the property on which the QIE is elected. The owner shall make this designation on Form 49E and attach it to a timely filed personal property declaration or, for operating property, the timely filed operator's statement. Owners who designate property on which the QIE is elected may not file the annual affidavit provided for in Section 63-602KK(6), Idaho Code, but must file the personal property declaration. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator's statement, the owner must provide on the personal property declaration or operator's statement the date the item elected for the QIE was placed in service. ~~*(4-6-05)*~~(____)

03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration. For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration. (3-20-04)

04. Continuation of Listing. For all property designated for QIE, even though that property is exempt for two (2) years, the owner must list that property on the personal property declaration or operator's statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code. (3-20-04)

05. Period of QIE. The QIE shall be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho. (3-20-04)

06. Election Specificity. The QIE election provided by Section 63-3029B, Idaho Code, shall be specific to each qualified item listed on the personal property declaration or operator's statement. An item that is a qualified investment, but for which there is no QIE election during the year after the "year in which the investment is placed in service" in Idaho, is not eligible for the QIE. (4-6-05)

07. Notification by Assessor. (4-6-05)

a. Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of this rule, the county assessor shall send a copy of this form or listing to the State Tax Commission. (4-6-05)

b. Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the five (5) year period beginning with the date the property was placed in service, the county assessor shall notify the State Tax Commission and the taxpayer immediately. The county assessor shall also provide this notification upon discovery that the owner first claiming the QIE failed to list the item on any personal property declaration or failed to file a personal property declaration in any year during this five (5) year period. This notice shall include: (4-6-05)

i. Owner. Name of the owner receiving the QIE. (4-6-05)

ii. Property description. A description of the property that received the QIE. (4-6-05)

iii. New or used. State whether the individual item was purchased new or used. (4-6-05)

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. (4-6-05)

v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. (4-6-05)

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. (4-6-05)

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. (4-6-05)

08. Moved Personal Property. In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: (3-20-04)

a. Is required of taxpayers moving locally assessed property between counties in Idaho during the five (5) year period beginning the date that property was placed in service; (4-6-05)

i. The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved. (4-6-05)

ii. The taxpayers must include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E. (4-6-05)

b. Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property. (4-6-05)

09. Notification Regarding Transient Personal Property. For transient personal property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor shall send a copy of this notice to the State Tax Commission. (3-20-04)

10. Partial-Year Assessments. Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. (3-20-04)

11. Limitation on Amount of Exemption. (3-20-04)

a. New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

b. Used Property. The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: (4-6-05)

i. QIE cost shall be determined for each item of used property upon which the QIE is

claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars ($150,000); provided, however, that the QIE cost for all elected used property shall not exceed one hundred fifty thousand dollars ($150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars ($150,000), QIE cost shall reflect the reduction necessary to stay within the one hundred fifty thousand dollar ($150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719 for information on the selection of items of used property). (4-6-05)

ii. For each item purchased used, the QIE shall be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). (4-6-05)

c. Examples. In the following examples, all of the property is owned by the same taxpayer and is a qualified investment. (4-6-05)

i. Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption. In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars ($130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of January 1, 2006.

Example A										
Property Description (same taxpayer)	**Year Placed in Service**	**Cost**	**New or Used**	**QIE Cost**	**2004 Market Value**	**2004 Exempt Value**	**2004 Taxable Value**	**2005 Market Value**	**2005 Exempt Value**	**2005 Taxable Value**
Computer 1	2003	$20,000	Used	$20,000	$12,000	$12,000	$0	$8,000	$8,000	$0
~~*Assembly line*~~	2003	$160,000	Used	$130,000	$140,000	$130,000	$10,000	$110,000	$110,000	$0
Computer 2	2003	$50,000	New	N/A	$40,000	$40,000	$0	$30,000	$30,000	$0
Conveyor belt	2004	$200,000	Used	$150,000	N/A	N/A	N/A	$200,000	$150,000	$50,000

(4-6-05)

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its market value.

Example B										
Property Description	**Year Placed in Service**	**Cost**	**New or Used**	**QIE Cost**	**2006 Market Value**	**2006 Exempt Value**	**2006 Taxable Value**	**2007 Market Value**	**2007 Exempt Value**	**2007 Taxable Value**
Construction Equipment	2005	$20,000	Used	$20,000	$80,000	$20,000	$60,000	$70,000	$20,000	$50,000

(4-6-05)

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars ($150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars ($150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars ($300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars ($300,000) or the (depreciated) market value of this used property. (4-6-05)

12. Multi-County Taxpayers. (3-20-04)

a. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. (3-20-04)

b. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. (3-20-04)

c. Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated operating property and purchased new or used must indicate on Form 49E each county where each property is located and attach it to the operator's statement. (4-6-05)

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. (3-20-04)

13. Special Provisions for Nonregulated Operating Property. (4-6-05)

a. For nonregulated operating property, the market value of the QIE is calculated by multiplying the depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of these rules to the cost approach value determined under Subsection 405.02 of these rules. (4-6-05)

b. The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. (4-6-05)

i. Reduction in Idaho value. For nonregulated operating property except situs property, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. (4-6-05)

ii. Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. (4-6-05)

14. Denial of QIE. If the QIE is denied for all or part of the market value of any item for which the QIE had been claimed, the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. (3-20-04)

15. Public Records and Exemption of Certain QIE Information from Disclosure. Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses (such as trade secrets and other proprietary information) may be exempt from public disclosure (See Section 9-340D, Idaho Code) and may be protected from disclosure by the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, and other laws. A taxpayer who submits information to the State Tax Commission or to a county assessor or Board of Equalization in accordance with this rule may designate all or part of the information as confidential. The designation must be made in writing and clearly identify the particular information deemed confidential. In addition, the front page of the submission must prominently state that the document contains information designated as confidential. The State Tax Commission, the county assessor and Board of Equalization shall treat the designated information as confidential, exempt from disclosure under Section 9-340D, Idaho Code and as subject to the Idaho Trade Secrets Act (see Chapter 8, Title 48, Idaho Code). Nothing in this paragraph limits exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law. (3-20-04)

16. Cross Reference. For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. (4-6-05)

989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).
Section 63-3029B, Idaho Code. (4-6-05)

01. In General. If a taxpayer has elected the property tax exemption (also known as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. ~~*(4-6-05)*~~(____)

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly

claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the due date of that taxpayer's income tax return, irrespective of any income tax extensions of the income tax payment, for the income taxable year in which such event occurs. ~~*If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15.*~~ Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: ~~*(3-30-07)*~~(____)

a. A description of the item that ceases to qualify, (4-6-05)

b. The county where the item was located, (4-6-05)

c. The date the item was placed in service, (4-6-05)

d. The date the item was no longer qualified for the QIE, (4-6-05)

e. The amount of value exempted from property tax each year, and (4-6-05)

f. The amount of the property tax benefit recapture. (4-6-05)

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	**Recapture Percentage**
Less than one (1) year	100%
Equal to one (1) year but less than two (2) years	80%

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	**Recapture Percentage**
Equal to two (2) years but less than three (3) years	60%
Equal to three (3) years but less than four (4) years	40%
Equal to four (4) years but less than five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. (3-30-07)

06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property. For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

a. Property Tax Budget Summation. For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)

b. Average Property Tax Levy. The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)

c. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-

3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

a. Owner. Name of the owner receiving the QIE; (4-6-05)

b. Property Description. A description of the property that received the QIE; (4-6-05)

c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)

d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)

e. Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)

f. Amount Remitted. The amount of money remitted for any item. (4-6-05)

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)

10. Penalty and Interest. Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0903

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105 and 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 388 through 394.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rules, contact Alan Dornfest (208) 334-7544.

DATED this 13th day of November, 2009.

Alan Dornfest
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 801 is being amended to provide and explain the formula to compute the voter test which is the sum of the COSA's first year amount divided by last year's market value for assessment purposes and the amount of the existing plant facilities fund levy divided by last year's market value for assessment purposes. The proper handling of urban renewal increment value is also explained in the rule.

Rule 804 is being amended to include school longer than two year temporary supplemental funds and the Cooperative Service Agency funds in the list of funds to be left in the base when computing levies for taxing districts encompassing urban renewable revenue allocation areas.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: In compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

801. LIMITATION ON BUDGET REQUESTS -- SPECIAL PLANT FACILITIES FUND LEVY PROVISIONS (RULE 801).
Sections 63-802, 33-804, ~~*and*~~ 33-317A, and 33-909, Idaho Code. ~~*(3-30-07)*~~(____)

01. Limits on Plant Facilities Funds. For any school or library district with a plant facilities fund created pursuant to Section 33-804, Idaho Code, the amount of property tax to be budgeted for said fund in any year cannot exceed four tenths of one percent (0.4%) multiplied by the market value for assessment purposes of the taxing district as of December 31 of the year prior to the first year in which a plant facilities fund levy is made. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code, or to any cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ~~*(3-30-07)*~~(____)

02. No Additional Plant Facilities Fund Permitted. Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation shall not apply to any state-authorized plant facilities levy, established under Section 33-909, Idaho Code or the cooperative service agency school plant facility levy established under Section 33-317A, Idaho Code. ~~*(3-30-07)*~~(____)

03. Plant Facilities Fund Extensions or Increases. Except for increases related to cooperative service agency school plant facility levies, ~~*A*~~any school or library district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-804, Idaho Code. For the purpose of such increase, the "total levy for school or library plant facilities and bonded indebtedness" shall be computed as follows. ~~*(3-15-02)*~~(____)

a. For the first year in which the increased or extended plant facilities fund levy is to be made, sum of the amount to be levied for the plant facilities fund and for any bond fund in existence prior to the new plant facilities fund. (3-15-02)

b. Divide the sum computed in Subsection 801.03.a. by the district's actual market value for assessment purposes as of December 31 of the year immediately preceding the year in which the increased or extended plant facilities fund is to be levied. (3-15-02)

c. The value used for this calculation shall include any portion of increment value in

any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. For example, an existing plant facilities fund levy raises one hundred thousand dollars ($100,000) per year. The district wishes to increase this by fifty thousand dollars ($50,000) per year. The "total levy" would be computed excluding the increment value for the one hundred thousand dollars ($100,000) portion, but including the increment value for the fifty thousand dollars ($50,000) new portion of the amount to be levied. ( )

d. Any plant facilities fund levy that is extended, pursuant to Section 33-804, Idaho Code, will be considered passed after December 31, 2007 for the purposes of section 50-2908, Idaho Code, and increment value will be included in the calculation of the "total levy" and the actual levy. ( )

04. Cooperative Service Agency School (COSA) Plant Facility Fund Increases. Any school district may hold an election to increase the amount to be levied pursuant to the requirements of Section 33-317A. For the purpose of determining whether the increase has been approved by the electors, the "total levy for school plant facilities" shall be computed as follows. ( )

a. The first year's dollar amount of the proposed COSA plant facility levy shall be divided by the school district's actual market value for assessment purposes, including any increment value in any Revenue Allocation Area in the district, as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. ( )

b. The dollar amount most recently certified by the school district for an existing plant facilities fund levy shall be divided by the district's actual market value for assessment purposes as of December 31 of the year immediately preceding the first year in which the COSA plant facility levy is to be made. The value used for this calculation shall include any portion of increment value in any Revenue Allocation Area in the district, provided that property tax revenue resulting from the levy of the plant facilities fund against such increment value is allocated to the school district and not to any urban renewal agency. ( )

c. The quotients computed in Paragraphs 801.04.a. and 801.04.b. shall be summed. ( )

0~~4~~5. Maximum Amount of Increased Plant Facilities Fund. Except as provided in Subsection 801.04, ~~W~~when any district increases its plant facilities fund amount to be levied, the maximum amount shall not in any year exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the year immediately preceding the first year the increased fund is to be levied. This limitation shall not apply to Cooperative Service Agency school plant facility levies, which, in any year, shall not exceed four tenths of a percent (0.4%) multiplied by the actual market value for assessment purposes as of December 31 of the immediate prior year. ~~*(3-15-02)*~~( )

0~~5~~6. Special Reporting Requirements for State-Authorized Plant Facilities Levy. When the state Department of Education certifies a state-authorized plant facilities levy to any county under Section 33-909, Idaho Code, the county clerk shall forward a copy of such certification to the State Tax Commission as an attachment to the L-2 Form described in Rule 803

of these rules and submitted for the affected school district. (3-30-07)

07. Special Reporting for COSA and Increased Plant Facilities Levies. Any COSA plant facilities levy shall be reported on a separate line on the L-2 Form defined in Rule 803 of these rules. In addition, the increased amount of a plant facilities levy originally approved on or before December 31, 2007 shall be reported on a separate line on the L-2 Form. ( )

(BREAK IN CONTINUITY OF SECTIONS)

804. TAX LEVY -- CERTIFICATION -- URBAN RENEWAL DISTRICTS (RULE 804). Section 50-2908, 63-803, and 63-811, Idaho Code. (5-8-09)

01. Definitions. (4-5-00)

a. "Urban renewal district." An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

b. "Revenue allocation area (RAA)." A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00)

c. "Current base value." The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

d. "Initial base value." The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. (4-5-00)

e. "Increment value." The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel's current base value, provided such difference is a positive value. (4-5-00)

02. Establishing and Adjusting Base and Increment Values. (4-5-00)

a. Establishing initial base value. If a parcel's legal description has changed prior to computing initial base year value, the value that best reflects the prior year's taxable value of the parcel's current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

b. Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars ($100,000), including Category 21 value of twenty thousand dollars ($20,000) and Category 42 value of eighty thousand dollars ($80,000). (4-5-00)

i. Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar ($1,000) decrease in value in Category 21 and a one thousand dollar ($1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars ($3,000) decrease in value in Category 21 and a one thousand dollars ($1,000) increase in Category 42 value. The base value decreases two thousand dollars ($2,000) to ninety-eight thousand dollars ($98,000). (4-5-00)

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars ($98,000), the value of the parcel increases by five thousand dollars ($5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars ($98,000). (4-5-00)

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. (4-5-00)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels. When a partially exempt parcel within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars ($500) in the year the RAA base value was established. Assume also that if this parcel had not been actively devoted to agriculture at that time, the taxable value would have been fifteen hundred dollars ($1500). After five (5) years, this parcel is no longer used for farming, loses its partial exemption, and becomes reclassified as industrial land with a value of ten thousand dollars ($10,000). The base value within the RAA would be adjusted upwards by one thousand dollars ($1,000), the difference between fifteen hundred dollars ($1500) and five hundred ($500). (4-5-00)

iii. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the original value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars ($20,000). Three (3) years later, an improvement valued at one hundred thousand dollars ($100,000) was added. The land at this later date had a value of thirty thousand dollars ($30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by twenty thousand dollars ($20,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by twenty thousand dollars ($20,000). (4-5-00)

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA. (4-5-00)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to increment values. Decreases in total parcel value below the initial

base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars ($100,000) decreases in value to ninety-five thousand dollars ($95,000), but later increases to ninety-eight thousand dollars ($98,000), an increment value of three thousand dollars ($3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars ($102,000) after the decrease to ninety-five thousand dollars ($95,000), the increment value would be seven thousand dollars ($7,000). (4-5-00)

g. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts. Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

a. For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars ($100,000,000) but fifteen million dollars ($15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars ($85,000,000). (5-8-09)

b. For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars ($100,000,000). (5-8-09)

04. Modification of an Urban Renewal Plan. When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred. All modifications to urban renewal areas and RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)

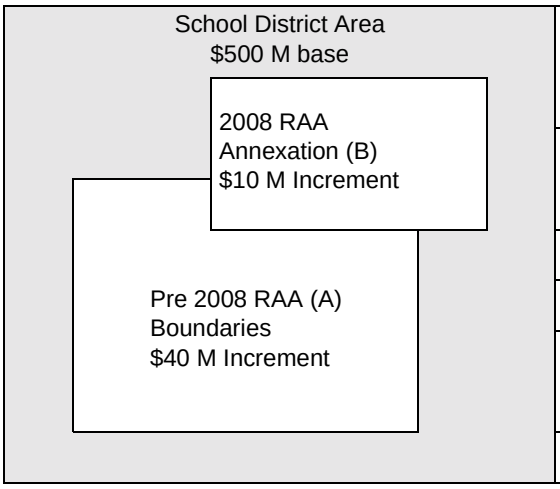
a. Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

b. Modification by annexation. (5-8-09)

i. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

ii. For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	$500 Million
	RAA (A) increment	$40 Million
	RAA annex (B) increment	$10 Million



2009 School Levies	
Fund	Value for Setting Levies $ Millions
Tort	500
2001 Plant	510
2008 Bond (Passed and first levied in 2008)	550
2009 Override	550

(5-8-09)

05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes. Beginning in 2008, levies to be certified for taxing district or unit funds meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007~~*, for up to two (2) years*~~; or ~~*(5-8-09)*~~(____)

e. Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007~~.~~; ~~*(5-8-09)*~~(____)

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (____)

06. Cross Reference. The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. (4-2-08)

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Volume 09-8, pages 129 through 131.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rules, contact Randy Nilson at (208) 334-7544.

DATED this 13th day of November, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105, 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 August 19, 2009.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Motor Fuels Rule 130 is being amended to be consistent with the passage of House Bill 338 and to notify motor fuels distributors that deductions on the motor fuel distributor report for ethanol and biodiesel cannot be claimed on or after June 1, 2009.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: In compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the amendments are simple in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Randy Nilson.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)

c. The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)

i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)

ii. Exported; (4-11-06)

iii. Delivered to the Idaho National Guard tax exempt; or (4-11-06)

iv. Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)

d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)

e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)

f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)

g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)

h. The tax-paid purchases; (7-1-98)

i. The net taxable gallons; (7-1-98)

j. The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009); ~~*(4-2-08)*~~( )

k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)

l. The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)

m. The tax computation; (7-1-98)

n. The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)

o. The gaseous fuels permit fees; and (4-11-06)

p. The net tax due. (4-11-06)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars ($100,000) or more. (5-8-09)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum

products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

06. Motor Fuels Receipts. All gasoline, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (5-8-09)

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 395 through 401.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rules, contact Randy Nilson at (208) 334-7544.

DATED this 13th day of November, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, 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 21, 2009.

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 130 is being amended to remind motor fuels distributors that ethanol must be reported as a receipt on the motor fuels distributors report when it is blended with gasoline and to notify motor fuels distributors pursuant to House Bill 338 that deductions on the monthly motor fuel distributor report for ethanol and biodiesel cannot be claimed for periods before June 1, 2009.

Rule 131 was created pursuant to House Bill 11 which provided that the State Tax Commission may by rule require a motor fuels distributor who reports at least 25 receipts or disbursements of motor fuel on its monthly fuel tax return to file electronically. To provide for an exemption from the electronic filing requirement that takes into account, among other relevant factors, the ability of the distributor to comply, at a reasonable cost, with the requirements of this rules.

Rule 135 is being amended pursuant to House Bill 9 to exempt persons who produce 5,000 gallons or less of biodiesel fuel in a calendar year for their personal consumption from paying the 1¢ per gallon petroleum transfer fee.

Rule 170 is being amended by adding a reference to Idaho Code section 63-2425 to inform consumers of new penalties for using dyed diesel fuel for an illegal purpose and to remove unrelated subject matter.

Rule 171 is being created to include information deleted from Rule 170 concerning sale and use tax on motor fuels.

Rule 421 is being amended to delete the recordkeeping requirements for carriers registered under the Full Fee Plan and to place them in a new Rule 422.

Rule 422 is being created to show the recordkeeping requirements for carriers registered under the Full Fee Plan.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7544.

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 28, 2009.

DATED this 21st day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels <u>includes ethanol blended with motor fuel</u> and other petroleum products received during the month; ~~*(7-1-98)*~~<u>( )</u>

c. The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)

i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)

ii. Exported; (4-11-06)

iii. Delivered to the Idaho National Guard tax exempt; or (4-11-06)

iv. Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)

d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)

e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)

f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)

g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)

h. The tax-paid purchases; (7-1-98)

i. The net taxable gallons; (7-1-98)

j. The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This Subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009); ~~(4-2-08)~~(____)

k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)

l. The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)

m. The tax computation; (7-1-98)

n. The bad debt amounts~~,~~; refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); ~~(4-2-08)~~(____)

o. The gaseous fuels permit fees; and (4-11-06)

p. The net tax due. (4-11-06)

02. Exemption from Licensing and Monthly Reporting. See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. ( )

0~~2~~3. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars ($100,000) or more. (5-8-09)

0~~3~~4. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

0~~4~~5. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

0~~5~~6. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

0~~6~~7. Motor Fuels Receipts. All gasoline, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (5-8-09)

131. REQUIREMENT TO FILE MOTOR FUELS DISTRIBUTOR REPORTS ELECTRONICALLY (RULE 131).

01. **Electronic Filing Requirement**. A motor fuels distributor who reports twenty-five (25) or more receipts or disbursements of motor fuels on its monthly distributor report is required to file the distributor report electronically. ( )

02. **Failure to File Report Electronically**. A motor fuels distributor who is required to file its distributor report electronically but does not file the report electronically will be treated as if the distributor did not file the monthly report. ( )

03. **Waiver from Requirement to File Report Electronically**. A motor fuels distributor can request a waiver from the requirement to file motor fuel distributor reports electronically. The distributor making the request for waiver must show that the cost to comply with this rule is unreasonable. The Commission will review each request for waiver and issue a determination. ( )

13~~1~~2. -- 134. (RESERVED).

135. EXEMPTION FROM OBTAINING A MOTOR FUELS DISTRIBUTOR LICENSE AND MONTHLY ~~*ALTERNATE*~~ REPORTING FOR PERSONS WHO PRODUCE ~~*MOTOR FUELS*~~ BIODIESEL OR IMPORT MOTOR FUELS INTO IDAHO ONLY FOR USE IN THEIR OWN AIRCRAFT, MOTOR VEHICLES, AND EQUIPMENT (RULE 135).

01. **In General**. The state of Idaho imposes an excise tax on all motor fuel, except dyed diesel, and the transfer fee on all petroleum and petroleum products~~,~~ received in Idaho. See Rule 510 of these rules for the definition of petroleum and petroleum products. Motor fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the motor fuel when the fuel arrives in Idaho. Motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks. For example: 55 gallon barrels, above ground tanks, stilt tanks, underground tanks, tank wagons, old delivery trucks, old tanker trucks, slip tanks in pickups, and any other storage tank used to store the motor fuel. The excise tax and transfer fee due on the motor fuel received in Idaho during a month are normally reported on a~~n~~ monthly Idaho Motor Fuels Distributor Report ~~*on a monthly basis*~~. ~~*(5-8-09)*~~( )

02. **Alternative to Monthly Reporting for Qualified Consumers**. As an alternative to obtaining an Idaho motor fuel distributor license and filing monthly reports, a qualified consumer may file an annual report to remit the motor fuel tax and transfer fee due to the state of Idaho or to receive a refund of excess tax or transfer fee paid. (7-1-99)

a. A qualified consumer is not required to pay the transfer fee on the biodiesel he produces. ( )

03. **Qualifications**. To be a qualified consumer under this rule, a person must: (7-1-99)

a. Use the produced biodiesel or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and ~~*(5-8-09)*~~( )

b. Import into Idaho one-hundred thousand (100,000) gallons or less of motor fuel in a calendar year; or (5-8-09)

c. Produce in Idaho five thousand (5,000) gallons or less of ~~*motor fuel*~~ biodiesel in a calendar year. ~~*(5-8-09)*~~( )

04. Documentation of Export. To claim an export of motor fuel or other petroleum products a qualified consumer must have tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the jurisdiction into which the fuel was claimed to have been exported. (3-30-01)

05. Limitations. (7-1-99)

a. A qualified consumer may not claim an export from Idaho for fuel in the supply tank of a motor vehicle or aircraft. (7-1-99)

b. A licensed Idaho fuel distributor may not file this report. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

170. ~~*ADDITIONAL*~~ INFORMATION ON DYED & UNDYED DIESEL FUEL (RULE 170).

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes included in the purchase price on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (4-2-08)

a. Properly documenting information on the sales invoice; and (7-1-98)

b. Providing the customer with a Form 75~~*-HF "Heating Fuel Only."*~~ ~~*(7-1-98)*~~( )

02. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. It is illegal to use red-dyed low-sulfur and ultra low-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state unless the type of user is listed in Subsection 170.03 of this rule. Penalties for illegal use of red-dyed low-sulfur and ultra low-sulfur fuel in a motor vehicle are found in Section 63-2425, Idaho Code. ~~*(4-2-08)*~~( )

03. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur and ultra low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur and ultra low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur and ultra low-sulfur diesel fuel may be

used: (4-2-08)

a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)

b. In the engine of a train; (7-1-98)

c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)

d. In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; (4-11-06)

e. In a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country and is used in the operator's trade or business or for the production of income; (4-11-06)

f. In a highway vehicle owned by the United States that is not used on a highway; (4-11-06)

g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). (4-11-06)

~~04~~171. MOTOR FUELS EXEMPTION FROM SALES TAX (RULE 171).
Any sale of motor fuels by any fuel distributor that is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If such purchases are later included in credits or refunds for motor fuels tax paid and not subject to taxes imposed by Title 63, Chapter 24, Idaho Code, and no other exemption applies, sales and use taxes will be applicable. If ~~*fuel, including*~~ dyed ~~*diesel*~~ fuel~~, *is*~~ products are sold without the motor fuels tax, the sale is subject to the Idaho ~~*state*~~ sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of dyed fuel ~~*delivered into bulk storage tanks, where*~~ that do not include the motor fuels tax ~~*is not charged,*~~ are exempt from Idaho sales tax only if the ~~*distributor*~~ seller has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the dyed fuel product delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. ~~*(5-3-03)*~~( )

17~~1~~2. -- 179. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

421. DOCUMENTATION FOR IDAHO INTERNATIONAL REGISTRATION PLAN ~~*AND FULL FEE*~~ REGISTRANTS (RULE 421).
Records Required For Idaho International Registration Plan ~~*and Full Fee*~~ Registrants. Registrants must keep records to verify the accuracy of any Idaho International Registration Plan (IRP) ~~*or*~~

~~*Full Fee registration*~~ application submitted to the Idaho Transportation Department. Registrants must keep the records required by Rule 420 of these rules for all IRP registered vehicles~~*, except for Full Fee vehicles registered at less than sixty-two thousand (62,000) lbs. GVW or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year*~~. Also, registrants must keep individual vehicle records by registered fleet for each application reporting period of July 1st through June 30th. ~~*(4-6-05)*~~( )

422. DOCUMENTATION FOR IDAHO FULL FEE REGISTRANTS (RULE 422).

01. Records Required For Idaho Full Fee Registrations. Registrants must keep records to verify the accuracy of any Idaho Full Fee registration application submitted to the Idaho Transportation Department. These records must include all summaries and source documents for all registered vehicles, except for full fee vehicles registered at less than sixty-two thousand (62,000) lbs. gvw or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year. To provide primary and secondary source verification of the distance reported on the application, registrants must keep records by individual vehicle for each reporting period of July 1st through June 30th using two (2) of the following recordkeeping options: ( )

a. Distance Measuring Devices. Odometer, hubometer, GPS or perpetual life-to-date readings must be supported by a second source of documentation such as fuel purchases, trip logs, or daily logs. ( )

b. Trip Logs. Daily trip logs should show date of travel, origin and destination of the trip, and number of miles traveled. Daily trip sheets should be supported by load tickets, billing invoices, or other original source documents that can be used as verification of miles traveled. ( )

c. Number of Trip/Round Trip Miles. This method is used by registrants making numerous short trips from the same origin to the same destination. Computations should be supported by scale tickets, load tickets, or a Commission approved trip analysis. ( )

d. Fuel Purchases. Records of fuel purchases must be supported by fuel invoices that show date, location, quantity, and type of fuel purchased. Fuel purchase records should include the usage per unit. If fuel purchases are used to determine miles, the records should contain documentation of how the average miles-per-gallon (MPG) was calculated. ( )

02. Credit For Off-Road Miles And Documentation Required. Credit for off-road miles may be given for roads not maintained by a government entity or roads built or maintained by the registrant pursuant to a contract, according to Subsection 292.03 of these rules. These include roads on private property, roads under construction but not open to the public, and may include designated Forest Service roads. Off-road miles must be documented by using odometer readings, maps, contracts, GPS readings, or a Commission approved trip analysis. ( )

42~~2~~3. -- 499. (RESERVED).

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.09 - IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2010 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 402 through 404.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Husted at (208) 334-7544.

DATED this 13th day of November, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105 and 23-1323.

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 21, 2009.

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 016 is being amended to allow for quarterly, semiannual, and annual returns for distributors and wine direct shippers who are remitting small amounts (less than $600 per reporting period) of tax. Reporting period other than monthly became permissible when HB 012 was enacted in 2009.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

016. WINE TAX RETURNS AND REPORTS (RULE 016).

01. Due Date of Reports. Every person liable for the payment of taxes on wine and every person responsible for making reports to the ~~*State Tax*~~ Commission shall, on or before the 15th day of ~~*each*~~ the month following the end of the reporting period, file a written report with the ~~*State Tax*~~ Commission showing all sales of wine for use or delivery within Idaho during the immediately preceding ~~*calendar month*~~ reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. ~~*(3-30-07)*~~( )

a. Monthly Filing Generally Required. All persons who pay wine tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all wine tax due from the first through the last day of the preceding calendar month. ( )

b. Request to File Quarterly or Semiannually. Distributors or persons who owe six hundred dollars ($600) or less per quarter and have established a satisfactory record of timely filing and payment of the wine tax may request permission to file quarterly or semiannually instead of monthly. ( )

c. Request to File Annually. Wine direct shippers, distributors, or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. ( )

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

02. Weekend or Holiday Due Date. For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. ~~*(7-1-93)*~~( )

03. Prescribed Forms. (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms either provided by or approved by the Commission. ~~*(7-1-93)*~~( )

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

c. Out-of-state wineries, vintners, producers or manufacturers of wine shall use importer's reporting forms to report sales to distributors. (7-1-93)

d. In-state distributors, wineries, vintners, producers or manufacturers shall use Form 1752 and related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (3-30-07)

e. All persons liable for wine tax must file a wine tax returns provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (3-30-07)

i. The name, address, telephone number and permit number of the taxpayer. (3-30-07)

ii. Beginning and ending inventories. (3-30-07)

iii. Wine purchases made during the reporting period. (3-30-07)

iv. Exempt sales and transfers including sales to in-state and out-of-state wholesales and sales to military or liquor dispensaries. (3-30-07)

v. Purchases and sales of wine in odd size containers. (3-30-07)

vi. Spoilage. (3-30-07)

vii. Total taxable gallons. (3-30-07)

viii. Credits from previous periods, if any. (3-30-07)

ix. Total tax due. (3-30-07)

x. Penalty and interest due, if any. (3-30-07)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and the State Tax Commission Administration and enforcement rules, IDAPA 35.02.01, "Sales and Use Tax Rules." (3-30-07)

a. All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

b. All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

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

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-30-07)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0112-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2010 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 405 through 407.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jim Husted at (208) 334-7544.

DATED this 13th day of November, 2009.

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, 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 21, 2009.

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

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

Rule 017 is being amended to allow for quarterly, semiannual, and annual returns for beer wholesalers who are remitting small amounts (less than $600 per reporting period) of tax. Reporting period other than monthly became permissible when HB 012 was enacted in 2009.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

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 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

017. BEER TAX RETURNS AND REPORTS (RULE 017).

01. Due Date of Reports. Every person liable for the payment of taxes on beer and every person responsible for making reports to the Commission shall, on or before the fifteenth day of ~~*each*~~ the month following the end of the reporting period, file a written report with the Commission showing all sales of beer for use or delivery within Idaho during the immediately preceding ~~*calendar month*~~ reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefore, at the time such report is filed. ~~*(7-1-93)*~~(____)

a. Monthly Filing Generally Required. All persons who pay beer tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all beer tax due from the first through the last day of the preceding calendar month. (____)

b. Request to File Quarterly or Semiannually. Wholesalers or persons who owe six hundred dollars ($600) or less per quarter and have established a satisfactory record of timely filing and payment of the beer tax may request permission to file quarterly or semiannually instead of monthly. (____)

c. Request to File Annually. Wholesalers or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (____)

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

02. Weekend or Holiday Due Date. For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. ~~*(7-1-93)*~~(____)

03. Forms Provided or Approved by Tax Commission. All dealers engaged in the sale or other disposition of beer imported into Idaho shall report all sales and dispositions of beer on forms either provided or approved by the Commission. ~~*(7-1-93)*~~(____)

04. Inventory Reporting Methods. Wholesalers of beer must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on Wholesaler Beer Tax Returns provided by the Commission. (7-1-93)

05. Out-of-State Brewers. Out-of-state brewers of beer shall use dealer's reporting

forms to report sales to wholesalers. (7-1-93)

06. In-State Brewers. In-state brewers of beer shall use wholesaler's beer tax returns to report all withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by a brewery are subject to tax at the time of withdrawal from the brewer's inventory. (7-1-93)

07. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1051, Idaho Code, and this rule must meet the conditions pre scribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All beer tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the beer tax return form. (7-1-93)

b. All beer tax returns or other documents filed by the taxpayer must include his beer tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

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

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

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 408 through 419.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 13th day of November, 2009.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 005 is being amended to correct the address of the new Twin Fall's field office.

Rule 200 is being repealed and replaced with new Rules 200, 201, 202, 203, and 204. Negotiated rulemaking was undertaken to modify the rule that addressed the examination of books, witnesses, and discovery. The new rules basically incorporate the Federation of Tax Administrators' model recordkeeping and retention regulation and some of Oregon's rules on providing copies of documents. Rule 201 also retains Subsection 200.02, Failure to Comply and Subsection 200.04, Cost Reimbursement to a Third-Party.

Rule 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2010 to the table that identifies this information by year.

Rule 320 is being amended to clarify what a perfected protest is and to define "unperfected protest."

Rule 500 is being amended to address "settlements" rather than "compromises," defines "disputed liability," "doubt as to collectability" and "economic hardship" based on language in Rev. Proc, 2003-71. Rule 500 also adds "promotion of effective tax administration" as an additional ground

Rule 704 is being amended to add the Alcohol Beverage Control Bureau of the Idaho State Police to the list of disclosure agreements and Section 23-907, Idaho Code to the title of the rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

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 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is http://www.tax.idaho.gov. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.idaho.gov." All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. (3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in Subsections 005.02.a. through 005.02.e. (3-15-02)

a. Coeur d'Alene Field Office. 1910 Northwest Blvd., Suite 100, Coeur d'Alene, Idaho 83814-2615. The telephone number is (208) 769-1500. The facsimile number is (208) 769-1505. (3-15-02)

b. Lewiston Field Office. 1118 F Street, P.O. Box 1014, Lewiston, Idaho 83501-1014. The telephone number is (208) 799-3491. The facsimile number is (208) 799-5053. (3-15-02)

c. Idaho Falls Field Office. 150 Shoup Avenue, Suite 16, Idaho Falls, Idaho 83402-3653. The telephone number is (208) 525-7116. The facsimile number is (208) 525-7154. (3-15-02)

d. Pocatello Field Office. 611 Wilson Avenue, Suite 5, Pocatello, Idaho 83201-5029. The telephone number is (208) 236-6244. The facsimile number is (208)233-6134. (3-15-02)

e. Twin Falls Field Office. ~~*Suite C, 1038 Blue Lakes Blvd. N., P.O. Box 5227*~~ 440

Falls Avenue, Twin Falls, Idaho 8330~~3~~1-~~5227~~ 3320. The telephone number is (208) 736-3040. The facsimile number is (208) 736-3043. ~~(3-15-02)~~(____)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~***200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (RULE 200).***~~
~~*Sections 63-3042 and 63-3043, Idaho Code.* *(3-20-97)*~~

~~***01. Retention of Working Papers****. Each taxpayer shall retain and make available on request all business records and working papers used in the preparation of, or relevant to the correctness of, any tax return subject to examination by the Tax Commission.* *(3-20-97)*~~

~~***02. Failure to Comply****. In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Tax Commission, including either or both of the following:* *(3-20-97)*~~

~~***a.*** *The disallowance of claimed deductions, credits, or exemptions to which the requested information relates;* *(3-20-97)*~~

~~***b.*** *The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates.* *(3-20-97)*~~

~~***03. Discovery****. The Tax Commission may engage in all forms of discovery permitted by the Idaho Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions, and requests for production or inspection. Failure to respond to a discovery request in the manner required by the Idaho Rules of Civil Procedure results in the reissuance of a summons to the taxpayer and the imposition of sanctions permitted by statute or these rules for failure to respond to the summons.* *(3-20-97)*~~

~~***04. Cost Reimbursement to a Third Party****. If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents ($0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons.* *(3-20-97)*~~

200. EXAMINATION OF RECORDS -- DEFINITIONS (RULE 200).
Sections 63-3042 and 63-3043, Idaho Code. For purposes of Rules 200 through 204, the following definitions apply: (____)

01. Books and Papers. Books and papers shall mean and include any kind of written, printed, typed, or recorded matter of any kind or nature, however produced or reproduced

including, but not limited to: all mechanical, electronic, sound or video recordings or their transcripts; microfilm and microfiche records; papers; service orders; repair orders; agreements; contracts; notes; memoranda; correspondence; letters; telegrams; statements; books; reports; studies; minutes; records; accounting books; maps; plans; drawings; diagrams; photographs; analyses or studies; and all drafts prepared in connection with such items. "Books and papers" also include electronic files and computer stored data. ( )

02. **Database Management System**. Database Management System means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database. ( )

03. **Electronic Data Interchange or EDI Technology**. Electronic data interchange or EDI technology means the computer-to-computer exchange of business transactions in a standardized structured electronic format. ( )

04. **Hard Copy**. Hard copy means any documents, records, reports or other data printed on paper. ( )

05. **Machine-Sensible Record**. Machine-sensible record means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems. ( )

06. **Photocopy (Photocopied)**. Photocopy (photocopied) means a copy or reproduction of an original document including books and papers; to make a photographic reproduction of any document, printed, pictorial, or other medium of information or recordkeeping. ( )

07. **Records**. Records, as used in this rule, has the same meaning as "books and papers." ( )

08. **Storage-Only Imaging System**. Storage-only imaging system means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image. ( )

~~***201. 204. (RESERVED).***~~

201. EXAMINATION OF RECORDS -- RECORDKEEPING AND PRODUCTION REQUIREMENTS (RULE 201).
Sections 63-3042 and 63-3043, Idaho Code. ( )

01. **In General**. ( )

a. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. Required records must be made available on request by the Tax Commission or its authorized representatives. The time and place for production shall be reasonable and shall

occur during regular business hours. When books and papers are requested they will be relevant and reasonable documentation for the issues under examination. The request for information is relevant if it is germane to or applicable to an audit issue. ( )

b. Books and papers must be provided either as a photocopy, an electronic reproduction, or be made available for photocopying, scanning or other electronic reproduction at a specified time and place for the purposes of administering and verifying compliance with the tax laws. Photocopying is a benefit to both the Tax Commission and the taxpayer as the photocopy provides objective evidence supporting a tax position and allows for expediting the audit. ( )

c. All books and papers that are acquired during an audit or examination are confidential. ( )

d. If the requirement to produce records creates a hardship for a taxpayer, the auditor or agent will work with the taxpayer to come to a reasonable solution for both parties. ( )

e. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Tax Commission in machine-sensible format upon request of the Tax Commission. ( )

f. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media. However, this subsection shall not relieve the taxpayer of the obligation to comply with Paragraph 201.01.e. of this rule. ( )

02. Machine-Sensible Records. ( )

a. General Requirements. ( )

i. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Tax Commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met. ( )

ii. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format. ( )

iii. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes. ( )

b. Electronic Data Interchange Requirements. ( )

i. Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the

transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Tax Commission to interpret the coded information. ( )

ii. The taxpayer may capture the information necessary to satisfy Subparagraph 201.02.b.i. of this rule at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Tax Commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes. ( )

c. Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule. ( )

d. Business Process Information. ( )

i. Upon the request of the Tax Commission, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records. ( )

ii. The taxpayer shall be capable of demonstrating: ( )

(1) The functions being performed as they relate to the flow of data through the system; ( )

(2) The internal controls used to ensure accurate and reliable processing; and ( )

(3) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records. ( )

iii. The following specific documentation is required for machine-sensible records retained pursuant to this rule: ( )

(1) Record formats or layouts; ( )

(2) Field definitions (including the meaning of all codes used to represent information); ( )

(3) File descriptions (e.g., data set name); and ( )

(4) Detailed charts of accounts and account descriptions. ( )

03. Cost Reimbursement to a Third-Party. If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents ($0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. ( )

04. Failure to Comply. In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Tax Commission, including either or both of the following: ( )

a. The disallowance of claimed deductions, credits, or exemptions to which the requested information relates; ( )

b. The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates. ( )

202. EXAMINATION OF RECORDS -- ACCESS TO MACHINE-SENSIBLE RECORDS (RULE 202).
Sections 63-3042 and 63-3043, Idaho Code. ( )

01. In General. The manner in which the Tax Commission is provided access to machine-sensible records as required by Rule 201 may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer. ( )

02. Access Alternatives. Such access will be provided in one (1) or more of the following manners: ( )

a. The taxpayer may arrange to provide the Tax Commission with the hardware, software and personnel resources to access the machine-sensible records. ( )

b. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records. ( )

c. The taxpayer may convert the machine-sensible records to a standard record format specified by the Tax Commission, including copies of files, on a magnetic medium that is agreed to by the Tax Commission. ( )

d. The taxpayer and the Tax Commission may agree on other means of providing access to the machine-sensible records. ( )

203. EXAMINATION OF RECORDS -- RECORDS MAINTENANCE (RULE 203).
Sections 63-3042 and 63-3043, Idaho Code. ( )

01. Requirements. ( )

a. The Tax Commission recommends, but does not require, that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, edition.] ( )

b. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records. ( )

02. Taxpayer Responsibility and Discretionary Authority. ( )

a. In conjunction with meeting the requirements of Rule 201, a taxpayer may create files solely for the use of the Tax Commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of Rule 201. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records. ( )

b. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this rule. ( )

03. Effect on Hard-Copy Recordkeeping Requirements. ( )

a. Except as otherwise provided in this section, the provisions of these rules do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and rules. Hard-copy records may be retained on a recordkeeping medium as provided in Rule 204 of these rules. ( )

b. If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created. ( )

c. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. Such details include those listed in Paragraph 201.02.b. ( )

d. Computer printouts that are created for validation, control, or other temporary purposes need not be retained. ( )

e. Nothing in this section shall prevent the Tax Commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination. ( )

204. EXAMINATION OF RECORDS -- ALTERNATIVE STORAGE MEDIA (RULE 204).
Sections 63-3042 and 63-3043, Idaho Code. ( )

01. In General. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda. ( )

02. Requirements of Storage-Only Imaging Systems. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements: ( )

a. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance. ( )

b. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available. ( )

c. Upon request by the Tax Commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system. ( )

d. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers. ( )

e. All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record. ( )

f. There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity. ( )

(BREAK IN CONTINUITY OF SECTIONS)

310. INTEREST RATES (RULE 310).
Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29

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

(BREAK IN CONTINUITY OF SECTIONS)

320. NOTICE OF DEFICIENCY -- FILING A PROTEST (RULE 320).
Section 63-3045, Idaho Code. (3-20-97)

01. In General. If a taxpayer does not agree with a deficiency determination, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest must be in writing and filed within sixty-three (63) days from the date the Notice of Deficiency is mailed. ~~*The protest must contain the following information to be perfected:*~~ ~~*(3-20-97)*~~(____)

02. Perfected Protest. The protest must contain the information in Paragraphs 320.02.a. through 320.02.d. of this rule to be perfected. A protest meets the requirements of Paragraphs 320.02.c. and 320.02.d. of this rule if the allegations of fact or contentions of law, viewed in the light most favorable to the taxpayer, raise factual or legal issues that, if correct, would entitle the taxpayer to relief. (____)

a. Name, address and pertinent identification number; (3-20-97)

b. The period to which the deficiency relates; (3-20-97)

c. The specific item or items in the Notice of Deficiency to which the taxpayer objects; and (3-20-97)

d. The factual or legal basis for the objections made. (3-20-97)

0~~2~~3. Receipt of Protest. Once a protest is received by the Tax Commission, the sixty-three (63) day period ends. (3-20-97)

0~~3~~4. Unperfected Protest. (3-20-97)

a. ~~*If the Tax Commission determines the*~~ A protest is unperfected if it does not include all the items required by this rule~~,~~. If the Tax Commission determines the protest is unperfected, the Tax Commission shall notify the taxpayer of the items needed to perfect the protest. The taxpayer has twenty-eight (28) days from the date the notice is mailed to provide the information. ~~*(3-20-97)*~~(____)

b. Example. A Notice of Deficiency is mailed to a taxpayer on August 31. He has sixty-three (63) days from August 31 to protest his deficiency determination. The Tax Commission receives his protest on September 10. The sixty-three (63) day period stops on September 10. The Tax Commission determines the protest is not perfected and mails notification to the taxpayer on September 15. The taxpayer has twenty-eight (28) days or through October 13 to perfect the protest. After October 13, he may no longer perfect his protest or submit a new protest even though the original sixty-three (63) day period would have run through November 2. (3-20-97)

0~~4~~5. Failure to Timely Perfect a Protest. Failure to perfect a protest within twenty-eight (28) days is treated the same as if no protest had been filed, pursuant to Section 63-3045(5), Idaho Code. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

500. ~~*ADJUSTED OR COMPROMISED CASES CLOSING AGREEMENTS*~~ SETTLEMENTS (RULE 500).
Sections 63-3047 and 63-3048, Idaho Code. ~~*(3-20-97)*~~(____)

01. Grounds for ~~*Compromise*~~ Settlement. The Tax Commission may ~~*compromise*~~ settle the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist: ~~*(3-20-97)*~~(____)

a. ~~*Doubt as to*~~ Disputed liability~~;~~, ~~*(3-20-97)*~~(____)

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. (____)

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. (____)

b. Doubt as to collectibility; ~~*or*~~ ~~*(3-20-97)*~~(____)

i. Doubt as to collectibility exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. (____)

ii. An offer to settle based on doubt as to collectability generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. (____)

c. ~~*Extreme*~~ Economic hardship of the taxpayer. ~~*(3-20-97)*~~(____)

i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. (____)

ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's

individual facts and circumstances. (____)

d. Promotion of effective tax administration. (____)

i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. (____)

ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. (____)

~~***02. Final Judgments****. The Tax Commission may not compromise the tax liability if the liability has been established by a final judgment of a court, and no doubt exists as to the taxpayer's ability to pay or the state's ability to collect the amounts owing.* *(3-20-97)*~~

0~~3~~2. Agreement Final. A ~~*compromise*~~ settlement agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. ~~*(3-20-97)*~~(____)

0~~4~~3. Form of ~~*Compromise*~~ Settlement. The taxpayer must submit an offer ~~*of compromise*~~ to settle in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. ~~*(3-30-07)*~~(____)

0~~5~~4. Withdrawal of Offer. A taxpayer may withdraw his offer ~~*in compromise*~~ to settle at any time prior to its acceptance by the Tax Commission. ~~*(3-20-97)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).
Sections 23-907, 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3634A, and 67-4917C, Idaho Code. ~~*(3-30-07)*~~(____)

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)

b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)

c. County assessors, limited to: (3-20-04)

i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)

ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)

d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)

e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)

f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)

g. Idaho Transportation Department, relating to: (3-20-04)

i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)

ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)

h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)

i. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed

by Section 63-3077(1)(b), Idaho Code; (4-6-05)

j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)

k. Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)

l. Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)

m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)

n. County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)

o. The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)

p. The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. ( )

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rule 501 is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 420 through 422.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7544.

DATED this 13th day of November, 2009.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 501 is being proposed to detail the procedures the State Tax Commission will follow to comply with the requirements and controls necessary when the Commission settles an administrative proceeding ("a tax protest") in which the amount in dispute exceeds $50,000.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(2), the Governor has found that temporary adoption of the rule is appropriate for the following reasons: In compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ted Spangler at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS (RULE 501).
Section 63-3048, Idaho Code. ( )

01. Signatures for Settlement. For settlement agreements where the amount in issue equals or exceeds fifty thousand dollars ($50,000), the signature of two (2) commissioners is required on the settlement agreement to make it binding and complete. One of the commissioners signing must be delegated the responsibility for oversight of the tax type subject to the settlement. ( )

02. Amount in Issue. The amount in issue is defined as the Notice of Deficiency amount, plus or minus any adjustments previously communicated in writing to the taxpayer, minus the proposed settlement amount. ( )

a. Example 1. The audit staff issues a Notice of Deficiency to the taxpayer for one hundred fifty thousand dollars ($150,000). The taxpayer then submits documentation for additional examination by the Commission or its staff. As a result of the examination, the amount claimed due is reduced to one hundred twenty thousand dollars ($120,000), and the taxpayer is notified in writing. The taxpayer then submits an offer to settle for eighty thousand dollars ($80,000). The amount in issue is forty thousand dollars ($40,000). ( )

b. Example 2. Same facts as in Paragraph 501.02.a., except the taxpayer makes the offer to settle before the Commission communicates the reduction in the amount claimed due based on the additional documentation. In this case, the amount in issue is seventy thousand dollars ($70,000) (NOD amount of $150,000 - settlement offer of $80,000 = $70,000), because the Commission has not communicated the allowance of the deduction to the taxpayer, and the taxpayer is not aware of the adjustment at the time he made the offer. ( )

c. Example 3. The taxpayer files a refund claim of one hundred thousand dollars ($100,000). The audit staff reviews the claim and determines the taxpayer is entitled to a refund of twenty thousand dollars ($20,000). The taxpayer protests the denial of the remaining eighty thousand dollars ($80,000). The taxpayer makes an offer to settle by proposing a refund of seventy-five thousand dollars ($75,000). The amount in issue is fifty-five thousand dollars ($55,000), which is the difference between the refund allowed and the proposed settlement amount. The calculation is as follows:

Audit staff NOD amount	($20,000)
Less settlement offer	- ($75,000)
Amount in issue	($55,000)

( )

d. Example 4. The taxpayer files a refund claim of one hundred thousand dollars

($100,000). The audit staff reviews the claim and determines the taxpayer is not entitled to a refund and instead owes fifty thousand dollars ($50,000). The audit staff issues a Notice of Deficiency for fifty thousand dollars ($50,000) and a denial of the refund claim. The taxpayer submits additional documentation for examination by the Commission or its staff. After review, the amount claimed due is reduced to thirty thousand dollars ($30,000), and this is communicated to the taxpayer in writing. The taxpayer then offers to settle by proposing a refund of forty thousand dollars ($40,000). The amount in issue is seventy thousand dollars ($70,000). The calculation is as follows:

Audit staff NOD amount	$50,000
Less adjustment submitted to taxpayer	- ($20,000)
Amount claimed due	$30,000
Less settlement offer	- ($40,000)
Amount in issue	$70,000)

( )

e. For purposes of the amount in issue, interest will be updated to the date of the offer. ( )

03. **Final Review**. When considering a proposed settlement, and the amount in issue equals or exceeds fifty thousand dollars ($50,000), the Commission will hold a final review before deciding to finalize the settlement. The meeting on the final review will be attended by at least two (2) commissioners, a tax policy specialist, a deputy attorney general, and a representative from the division in which the Notice of Deficiency originated. The representative shall be either the division administrator or the bureau chief. One of the commissioners must be the commissioner delegated oversight responsibility for the tax at issue, and the other commissioner signing the settlement agreement must attend the final review. The purpose of the final review is to evaluate the merits of the proposed settlement. ( )

04. **Written Summary**. The deputy attorney general or tax policy specialist at the final review shall prepare a written summary of the proposed settlement. The summary shall include recommendations of the audit staff as well as recommendations of the preparer. The summary shall be provided to those attending the review. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. A copy of the summary, along with a copy of the related settlement agreement, shall be maintained in separate files of the Commission. Such files may not be disclosed or inspected under the public records law. ( )

05. **Final Review When the Offer to Settle is Based on Inability to Pay**. If the taxpayer's offer is based on inability to pay, a representative of the Field Services Bureau will be provided a copy of the Written Summary and given an opportunity to participate in the final review. The representative attending the final review on behalf of the Field Service Bureau will be the division administrator or the bureau chief. ( )

06. **Annual Summary**. The Commission shall submit an annual report to the governor

and legislature by March 1 of each year summarizing all settlement agreements entered into during the previous calendar year in which the amount in issue equals or exceeds fifty thousand dollars ($50,000). The annual summary shall be based on the written summary for all applicable cases. The annual summary shall not contain any confidential taxpayer information but shall include a brief general description of each settlement. The annual summary shall be a public record subject to disclosure and inspection. ( )

07. **Applicable Settlements**. This rule applies to those matters when a protest has been timely filed pursuant to Section 63-3045, Idaho Code, and before the tax has been assessed, and to cases in which a decision of the Tax Commission has been appealed to the Board of Tax Appeals or to a court. However, this rule shall not apply to settlements where the amount in issue is less than fifty thousand dollars ($50,000). ( )

50~~1~~2. -- 599. (RESERVED).