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35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (Rule 000).
In accordance with Sections 63-105, 63-3624, 63-3635, and 63-3039, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Sales Tax Act. They are the State Tax Commission's official statement of policy relating to interpretations and applications of the Idaho Sales Tax Act. (7-1-98)

001. TITLE AND SCOPE (Rule 001).
These rules shall be cited as IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose an excise tax upon each sale at retail of the sales price of all property subject to taxation under this act and on the storage, use, or other consumption in this state of tangible personal property. (7-1-93)

002. WRITTEN INTERPRETATIONS (Rule 002).
In accordance with Section 52-5201(16)(b)(iv), Idaho Code, the Tax Commission has written statements which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that these documents are not confidential under Section 63-3075 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the State Tax Commission. (7-1-93)

003. ADMINISTRATIVE APPEALS (Rule 003).
This chapter does allow administrative relief of the provisions outlined herein under Section 63-3049, Idaho Code. (7-1-93)

004. PUBLIC RECORDS (Rule 004).
The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076 or 9-340, Idaho Code. (7-1-98)

005. -- 009. (RESERVED)

010. DEFINITIONS (Rule 010).

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

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

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

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

05. Fleet. The term fleet shall mean one or more vehicles. (7-1-93)

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

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

08. Manufactured Home/Mobile Home. The term manufactured home, previously known as a mobile

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

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

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

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

12. Modular Building. The term modular building, previously known as a prefabricated building, means any building or building component, other than a manufactured home as defined, above, which is constructed according to standards contained in the Uniform Building Code, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, and is designed to be affixed to real property. (7-1-93)

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

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

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

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

011. RETAIL SALES - SALE AT RETAIL (Rule 011).

The Idaho Sales Tax is a tax on retail sales. Retail sales include all sales of tangible personal property except for property that will be resold, leased, or rented in the regular course of the buyer's business. (7-1-93)

01. Retail Sales. Retail sales also include: (7-1-93)

a. Sales to any person who constructs, alters, repairs or improves real property regardless of whether the person improving the property intends to resell it. See ISTC Rule 012. (7-1-93)

b. Producing or fabricating property to the special order of the customer. See ISTC Rule 029. (7-1-93)

c. Furnishing, preparing or serving food, meals or drinks for compensation. See ISTC Rule 041.

(7-1-93)

d. Admission charges. See ISTC Rule 030. (7-1-93)

e. Charges for the use or privilege of using tangible personal property or facilities for recreation. See ISTC Rules 030 and 047. (7-1-93)

f. Providing hotel, motel, tourist home and trailer court accommodations. See ISTC Rule 028. (7-1-93)

g. Leasing or renting tangible personal property. See ISTC Rule 024. (7-1-93)

h. Charges for on demand, intrastate charter flights. See ISTC Rule 037. (7-1-93)

02. Retail Sales Of Tangible Personal Property Together With Services. The sales tax applies to retail sales of tangible personal property. It does not apply to the sale of services except as stated above. However, when a sale of tangible personal property includes incidental services, the tax applies to the total amount charged, including fees for any incidental services except separately stated transportation and installation fees. The fact that the charge for the tangible personal property results mainly from the labor or creativity of its maker does not turn a sale of tangible personal property into a sale of services. The cost of any product includes labor and manufacturing skill. To determine whether a transaction is a retail sale of tangible personal property or a sale of services, the following tests must be applied. (7-1-93)

a. To determine whether a transfer of tangible personal property is a taxable retail sale or is merely incidental to a service transaction, the proper test is to determine whether the transaction involves a consequential or inconsequential professional or personal service. If the service rendered is inconsequential, then the entire transaction is taxable. If a consequential service is rendered, then it must be determined whether the transfer of the tangible personal property is an inconsequential part of the transaction. If so, then none of the consideration paid is taxable. (7-1-93)

b. To determine whether a mixed transaction qualifies as a sale of services, the object of the transaction must be determined; that is, is the buyer seeking the service itself, or the property produced by the service. (7-1-93)

c. When a mixed transaction involves the transfer of tangible personal property and the performance of a service, both of which are consequential elements whose costs may be separately stated, then two (2) separate transactions exist. The one attributable to the sale of tangible personal property is subject to sales tax while the other is not. (7-1-93)

03. Determining The Type Of Sale. To determine whether a specific sale is a sale of tangible personal property, a sale of services or a mixed transaction, all the facts surrounding the case must be studied and the tests described above must be applied. Here are some examples. (7-1-93)

a. Example 1: An attorney is retained by a client to prepare his will. The attorney prepares the will, sees that it is properly executed and bills the client. The physical document, the will, is then transferred from the attorney to the client. This is a sale of services because the client's object is not to obtain the will itself, but to ensure that his estate is disposed of in a certain way when he dies. Since, the transaction between the attorney and the client is not a retail sale of tangible personal property, no sales or use tax applies. However, the attorney must pay sales or use tax when he buys stationery and other equipment to prepare the will. Compare Example 5. (7-1-93)

b. Example 2: The attorney in Example 1 prepares a form book of wills which he intends to sell to other attorneys. The will he prepared in Example 1 is included in the form book. The sale of the form book to other attorneys is a taxable retail sale of tangible personal property. From the buyer's point of view, the object of the sale is to obtain the book, which is tangible personal property. The fact that special skill or knowledge went into the preparation of the book and is reflected in the purchase price does not make the sale of the form book a service transaction. (7-1-93)

c. Example 3: An architect is hired to prepare construction plans for a house. He prepares the plans and delivers them to his client. As in the example of the attorney preparing the will, this is a sale of services and the transfer of the tangible personal property, the plans, is inconsequential the transaction. No sales or use tax is due on the sale of the plans. (7-1-93)

d. Example 4: The architect in Example 3 is asked to provide additional copies of the same plans to his original client or to a third party. The architect copies the plans on a duplicating machine and sells them to the requesting party. This is a taxable retail sale of tangible personal property, since the buyer's object is to obtain the property, the plans. (7-1-93)

e. Example 5: An artist is commissioned to paint an oil portrait. When the portrait is completed, ownership is transferred to the client who pays the artist a lump-sum amount for the portrait. This is a taxable retail sale of tangible personal property because the buyer's object is to obtain the portrait. If the artist otherwise qualifies as a retailer, he is required to collect and remit sales tax on the sale of the portrait. (7-1-93)

f. Example 6: An automobile repair shop does repair work for a customer. To do the work, the shop must replace certain parts on the automobile. The repair shop bills its customer an amount for the repair parts and a separate amount for labor. This is a mixed transaction. As long as the sale of the tangible personal property, the parts, and the sale of services, the labor, are separately stated, sales tax is due only on the sale of the parts and not on the charge for labor. However, allocation of the total charge between parts and labor must be reasonable. If part of the charge for parts is unreasonably attributed to the cost of labor, the allocation may be adjusted by the Tax Commission. (7-1-93)

g. Example 7: A retail clothing store provides needed alterations to items purchased by customers. Even though the sale depends on the alterations being done, the service is incidental to the sale of the property. The entire transaction is a retail sale subject to tax on the total price paid by the buyer, even if the charge for the alteration labor is separately stated. (7-1-93)

04. Kinds Of Services Incidental To The Sale. Two kinds of services rendered incidental to a retail sale are specifically exempt from tax if the charge for the service is separately stated. They are: (7-1-93)

a. Charges for transportation after the sale. See Section 63-3613, Idaho Code, and ISTC Rule 061; and (7-1-93)

b. Installation charges. See Section 63-3613, Idaho Code, and ISTC Rule 012. (7-1-93)

05. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for transportation or installation may not be used to avoid tax on the actual sales price of tangible personal property. If the allocation of the total price is unreasonable, the State Tax Commission may adjust it. (7-1-93)

06. Tangible Personal Property Used Or Consumed By A Business. Tangible personal property used or consumed by a business in performing a nontaxable service is subject to sales or use tax. See ISTC Rule 072. (7-1-93)

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)

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)

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 Idaho Sales Tax Administrative Rules 010 and 067. (6-23-94)

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 Idaho Sales Tax Administrative Rule 075. 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. (6-23-94)

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

a. Road and paving contractors, see Idaho Sales Tax Administrative Rule 013. (6-23-94)

b. Contractor/retailers, see Idaho Sales Tax Administrative Rule 014. (6-23-94)

c. Well drillers/pump installers, see Idaho Sales Tax Administrative Rule 015. (6-23-94)

013. ROAD AND PAVING CONTRACTORS (Rule 013).

01. In General. This rule illustrates the application of Idaho sales and use tax to specific activities of road and paving contractors. The general principles stated in ISTC Idaho Sales Tax Administrative Rule 12 apply equally to road and paving contractors. (7-1-96)

02. Road Or Paving Contractor. A road or paving contractor is a contractor improving real property. The use of materials over which he exercises right or power in the course of performing the contract is subject to tax. This is true even if an exempt entity, such as a government agency, owns the material. (7-1-96)

03. Materials. The sale or use of materials which are extracted and crushed is taxable. Use tax does not apply to the use of natural materials that are secured on site and used without significant change. (7-1-96)

04. Rock Crushing. The application of the sales or use tax to rock crushing operations depends upon the circumstances of the case. (7-1-96)

a. A sale of crushing only is a sale of a taxable processing service. In this circumstance the crusher obtains raw material owned by another, crushes the rock, and stockpiles it for subsequent use either by the owner or a third party. Unless an exemption applies, the crusher must charge tax on all such sales. (7-1-96)

b. A contractor who applies crushed rock to the highway pursuant to a contract is a person engaged in improving real property. If the contractor applying the crushed rock purchases the rock, the purchase price will be subject to a sales or use tax. If the contractor applies rock owned by another party, the contractor will be responsible for a use tax on the value of the rock, unless the other party paid a sales tax upon its acquisition. This is true even if a government agency supplied the rock. If a recent retail acquisition of the crushed rock exists, the retail price shall be presumed to be the value of the material. If a recent retail sales price does not exist, then value shall be determined by the current acquisition cost of like material from the same or a similar source. For purposes of this section, a retail acquisition within one (1) year of the time of the performance of the contract shall be presumed to be a recent sales price. (7-1-96)

c. A contractor whose contract calls for him to both crush and apply rock to a road is also subject to the must pay sales or use tax on the value of the rock whether the contract is performed for a governmental or private contractee. The value shall be determined by the royalty or similar charge for raw materials. If a royalty or similar charge does not exist, then the value will be determined as the royalty fee or value of like material from a similar source. If the contractor chooses to have the rock crushed by a subcontractor, the measure of the use tax is on the crushed value. (7-1-96)

d. A sale of rock crushing services to a retailer who will sell the rock is an exempt sale. The sale of crushed rock to a consumer is a taxable sale unless an exemption applies. (7-1-96)

05. Production Exemption. (7-1-96)

a. Since a contractor improving real property is defined as the consumer of materials incorporated into realty, he is not producing an article for resale. Therefore, the production exemption does not apply to the use of equipment used by contractors to produce asphalt or concrete which are used to complete paving contracts. (7-1-96)

b. A business which is primarily devoted to producing crushed rock, asphalt, or concrete which is ultimately sold at retail will qualify for the production exemption. See Idaho Administrative Sales Tax Rules 079 and 082. (7-1-96)

014. CONTRACTORS/RETAILERS (Rule 014).

01. In General. This rule shows how Idaho sales and use tax applies to contractors who are also retailers. The general principles in ISTC Rule 012 also apply to contractor/retailers and should be reviewed along with this rule. (7-1-93)

02. Contractor/Retailer. In many cases, a contractor is also a retailer. For instance, mechanical contractors may operate retail plumbing shops. In this case, the contractor must have a sales tax permit and report sales made directly to customers, just like any other retailer. Also, he is a consumer when performing contracts to improve real property. Such a contractor might make separate purchases of material to be used on a specific job. He probably would do so with major items such as boilers, furnaces, and similar items. He also may remove necessary materials, probably small items such as joints, pipes, and tools, from his general inventory. (7-1-93)

03. Record Keeping Procedure. For convenience, the contractor-retailer may choose to follow any consistent procedure that can apply to his particular operation. (7-1-93)

a. For instance, if the majority of a contractor-retailer's business is performing contracts to improve

real property, he may wish to pay tax on all his purchases, keep a record of all his normal retail sales and then regularly apply for credit against the sales and use tax due the state for tax paid on purchase. (7-1-93)

b. If the majority of the contractor/retailer's business is retail sales, he may wish to make all his purchases without paying tax by giving his suppliers a resale certificate, keeping a record of his withdrawals from stock for use on contracts and paying a use tax to the state on these materials. (7-1-93)

c. If the contractor does major jobs, he may want to use separate accounting procedures, and make his purchases for stock without paying tax by issuing a resale certificate, but pay tax on his major job material purchases. See ISTC Rule 071. (7-1-93)

04. Inventory Withdrawals. When any withdrawal is made from nontaxed inventory, the use tax is due to the state when the material is delivered to the job site, regardless of when it is actually used in performing a contract. (7-1-93)

05. Sales With Agreement To Install. A regular over-the-counter sale of a complete unit with an agreement to install it is not a contract to improve real property. This applies to sales of stoves, refrigerators, washing machines, dryers, and other electrical appliances. In this case, a tax is collected from the buyer by the seller. If the installation charges are properly separated, tax is due only on the cost of the unit. (7-1-93)

06. Sales Of Both Tangible Personal Property And Improvements To Real Property. If a contract includes both retail sales of personal property and improvements to real property, the contractor-retailer must collect sales tax on the retail portion of the contract. Also, if he does not pay sales tax to his vendor, he must pay use tax on the materials used to perform the real property portion of the contract. (7-1-93)

a. Example: A cabinet builder contracts to build and install kitchen cabinets and build a portable, freestanding china hutch. In the case of the cabinets, he is a contractor and must pay tax on his material costs. In the case of the china hutch, he is a retailer and must charge his customer sales tax on the full price of the hutch, including labor. (7-1-93)

b. Example: A cabinet builder is hired by Contractor X to fabricate and deliver cabinets to the job site. Contractor X will do the installation. In this case, the cabinet builder is a retailer and must charge sales tax to Contractor X on the full sales price, including labor. (7-1-93)

015. WELL DRILLERS/PUMP INSTALLERS (Rule 015).

01. In General. This rule is meant to explain how Idaho sales and use tax applies to contractors who drill wells and install pumps. The general principles in ISTC Rule 012, Contractors Improving Real Property, also apply to well drillers and pump installers and should be reviewed along with this rule. (7-1-93)

02. Types. The types of wells covered by this rule include, but are not limited to: (7-1-93)

a. Water wells, including those for municipal, domestic, commercial, and industrial purposes, and wells used for agricultural irrigation. (7-1-93)

b. Monitor wells used to check for contamination or to find the water table. (7-1-93)

c. Anode wells used to ground power or gas lines. (7-1-93)

d. Construction wells used for pilings, shoring, and elevator hoists. (7-1-93)

03. Contractor Improving Real Property. A well driller/pump installer is a contractor improving real property. In general, he is subject to sales or use tax on materials and equipment he owns and uses or over which he exercises right or power while performing a contract. He should not charge sales tax on materials, such as casing, pumps, screens, piping, etc., used to complete a well. Section 63-3609(a), Idaho Code, states that these materials are consumed by the well driller/pump installer. He is subject to tax even if the owner of the material is exempt from the tax, such as a government agency. Well drillers/pump installers may be responsible for use tax on owner-supplied

materials. See ISTC Rule 012. Exemptions are discussed in ISTC Rule 015.05. (7-1-93)

a. Example: A well driller/pump installer contracts to drill a water well for a homeowner. He bills the homeowner separately for materials and labor as well as the drill bits he used. He should pay sales or use tax on his purchase of the materials and drill bits. Sales tax should not be charged to the customer since this is a contract to improve real property. (7-1-93)

b. Example: A well driller/pump installer contracts to drill a well for an Idaho city. He must pay sales or use tax on the materials and pumps used to complete the well, even though the eventual owner of these items is a governmental entity. (7-1-93)

04. Well Drillers/Pump Installers As A Retailer. In some cases, a well driller/pump installer also may be a retailer. For instance, he may sell casing, pumps or pump parts with no installation. In this case, he must have a seller's permit number, collect sales tax, and file sales tax returns, just like any other retailer. For more information on contractor/retailers, see ISTC Rule 014. (7-1-93)

05. Exemptions. In some cases, exemptions may apply to materials installed by well drillers and pump installers. NOTE: These exemptions apply only to project materials and not to construction equipment and supplies, such as drilling rigs and drill bits. If a well driller/pump installer makes exempt purchases, he must complete an exemption certificate for the vendor's records. (7-1-93)

a. Materials installed in a well which will be used primarily for agricultural irrigation are exempt under Section 63-3622W, Idaho Code. The exemption applies even if the materials become part of the real property. Agricultural irrigation includes supplying water to crops, livestock, and fish which are produced for resale. (7-1-93)

b. Pumps and other equipment used directly in manufacturing or processing are exempt under Section 63-3622D, Idaho Code. This exemption applies only to tangible personal property. It does not apply to materials which will become part of real property. Examples include: pumps used directly in food processing; booster pumps and chlorine pumps used directly in manufacturing; and dairy waste pumps. (7-1-93)

06. Motor Vehicles. In general, drilling rigs and licensed motor vehicles are subject to sales or use tax when purchased by a well driller/pump installer. However, if a vehicle weighs more than twenty-six thousand (26,000) pounds, is used more than ten percent (10%) of the time outside of Idaho, and is registered under the International Registration Plan or similar pro rata plan, its purchase is exempt. See ISTC Rule 101. This exemption does not apply to repair parts for motor vehicles, or to drilling rigs purchased separately from a motor vehicle. (7-1-93)

07. Fuel. Motor fuel taxes do not apply, or a refund may be obtained, if the fuel is used to run drilling rigs or other off-road equipment. Fuel purchased for such off-highway use is subject to sales or use tax. See Sections 63-2410 and 63-2423, Idaho Code, and related IDAPA 35.01.05, "Idaho Motor Fuels Tax Rules". (7-1-93)

016. RETAIL SALE OF ASPHALT, CONCRETE, AND CONCRETE PRODUCTS (Rule 016).

01. In General. Asphalt, concrete and concrete products are building materials. The sale of such products to construct, alter, repair, or improve real estate is subject to sales tax. Separately stated charges for delivery by the vendor and vendor standby time are not subject to sales tax. (7-1-93)

02. Agricultural Irrigation. Materials purchased for agricultural irrigation are exempt from sales tax whether purchased by the farmer, contractor, or subcontractor. This exemption applies even if the material is permanently affixed to real estate, such as concrete used to line ditches or ponds. See ISTC 96. The buyer must provide the seller with an exemption certificate. See ISTC Rule 075. (7-1-93)

03. Production Exemption. The retailer who produces and sells asphalt or concrete may qualify to claim the production exemption on equipment and supplies used directly to produce the concrete or asphalt for resale. See ISTC Rule 079. However, trucks used by a ready-mix operator do not qualify for the production exemption because they are used for transportation. Although they may incidentally contribute to the manufacture of the final article, purchases of the truck, trailer, and the truck-mounted concrete mixer, which becomes a part of the motor

vehicle, are not exempt from the tax. (7-1-93)

017. AIRLINES, BUSES, AND RAILWAY DINING CARS (Rule 017).

01. Sale Of Meals. The sale of meals or drinks that are not included in the price of the ticket on commercial aircraft, railway dining cars or buses operating in Idaho is a retail sale. An airline, bus company or passenger train is operating in Idaho if a trip starts or ends in Idaho and part of the trip can be allocated to Idaho. (7-1-93)

02. Taxable Sales. The gross receipts of such a sale are taxable when the meals, beverages or other tangible personal property are ordered or served within the boundaries of Idaho. It does not matter whether the meals and other property are consumed in Idaho. (7-1-93)

03. Formula For Taxable Sales. A formula may be used to determine the taxable sales of meals and beverages on the trip if accurate records of actual sales are not kept. The formula is: first, find the percentage of trip miles in Idaho in relation to the total mileage of the trip; and then, multiply this percentage by the total sales of meals or beverages served on the entire trip. (7-1-93)

04. Complimentary Meals, Snacks, Beverages Or Other Tangible Personal Property. When the price of an airline, bus, or railway ticket includes meals, snacks, beverages, or other tangible personal property, the cost of these complimentary goods is subject to use tax. If the complimentary goods are purchased in Idaho by the airline, bus company, or railway, sales tax must be paid to the vendor, whether or not the goods are distributed to passengers in Idaho. If the goods are purchased in another state and no sales or use tax has been paid to that state, the cost of goods distributed to passengers on trips that start or end in Idaho is subject to use tax. In the absence of accurate records, the airline, bus company, or railway may determine taxable use based on trip miles determined by the formula in ISTC Rule 017.03. (7-1-93)

018. RETAILER DEFINED (Rule 018).

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

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

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

04. An Agent As A Retailer. Where there is a written agreement between a principal and his agent, dealer or other third party, and such agreement stipulates that the agent, dealer or other third party will be responsible for collection, reporting and payment of sales tax generated by sales, the Tax Commission will treat the position of the agent, dealer or third party as that of a retailer and impose on him the burden of collecting, accounting for, and paying the sales tax to the State Tax Commission. (7-1-93)

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

b. In some instances, such as the above, and the example of a newspaper delivery boy, the sales are

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

019. SALES BY COUNTY SHERIFFS (Rule 019).

01. Sales. Where tangible personal property is sold by a county sheriff, either as a result of a court order or pursuant to any summary notice and sale foreclosure procedure, a sales tax shall be assessed and collected by the county sheriff at the time of the sale in the same manner as required of any other seller. (7-1-93)

02. Requirement To Register. There is no requirement for the various sheriff's offices to register with the Commission. Each sheriff's office in the state of Idaho is assigned a number to be used in such cases. Although their offices are not required to file the regular sales tax report form, they shall be required to complete and file the Commission County Assessor's or Sheriff's Sales Tax Return, Form ST-852, on the twentieth (20th) day of the month following the month in which sales occur. (7-1-93)

020. AUCTIONEER, AGENT, BROKER, DISTRIBUTOR AND FACTORS (Rule 020).
Every factor, auctioneer, broker and agent acting for a principal, or entrusted with any bill of lading, custom house permit for delivery or any tangible personal property or entrusted with possession of any personal property for the purpose of sale, shall be responsible for the proper collection and remittance of tax with respect to such sales, regardless of the fact that the principal or owner of the property being sold would not have been liable for collection of the tax if he had made the sale himself. (7-1-93)

021. MULTI-LEVEL MARKETING FIRMS (Rule 021).

01. Multi-Level Marketing Firm. A multi-level marketing firm is an organization that can convey to a person the right to sell a product and the right to convey those rights to another person. (7-1-93)

02. Agents. The Idaho Sales Tax Act provides the Commission with the authority to view salesmen, representatives, peddlers, or canvassers as agents of the dealers or distributors under whom they operate or from whom they obtain the tangible personal property sold by them, even if such persons are independent contractors. The Commission may require the dealers or distributors to collect and remit the sales tax on behalf of such agents. (7-1-93)

03. Requirement Of Multi-Level Marketing Firms To Collect Tax. The Commission may, upon the request of the multi-level marketing firm or when it finds evidence of material failure to comply with the Idaho Sales Tax Act or these rules and when the Commission determines that it is necessary for the efficient administration of such act, require multi-level marketing firms to collect the sales and use tax on all taxable property sold by the multi-level marketing firm through such agents, whether or not the agents are independent contractors. (7-1-93)

04. Notification. The Commission, upon determination that a multi-level marketing firm shall be required to collect the tax on taxable sales through its agents, shall provide to the multi-level marketing firm, by certified mail, a notification of the sales and use tax remittance requirements imposed by the Commission. (7-1-93)

a. Beginning with the first reporting period after receipt of the notice, the multi-level marketing firm shall be responsible for collecting and remitting tax on all sales made by such agents. (7-1-93)

b. A taxpayer desiring to seek a redetermination of the notice must file a written protest with the Commission within the time limit and under the procedures provided by ISTC 121. (7-1-93)

022. DROP SHIPMENTS (Rule 022).

01. In General. Drop shipments refer to shipments made by a seller to someone other than its purchaser. For example, a Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate purchaser and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the

Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer holds an Idaho seller's permit. (7-1-99)

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

03. Sales Tax Responsibilities Of The Manufacturer. The Manufacturer can have sales tax responsibilities as to the sales transaction between itself and the Retailer. (7-1-99)

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

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

04. Resale Certificate. If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission if the rules set forth in Rule 071 of these rules are met. (7-1-99)

023. (RESERVED).

024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (Rule 024).

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

02. Bare Equipment Rental. A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 071 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment. (7-1-99)

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

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

b. A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies it along with operators who are his own employees, and the property supplied is of no value to the customer without the owner's employees. (7-1-93)

c. The owner or supplier of the equipment or property used in a fully operated equipment rental is the

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

d. If the equipment or property has value to the customer without the owner's or supplier's employees, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the employees of the owner or supplier. (7-1-93)

e. Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the rental company's employee, so the leasing company is not required to charge sales tax on the lease of the crane. (7-1-93)

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

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

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, he is the consumer of the equipment while it is used by his employees to perform his service contract. Accordingly, he must pay use tax on the reasonable rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (7-1-93)

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

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

06. Maintenance Of Rental Equipment. If the owner who rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (7-1-93)

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

08. Exempt Equipment Rentals. Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule 075 of these rules. (7-1-99)

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

10. Personal Property Tax. Separately stated personal property tax must be included in the rental

price subject to tax. For example, some industries rent or lease tangible personal property for a certain monthly, or other period, rental charge, plus a separately stated amount determined by the owner-lessor's personal property tax liability on the equipment. Even though the amount of property tax is separately stated from the basic rental charge, it must be included in the total rental price subject to tax. (7-1-93)

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

12. Lease-Purchase And Lease With Option To Purchase. (7-1-93)

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

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

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

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

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

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

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

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

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

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

025. RENTALS OR LEASES OF REAL PROPERTY (Rule 025).

01. In General. The sale, lease, or rental of real property, including office space, living space, lockers, boat docks, billboards, parking spaces, spaces for booths at fairs, and real property storage spaces is not subject to sales tax. (7-1-93)

02. Hotel, Motel, And Campground Accommodations. The charge for providing hotel, motel, and campground accommodations is subject to sales tax as provided by Section 63-3612, Idaho Code. See ISTC Rule 028. (7-1-93)

026. (RESERVED).

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (Rule 027).

01. Hardware, Computers, And Peripherals Defined. (7-1-93)

a. Hardware is the physical computer assembly and peripherals, including but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers. (7-1-93)

b. Computer. Computer means a programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment. (7-1-93)

02. Computer Software, Computer Program, And Storage Media Defined. (7-1-93)

a. Computer Software. Computer software means sequences of instructions or collections of data which, when incorporated into a machine-usable data processing storage or communication medium or device, such as printed material, cards, disks, tapes, modems, or memory, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes instructions and data, including any documentation or information held on storage media. (7-1-93)

b. Computer Program. Computer program means instructions encoded in a programming language and the data which are manipulated by the instructions, regardless of whether such information is held in a machine-readable format on storage media or a hardcopy human-readable format. (7-1-93)

c. Storage Media. Storage media includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer. (7-1-93)

03. Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See ISTC Rule 024. (7-1-93)

04. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program. (7-1-93)

a. Canned software may be transferred to a customer electronically or in the form of punched cards, magnetic tape, or other storage media or by listing the program instructions on coding sheets. Tax applies to the sale or lease of the storage media or coding sheets on which or into which such canned software is recorded, coded, or punched. (7-1-93)

b. Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of software for the purpose of direct use or to be recorded or punched by the customer or by the lessor on the customer's premises, is a sale or lease of tangible personal property and is taxable. (7-1-93)

c. Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (7-1-93)

d. The sale, license, or lease of canned software is a taxable transaction, even though the program is transferred by remote telecommunications from the seller's place of business, to or through the purchaser's computer. (7-1-93)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned

software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive error corrections and telephone or on-site consultation services. (7-1-93)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. (7-1-93)

b. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing storage media improvements is subject to sales tax IF the fee for consultation services and error corrections is separately stated. If the fee for consultation services and error corrections is not separately stated from the fee for storage media improvements, the entire charge for the maintenance contract is subject to sales tax. (7-1-93)

06. Reports Compiled By A Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable. If a report is compiled after January 1, 1992, from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (7-1-93)

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

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

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

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

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

07. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by ISTC Rule 011. (7-1-93)

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

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

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must accrue use tax. (7-1-93)

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

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form in which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (7-1-93)

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

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

09. Data Processing Service Agreement. Data processing service agreements are contractual agreements to access either by batch or on-line, or to receive services from a computer owned and operated by another. A charge for computer time under the terms of a data processing service agreement is a service and not subject to sales tax. Computer hardware sold, leased, or rented in connection with a data processing service agreement must be separately stated and taxed as provided in Subsection 027.01. (7-1-93)

10. Purchases For Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See ISTC Rule 071. (7-1-93)

028. HOTELS, MOTELS AND CAMPGROUNDS (Rule 028).

01. Fees. Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Tourism and Convention taxes and may be subject to the Greater Boise Auditorium District sales tax. These taxes are explained in the Commission's rules entitled Hotel/Motel Room and Campground Sales Tax Rules, IDAPA 35.01.06. (7-1-93)

02. Purchases By Hotels, Motels, And Campgrounds. Effective July 1, 1988, hotels, motels, and campgrounds may purchase tangible personal property for consumption by their customers without paying tax if the tangible personal property is included in the fee charged to the customer and is directly consumed by the customer in such a way that it cannot be reused. Hotels, motels, and campgrounds must provide a resale certificate to their vendor when purchasing such items for resale. Examples include: (7-1-93)

a. Facial tissue, toilet tissue, toilet sanitation tissues, disposable laundry pickup bags, and paper napkins. (7-1-93)

b. Soaps, hair shampoo, hair conditioners, and lotions. (7-1-93)

c. Disposable plastic drinking glasses, disposable plastic utensils, disposable shoe shine cloths, and disposable shower caps. (7-1-93)

d. Candies, beverages, meals, and newspapers furnished with the room. (7-1-93)

e. Room stationery, envelopes, notepads, and matches. (7-1-93)

03. Tangible Personal Property Subject To Tax. Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by

the hotel, motel, or campground. Tangible personal property subject to tax includes property which is NOT directly consumed by the customer, property that is nondisposable in nature, or property that is depreciated in the books and records of the hotel, motel, or campground. The hotel, motel, or campground is the user and consumer of such supplies and equipment and will pay sales tax on the purchase of such items. Examples include: (7-1-93)

a. Bath towels, bath mats, linens, and bedding. (7-1-93)

b. Glassware, silverware, and china. (7-1-93)

c. Furniture and fixtures. (7-1-93)

d. Bibles, room service menus, and directories. (7-1-93)

e. Toilet sanitary rings and garbage can liners. (7-1-93)

f. Any tangible personal property available to the general public. (7-1-93)

029. PRODUCING, FABRICATING, AND PROCESSING (Rule 029).

01. In General. Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether or not consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving. (7-1-93)

a. Example 1: An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price. (7-1-93)

b. Example 2: An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker. (7-1-93)

c. Example 3: An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving shall be subject to tax. (7-1-93)

d. Example 4: A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge. (7-1-93)

e. Example 5: An individual takes a beef to a packing plant and requests that the meat be processed by cutting, wrapping, and freezing the meat to the purchaser's specification. The total price paid for this processing shall be subject to sales tax. (7-1-93)

f. Example 6: A hunter takes a deer to a business which processes smoked meats. Although the material actually consumed in the smoking process may be minimal, the entire price paid for this processing is subject to sales tax. (7-1-93)

02. Repairing And Reconditioning Distinguished. Producing, fabricating, and processing includes any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced. (7-1-93)

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

a. Repairs and Renovation of Tangible Personal Property. See ISTC Rules 011 and 062. (7-1-93)

b. Fabrications by Contractors. See ISTC Rule 012. (7-1-93)

030. RECREATIONAL FACILITIES AND ADMISSIONS DEFINED (Rule 030).

01. Admissions. The amount paid for the right to use a reserved seat or any seat in any auditorium, theater, circus, stadium, school building, meeting house or gymnasium to view any type of entertainment is taxable. The right to use a table at a nightclub, hotel or roof garden is taxable whether such charge is designated as a cover charge, minimum charge or any such similar charge and the amount paid for such right is subject to the tax. This is true whether the charge made for the use of the seat, table or similar accommodation is combined with an admission charge proper to form a single charge or is separate and distinct from an admission charge or is itself the sale charge. (7-1-93)

a. When an original admission charge carries the right to remain in a place or use a seat or table or other similar accommodation for a limited time only and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the code. (7-1-93)

b. When a person or organization acquires the sole right to use any place or the right to dispose of all the admissions to any place for one or more occasions, the amount paid for such right is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place whether or not it is so designated. However, if the person or organization in turn sells admission, the tax will apply to the amounts paid for such admission. (7-1-93)

02. Use Of A Recreational Facility. Charges for bowling, green fees, membership dues, or other fees required to be paid to golf clubs, racquet clubs, swim clubs, health clubs, or other clubs and organizations of a similar nature, the primary purpose of said charges or fees being to procure the use of a particular facility, facilities, or building for the purpose of recreation or physical conditioning are subject to sales tax. (7-1-93)

03. Dues. Dues paid to such fraternal organizations as the Elks, Eagles, Masonic Order, or similar organizations will not normally be paid primarily for the use of such facilities as might be designed for recreation; in such cases, recreational use of facilities will be incidental to other purposes for tax. However, any separate, identifiable fees charged by such fraternal organizations, in excess of ordinary membership dues and fees, specifically for the use of recreational or physical conditioning facilities will be subject to sales tax including, but not limited to, bowling fees, green fees, swimming fees, court fees, or equipment usage fees. (7-1-93)

04. Admissions Combined With The Use Of Tangible Personal Property. Charges imposed on persons admitted to swimming pools, skating rinks, golf courses and bowling alleys, etc., often combine the privilege of entering the place with the right to use tangible personal property. Where a uniform price is imposed upon all persons admitted without regard to the intention of the individual to use tangible personal property or the other facilities included, the total charge will be presumed to be an admission charge and subject to tax. (7-1-93)

05. Rental Of Tangible Personal Property. When a charge is made only for the rental of tangible personal property such as skates, bathing suits, etc., the rental will be taxable if the rental charged exceeds eleven cents ($0.11); or if a lesser charge is made to a person not desiring to use the property or services offered; this lesser amount shall be deemed to represent the amount charged for admission. (7-1-93)

06. Instructional Fees. Separately stated instruction fees, such as for jazzercise, aerobics, dance, and swimming are not subject to tax. (7-1-93)

07. Pari-Mutuel Betting. Pari-mutuel betting is not subject to the sales tax. Admission charges to attend horse racing, dog racing or any other event are taxable. (7-1-93)

031. RADIO AND TELECOMMUNICATIONS EQUIPMENT AND LAND MOBILE RADIO SERVICE OF SYSTEMS.

01. General Rule And Scope. Sales and purchases of communication equipment and land mobile

radio systems are subject to sales and use tax. This rule describes sales and use tax treatment of telephone terminal equipment or services and land mobile radio systems or service. (7-1-97)

02. Telephone Terminal Equipment And Services. (7-1-93)

a. Telephone terminal equipment includes, but is not limited to, desk sets, PBX systems, automated answering equipment, cellular telephones and mobile radio telephones. All lessors, or sellers, or both, of this type of equipment are required to obtain seller's permits, and must collect and remit sales tax on the retail sales price or lease price. (7-1-97)

b. Fees for access charges, toll charges, call waiting, call forward, message recording, and similar charges to customers are not subject to the sales tax. (7-1-97)

03. Land Mobile Radio Systems Or Services. (7-1-93)

a. Generally, land mobile radio systems or services are defined by 47 Code of Federal Regulations, Section 90.7. (7-1-93)

b. Sales of terminal equipment or customer premises equipment are taxable. Terminal and customer premises equipment shall include handsets, mobile telephones, antennae, and like or similar property. (7-1-97)

c. Separately stated fees for labor rendered to install or apply terminal or customer premises equipment on premises or in facilities under the dominion and control of the consumer are not subject to sales tax. (7-1-93)

d. Fees for access charges, toll charges, and similar charges are not subject to the sales tax. (7-1-97)

04. Provider Equipment. Equipment or tangible personal property used in receiving or transmitting, other than terminal or customer premises equipment, shall be deemed purchased for use by the owner or provider of the telephone or land mobile radio system or service, and subject to sales or use tax on his purchase cost. The owner or provider of telephone or land mobile radio systems or services will be deemed the consumer of other tangible personal property which he purchases and which is used for other purposes including, but not limited to, office supplies, repair equipment, accounting or customer billing equipment, and equipment or devices or other property used to maintain or repair land mobile radio systems or services. (7-1-93)

05. Drop-In Equipment And Inside Wiring. (7-1-93)

a. Drop-in equipment and inside wiring shall include wires, plugs, sockets, receptacles, connectors and similar items which are or become improvements or accessions to real estate, and which are useful or necessary to bring telephonic or radio communication transmissions from a source outside the premises of the user, for example, telephone pole or transmitter, to terminal equipment within the user's premises. (7-1-93)

b. Sales and purchases of drop-in equipment and inside wiring shall be subject to sales or use tax as tangible personal property consumed by a contractor improving real estate, and persons installing drop-in equipment and inside wiring shall be considered contractors for the purposes of such installations. See Idaho Sales Tax Administrative Rule 012 for tax treatment of contractors. (7-1-97)

032. (RESERVED).

033. SALES OF NEWSPAPERS AND MAGAZINES (Rule 033).

01. Subscriptions. Subscriptions to newspapers and magazines are sales of tangible personal property. The sale will be taxed if the single copy price of each newspaper or magazine purchased by the subscriber exceeds eleven cents ($0.11). The single copy price shall be computed on an annual basis regardless of whether the subscription is paid weekly, monthly or on some other periodic basis. (7-1-93)

02. Single Copy Price. The single copy price shall be computed according to the following formula.

(Published subscription price) x (Number of subscription periods in one (1) year) / (Number of issues a subscriber receives in one (1) year) = Single Copy Price. If the single copy price as computed exceeds eleven ($0.11)cents, the subscription is taxable. If the single copy price is eleven cents ($0.11) or less, the subscription price is not taxable. (7-1-93)

03. Computation Of Tax. If the subscription price is taxable, the tax shall be computed on the subscription price according to the schedule contained in Section 63-3619, Idaho Code. (7-1-93)

04. Subscription Price. As used in this rule, the terms published subscription price and subscription price mean the total amount charged for purchase and delivery of the newspaper and magazine, except that separately stated postage shall be excluded from the subscription price subject to tax. It is acceptable business practice for publishers to establish a price for their newspapers as separate weekday-only and Sunday-only issues. The provisions of this rule will be in effect in such cases. When the price is posted as a combined weekday-Sunday price, sales tax will be charged on the combined subscription price. (7-1-99)

05. Individual Sales. Individual or separate sales of newspapers or magazines, except as provided in subsection 06 of this rule for a single price of eleven cents ($0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents ($0.11) are subject to tax according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together with retail sales or other tangible personal property subject to tax shall be taxable if the total sales price of all taxable property included in the sale exceeds eleven cents ($0.11). (7-1-93)

06. Vending Machine Sales. Sales of newspapers or magazines through a vending machine are governed by the provisions of Section 63-3613, Idaho Code, and Rule 058 of these rules, except when the cost of the newspaper is greater than the sales price, tax will be computed on the retail sales price. (7-1-99)

07. Independent Retailer Sales. The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See Rule 071 of these rules. The incidence of sales tax then falls upon the independent retailer who must have a registered seller's permit number and will be responsible for collecting, accounting for and remitting the sales tax on all newspapers thus purchased and resold. (7-1-99)

08. Carriers Less Than Sixteen Years Old. If the carrier is less than sixteen (16) years old, the publisher or other seller's permit holder from whom he or she obtains the newspapers will be responsible for the collection of sales tax and remitting such taxes to the State Tax Commission. (7-1-93)

09. Product Consumed By The Publisher. Eight-tenths of one percent (0.8%) of net press run of newspapers or magazines, will be taxed as product consumed by the publisher. Any percentage figure below eight-tenths of one percent (0.8%) must be supported by accepted accounting methods generally used in the publishing industry. The value of the newspapers used shall be set at the retail price charged the consumer. Example: (Eight tenths of one percent (0.8%) of Daily Net Press Run) x (Single Copy Retail Price) x (Tax Rate) / Daily Net Press Run = Tax Per Copy. (7-1-93)

10. Single Unit Price And Net Press Run. For purposes of the computation in Subsection 033.09 of this rule single copy price shall be the amount computed by the formula in Subsection 033.02 of this rule. Net press run shall mean all readable, usable copies, including editorial copies, tearsheets, and archival copies, and not including spoiled runs or printing waste. (7-1-93)

11. Free Distribution Publications. Those free distribution publications, such as shoppers or flyers which, because they achieve no retail value as defined in this rule and meet the exemption laws due to a ten percent (10%) editorial content, will not be subject to sales tax. (7-1-93)

12. Cross-Reference. (7-1-93)

a. See Rule 058 of these rules, Sales Through Vending Machines. (7-1-99)

b. See Rule 071 of these rules, Resale Certificates-Purchases for Resale. (7-1-99)

034. TRADING STAMPS (Rule 034).

01. Sales Price. Sales price includes the total consideration paid whether received in money or otherwise. If property is purchased with trading stamps, a tax will be imposed at the time of sale measured by the listed retail selling price for the goods. If no such price is listed, the actual retail selling price or the redemptive value of the stamps, whichever is higher, will be used as the measure of the tax. Sales tax will be collected from the purchaser. (7-1-93)

02. Purchase Of Trading Stamps By Retailer. The purchase of trading stamps by a retailer for distribution to his customers is a purchase of tangible personal property subject to the tax. As the stamps are distributed by the retailer to his customers at no charge, the retailer is considered to be the customer of the trading stamps. (7-1-93)

035. LAYAWAY SALES (Rule 035).

01. In General. Layaway sales will be assessed sales tax. The tax shall be collected on the total sales price of the items on layaway at the time of sale. (7-1-93)

02. The Time A Sale Occurs. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. (7-1-93)

a. The sales tax is accrued and remitted to the state based on the tax rate in effect at the time of sale. (7-1-93)

b. Separately stated nonrefundable service charges are not a measure of the applicable sales tax. (7-1-93)

c. Example 1: On March 1, 1986, a customer puts on layaway an item costing one hundred dollars ($100). A twenty dollar ($20) down payment is made, plus a nonrefundable two dollar ($2) service charge. A twenty dollar ($20) biweekly payment is to be made. The customer meets the biweekly payment schedule, makes the final payment, and accepts delivery of the item on April 26, 1986. On that date, title to the property passes through delivery to the customer. If the two dollar ($2) service charge is separately stated, it is not a measure of the tax due. The one hundred dollar ($100) retail sale is reported as occurring in April, 1986, and is subject to the rate of tax for the month of April. (7-1-93)

d. Example 2: The same circumstances as in Subsection 035.02.c., Example 1, except that only two (2) payments are made and the customer decides not to complete the layaway transaction. The retailer refunds all amounts paid, except the two dollar ($2) nonrefundable service charge. A sale does not occur and no sales tax is due. (7-1-93)

e. Example 3: The same circumstances as in Subsection 035.02.c., Example 1, except after one (1) payment the customer moves and cannot be located. No refund of amounts paid by the customer is made. The amount no refunded is not subject to sales tax because there is no sale through delivery of tangible personal property to the customer. See Section 63-3612, Idaho Code. (7-1-93)

036. SIGNS AND BILLBOARDS (Rule 036).

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

02. Rental Of Signs. The rental of signs is subject to sales tax and a sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which in fact a sale, will be treated as a sale and tax collected

on the entire sales price at the date upon which the contract is executed. (7-1-93)

03. Material That Becomes Part Of A Sign. Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 071 of these rules. (7-1-99)

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

05. Billboards. (7-1-99)

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

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

037. AIRCRAFT AND FLYING SERVICES (Rule 037).

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

a. Certified air carrier. Any person who directly or indirectly or by a lease or any other arrangement, offers air transportation and is authorized by the FAA to operate as an air carrier under an air carrier operating certificate. (7-1-94)

b. Regular scheduled flight. A flight which is operated regularly between two (2) points and is listed in a published schedule which is readily available to the public. (7-1-94)

c. On demand flight. The hiring on demand of an aircraft with a pilot to transport freight or passengers on an unscheduled flight. (7-1-94)

d. 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, photography, wildlife viewing, hot air balloon rides, or other similar activities. (7-1-94)

e. Intrastate flight. A flight where the origin and destination points are within Idaho. (7-1-94)

f. 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. (7-1-94)

g. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

h. Nonresident Business. A business with no property located in Idaho, or employees working in Idaho. (7-1-94)

i. Day. For the purpose of this rule any part of a day is a day. (7-1-94)

02. Sales Subject To Tax. Sales or use tax applies to the total sales price of: (7-1-94)

a. An aircraft sold at retail, except as provided by Subsection 037.03 of this rule. (7-1-94)

b. The receipts from intrastate on demand flights, except as part of a regularly scheduled flight by a certified air carrier, under the authority of the FAA. (7-1-93)

c. The receipts from transporting passengers for a recreational flight. (7-1-94)

d. The sale of parts or other tangible personal property used to repair or maintain an aircraft not held for resale, including parts or other tangible personal property used to repair or maintain aircraft primarily used to transport passengers or freight for hire. (7-1-93)

03. Aircraft Not Subject To Tax. Sales or use tax does not apply to the sale, lease, purchase, or use of an aircraft. (7-1-94)

a. PRIMARILY used to transport passengers or freight for hire. (7-1-94)

b. PRIMARILY used for emergency transportation of sick or injured persons (7-1-94)

c. By nonresidents for use outside this state, when the aircraft is upon delivery taken outside this state, but only if the aircraft registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninty (90) days in any twelve (12) month period. (7-1-94)

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 037.03 above. See Idaho Sales Tax Administrative Rule 024. (7-1-94)

05. On Demand Flying Services. The charge for intrastate on demand flying of passengers or freight is subject to sales tax. The sales tax applies to the total amount charged for the intrastate charter flight, including standby time for a pilot, crew, or other separately stated charges. (7-1-94)

a. Example: A customer hires a flight on demand from Boise to Coeur d'Alene, Idaho. During the flight the pilot stops briefly in Spokane, Washington, at the passenger's request. In this example the flight is an intrastate on demand flight of passengers for hire and is subject to sales tax. The measure of the sales tax is the total amount charged for the on demand flight. (7-1-94)

b. Example: A customer hires a flight on demand from Boise, Idaho, to Spokane, Washington. During the flight the pilot stops briefly in Coeur d'Alene, Idaho, at the passenger's request. In this example the flight is an interstate on demand flight, even though the aircraft landed briefly in Idaho. Sales tax will not apply to the flight because it is an interstate flight. (7-1-94)

c. Example: A company hires a flight on demand from Boise, Idaho, which is to transport one (1) passenger to Pocatello, Idaho, and the remaining passengers to Salt Lake City, Utah. The amount charged to transport the passenger to Pocatello is subject to sales tax as an intrastate on demand flight. The charge for flying the remaining passengers to Salt Lake City is not subject to sales tax, as it is an interstate flight. (7-1-93)

d. Example: A company hires a flight on demand from Boise to Pocatello, Idaho, and requests that the plane then fly the passenger to Salt Lake City, Utah, later in the day. Two (2) on demand flights have occurred. The first is an intrastate flight from Boise to Pocatello, subject to sales tax. The second flight is interstate, Pocatello to Salt Lake City, and not subject to sales tax. (7-1-93)

e. Aircraft which are purchased, rented, leased, or withdrawn from resale inventory to be used primarily for on demand flights are not subject to sales or use tax. Sales or use tax DOES apply to parts, oil, or other tangible personal property used to repair or maintain such aircraft. (7-1-94)

06. Aerial Contracting Services. Sales tax does not apply to the amount charged by the owner or operator of an aircraft to perform aerial contracting services such as aerial logging, applying agricultural products or other products by aerial spraying or dumping, or other similar activities not involving the transportation of freight or passengers. However, if the service involves the hauling of freight or passengers who are not employees of the flying service, the flight is deemed an on demand flight. (7-1-94)

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, 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. (7-1-94)

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

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

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

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

09. Recreational Flights. Fees charged for recreational flights are taxable as provided by Subsection 037.02.c. of this rule. Aircraft purchased, rented, or leased primarily for providing recreational flights are subject to sales or use tax. (7-1-94)

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

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

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

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Idaho Sales Tax Administrative Rule 071. (7-1-94)

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

12. Records Required. The owner or operator of an on-demand flying service must give his customer a receipt and keep a copy for his records, showing the customer's name and address, date of flight, its purpose, and its origin and destination. If the flight or transaction is subject to sales tax, the tax must be separately stated on the receipt. (7-1-94)

038. FLYING CLUBS (Rule 038).

01. In General. A flying club is an association of persons who have purchased or leased aircraft for the purpose of renting the aircraft to club members. The aircraft rentals to the club members are considered bare equipment rentals and are subject to the tax at a reasonable rental value. (7-1-93)

02. Rental Or Sale Of Aircraft To Members. The flying club is a retailer who is required to obtain a seller's permit and collect and remit sales tax. The sales tax, at the prevailing tax rate, is to be collected by the flying club and remitted to the Commission in the manner prescribed for other retailers. The tax is applicable whether the aircraft is sold or is rented on an hourly, daily, weekly, monthly, or any other basis. The flying club, primarily engaged in the business of making bare equipment rentals to club members, may purchase or lease the aircraft without paying sales tax by giving to its vendor a valid resale certificate as required by ISTC Rule 071. (7-1-93)

03. Other Charges To Members. Charges for membership fees are generally subject to sales tax. If the membership fee is in no way related to the rental of the aircraft, the fee is not subject to sales tax. Charges for flight instruction, if such charges are separately stated, are not subject to sales tax. However, charges for logbooks and flight instruction manuals are subject to tax. (7-1-93)

04. Aircraft Repair Parts. If the flying club is responsible for the maintenance of the aircraft, the club may purchase the necessary repair and replacement parts without paying tax by providing a valid resale certificate. See ISTC Rule 071. (7-1-93)

05. Cross-Reference. Aircraft and Flying Services see ISTC 037. (7-1-93)

039. SALE AND PURCHASE OF BULLION, COINS, OR OTHER CURRENCY (Rule 039).

01. Sales And Purchases Of Bullion. Sales and purchases of precious metal bullion and monetized bullion are exempt from sales tax. (7-1-93)

a. Precious metal bullion is an elementary precious metal, such as gold, silver, platinum, rhodium and chromium which has been processed by smelting or refining and where the value of the metal depends upon the content and not upon its form. (7-1-93)

b. Monetized bullion is a coin made of gold, silver or other metals which has been, is or will be used as a medium of exchange under the laws of this state, the United States or any foreign nation. (7-1-93)

02. Jewelry Or Other Works Of Art. The exemption does not extend to coins or money sold to create jewelry or other works of art. The exemption also does not extend to coins whose values may be determined by their form, and which are not minted or manufactured as currency. (7-1-93)

a. Medallions, tokens or other coins created to commemorate a historical event are taxable. (7-1-93)

b. An ingot of precious metal purchased by an individual is exempt from sales tax. Jewelry items, such as belt buckles, bracelets or necklaces, containing silver dollars or other legal tender or ingots are taxable. (7-1-93)

c. Coins, such as Krugerands the one (1) ounce gold coins of the Republic of South Africa, are exempt, unless incorporated into a jewelry item or other decoration. (7-1-93)

040. PROFESSIONAL TAXIDERMIST (Rule 040).

01. In General. The taxidermy profession is subject to Idaho sales and use tax under the category of custom made items. The underlying reason for the custom made section of Idaho Code is to equalize the tax on custom made items to those that could be purchased and sold in channels of trade. When buying an item fabricated from either a hide or fur pelt, the purchase price is based on the full cost of material and labor. In the instance of the taxidermy profession, the untanned pelt of hide would be the basic raw material from which the finished product was fabricated. (7-1-93)

02. Fabrication. A deerskin brought to the taxidermist for tanning should be taxed on the price charged by the taxidermist for tanning. If later that tanned skin is taken to a business that fabricates either gloves, moccasins, or jackets, again the fabricator should charge tax on the cost of fabricating the tanned hide making the total tax on the item fabricated comparable with the deerskin, gloves, etc., purchased from a retail store. This also would apply to the mounting of antlers, etc., and even to the making of full mounts of animals. At the time the taxidermist receives the head, the antlers, etc., of the animal from the customer, he has received only a basic piece of material that would be useless until he performs certain functions to place it in a usable or finished condition. (7-1-93)

03. Materials. All materials, such as mounting material, tanning material, and preservatives may be purchased by the taxidermist tax exempt since he will charge tax on the finished product. He may provide his supplier

with a resale certificate. See ISTC Rule 071. (7-1-93)

041. FOOD, MEALS, OR DRINKS (Rule 041).

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

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

03. Clubs And Organizations. Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See ISTC Rule 030. Special rules apply to religious organizations. See ISTC Rule 086. (7-1-93)

a. When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example:

Dinner, dancing, etc.	$ 8.00
Tax.	$ .40
Registration, speakers, etc.	$ 6.60
Total Ticket	$15.00

Meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (7-1-93)

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

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

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

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

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

05. Fraternities, Sororities, And Cooperative Living Group. Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by

members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

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

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

c. Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (7-1-93)

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

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

a. Sales tax applies to the gross receipts. The posted price must include a statement that sales tax is included. (7-1-93)

b. The formula for computing the taxable amount effective July 1, 1986, is: (Gross Receipts) / (one hundred five percent (105%)) = Taxable Sales. (Taxable Sales) x (five one hundredths (.05)) = Tax Due. (7-1-93)

08. Church Organization. Special rules apply to religious organizations. See ISTC Rule 086. (7-1-93)

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

10. Nontaxable Purchases By Establishments Selling Meals Or Beverages. Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See ISTC Rule 071. Examples of items which are purchased for resale and directly consumed by customers include: (7-1-93)

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

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

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

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

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

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

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

042. PRICE LABELS (Rule 042).

Sales of price labels, stickers, pricing ink, pricing guns and shelf labels are considered to be property used and consumed by the store in the course of conducting its business activities and are subject to tax. Pricing labels which contain commodity information such as ingredients, nutritional information, or caloric information are not subject to tax, since the utility of the label does not end with the purchase of the product. (7-1-93)

043. SALES PRICE OR PURCHASE PRICE DEFINED (Rule 043).

01. Sales Price And Purchase Price. The term sales price and purchase price may be used interchangeably. Both mean the price paid by the customer or user to the seller including: (7-1-93)

a. The cost of transporting goods to the seller. See Idaho Sales Tax Administrative Rule 061. (7-1-97)

b. Manufacturer's or importer's excise tax. See Idaho Sales Tax Administrative Rule 060. (7-1-97)

c. Services agreed to be rendered as part of the sale. (7-1-97)

d. Separately stated labor charges to produce or fabricate made to order goods. See Idaho Sales Tax Administrative Rule 029. (7-1-97)

02. Charges Not Included. Sales price does not include charges for interest, carrying charges, amounts charged for insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price. (7-1-93)

03. Gratuities. A gratuity is defined as something given voluntarily or beyond obligation. Gratuities may sometimes be referred to as tips. (7-1-93)

a. When a gratuity is given directly to employees by the purchaser in the form of cash or the PURCHASER adds a nonsolicited gratuity to his bill, charge card voucher form, or house account form, no sales tax applies to the gratuity. (7-1-93)

b. When an amount is added to a customer's bill by the retailer and the customer is advised IN WRITING on the face of the bill that he may decline to pay all or part of the amount, that amount is a gratuity. Sales tax will not apply to the gratuity. (7-1-93)

c. When an amount is added to a customer's bill by the retailer, and the customer is not advised IN WRITING on the face of the bill that he may decline to pay all or part of the amount, it is not a gratuity and the fee so added is subject to the sales tax. (7-1-93)

d. When a gratuity is negotiated BEFORE THE SALE, such as in the case of a banquet, tax must be charged on the entire fee so negotiated. Because of the negotiation, the fee loses its identity as a gratuity and becomes a service charge and part of the purchase price of the meal. See Subsection 043.04 of this rule. (7-1-93)

04. Service Charges. Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax, even though such service charges are made in lieu of tips and paid over by the retailer to his employees. (7-1-93)

044. TRADE-INS, TRADE-DOWNS AND BARTER (Rule 044).

01. Trade-Ins. A trade-in is the amount allowed by a retailer on merchandise accepted as payment for other merchandise. Merchandise is tangible personal property which is, or becomes, part of an inventory held for resale. (7-1-93)

02. Trade-In Allowance. When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. (7-1-93)

a. Before July 1, 1990, the deduction applied ONLY if the value allowed for trade-in goods was accepted as partial payment for the merchandise purchased from the retailer. Values allowed on trade-in goods which represented FULL payment, barter, or exceeded full payment, trade-down, could not be used to reduce the taxable sales price of the merchandise purchased from the retailer. (7-1-93)

b. Effective July 1, 1990, the deduction applies regardless of whether the value allowed for the trade-in goods represents partial or full payment, or exceeds full payment for the merchandise purchased from the retailer. (7-1-93)

c. Example: A customer buys a car from a dealer for four thousand dollars ($4,000). A trade-in of one thousand five hundred dollars ($1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars ($2,500). (7-1-93)

d. Example: On July 1, 1990, a dealer agrees to sell a customer a car for four thousand dollars ($4,000) and allows him a five thousand dollars ($5,000) trade-in for his car. The dealer gives the customer one thousand dollars ($1,000) cash. No sales tax is due on this trade-down. When the dealer resells the more expensive car, he must collect sales tax. If this transaction had occurred before July 1, 1990, the dealer would have had to collect sales tax on the four thousand dollars ($4,000) sales price of the car. (7-1-93)

e. Example: On July 1, 1990, a car dealer agrees to exchange cars with a customer in a straight-across trade with no other consideration. The car received by the customer is not subject to sales tax, since the retail sales price is completely reduced by the trade-in deduction. The car received by the dealer is put into his resale inventory and, when it is later resold, sales tax will be collected. If this transaction had occurred before July 1, 1990, the dealer would have had to collect sales tax on the retail sales price of the car sold to the customer. (7-1-93)

03. Disallowed Trade-In Deductions. Trade-in deductions are not allowed on transactions between individuals. (7-1-93)

a. Example: Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties must pay tax on the fair market value of the vehicle received in the barter. (7-1-93)

b. Example: Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars ($10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars ($8,000), is transferred to Tom. Bill pays Tom two thousand dollars ($2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars ($8,000); Bill pays use tax on ten thousand dollars ($10,000). (7-1-93)

04. Insurance Settlements. An insurance settlement does not qualify as a trade-in. Example: Tom is

involved in a car accident which causes damage beyond reasonable cost to repair. His insurance company declares damage his car a total loss and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (7-1-93)

05. Core Charges. Parts for cars, trucks, and other types of equipment are often sold with an added core charge. When the used core is returned, the core charge is refunded. This is essentially a trade-in of a used part for a new part. Since the seller cannot be certain that the customer will return a reusable core, such core charges are subject to sales tax. The tax on the core charge will be refunded by the seller at the time credit for the core charge is allowed. (7-1-93)

06. Trade-In For Rental/Lease Property. When tangible personal property is traded in as part payment for the rental or lease of other tangible personal property, sales tax applies to all payments made after the value of the trade-in property has been depleted and the lessor actually begins charging for the lease or rental. The methods of applying the trade-in value to the lease are: (7-1-93)

a. The trade-in value may be subtracted from the value of the leased or rented property, thereby reducing the monthly payments and the sales tax due on those payments. (7-1-93)

b. The trade-in value may be subtracted from the initial lease payments, with no sales tax due on those payments until it is used up. (7-1-93)

c. A combination of the two (2) methods, above. (7-1-93)

d. For example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars ($250) per month. The value on which the lease payments are based is ten thousand dollars ($10,000). The customer trades in a car worth two thousand dollars ($2,000). Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars ($2,000) and reduce the payments to only two hundred dollars ($200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar ($200) payment. Alternative 2: The customer and lessor agree to apply the two thousand dollar ($2,000) trade-in allowance against the two hundred fifty dollar ($250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments. Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars ($1,000) against the value on which the lease is based and use the remaining one thousand dollars ($1,000) against the monthly payments, reducing the sales tax liability accordingly. (7-1-93)

045. RESCINDED SALE, REFUNDS OF PURCHASE PRICE (Rule 045).

01. A Rescinded Sale. A transaction in which the seller and buyer place each other in the same positions they were in prior to entering into any sales taxable transaction; and a transaction which meets the rules of the Uniform Commercial Code for revoking acceptance in whole or in part. See Section 28-2-608, Idaho Code. (7-1-93)

02. Refund Of Remitted Sales Tax. Where a seller has collected and remitted tax on the sale and has refunded it to the buyer on rescission, the Commission will refund or credit the seller accordingly. The burden of proving a recision is on the person claiming the refund or credit on a rescinded sale. See ISTC 117. (7-1-93)

03. Amount Refunded Reduced. If the seller reduces the amount refunded to the buyer on returned merchandise to recover depreciation, buyer usage or other costs, the amount of the reduction is considered a charge by the seller to the buyer for use of the tangible personal property and is subject to sales tax in the same manner as a rental. The amount of sales tax refunded to the buyer must be reduced accordingly. (7-1-93)

04. Restocking Charge. If a seller places a restocking charge on returned merchandise, the charge is not taxable. A restocking charge is a fee charged by a seller to cover his time and expense in returning goods to resale inventory when the buyer has not used the goods in a way that decreases their value. (7-1-93)

05. Required To Buy Other Property. If the customer, in order to retain the refund, is required to buy other property at a higher price, there is no refund and the amount credited on the subsequent purchase is treated as a

trade-in. The seller must charge the customer sales tax on the difference between the amount credited and the sales price of the other property. (7-1-93)

06. Documentation. In order to obtain refund credit, the seller must keep adequate documents to support his claim for refund or adjustment. (7-1-93)

046. PLATING AND REPLATING (Rule 046).

01. Plating And Replating. Plating and replating operations are considered to be providing repair services. If the materials such as chrome, gold, or silver can be separately stated on the billing to the customer, a tax will apply on the sale of the material. If, as in the case of chrome plating of automobile bumpers and accessories, the vat of material is used and reused, the material would be incidental to the overall charges. The replating company will pay tax on the materials at time of purchase. See ISTC Rule 062. (7-1-93)

02. Exchange Basis. This, however, would not apply where a company operates on an exchange basis, giving credit for the bumpers or accessories against the price of the reconditioned piece of equipment. This type of transaction must be handled in the same manner as a trade-in with sales tax charged on the difference. See ISTC Rule 044. (7-1-93)

03. Reconditioned Material. Sales of reconditioned or replaced material or parts will be taxable on the full sales price. (7-1-93)

047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS (Rule 047).

01. In General. Fees charged for services performed by outfitters, guides, dude ranches, hunting and fishing lodges, or camps are charges for the use of, or privilege of using, tangible personal property or other facilities for recreation. Fees charged by outfitters and like operations for providing outdoor recreational services are subject to sales tax. (7-1-93)

a. An outfitter is any person who holds himself out to the public for hire to conduct outdoor recreational activities, including: hunting animals or birds; float or power boating of rivers, lakes, and streams; fishing; hiking; skiing; hazardous desert or mountain excursions; and other recreational activities. (7-1-93)

b. A guide is a person employed by an outfitter to furnish personal services for the conduct of outdoor recreational activities. (7-1-93)

02. Services Performed In More Than One State. When an outfitter's service to a client takes place in more than one (1) state, and the customer receives an invoice from the outfitter that separately displays the Idaho portion of the charges from those of the other states, only the Idaho portion is subject to Idaho sales tax. (7-1-93)

a. When an outfitter's service to a client takes place in more than one (1) state and the outfitter fails to separately state the Idaho portion of the charges from those of other states, sales tax must be charged on the total amount. (7-1-93)

b. If the service takes place on a river which divides Idaho from another state, tax must be charged on fifty percent (50%) of the fee attributed to that portion of the trip. (7-1-93)

c. Example: A one hundred (100) mile float trip consists of fifty (50) miles on Idaho rivers, twenty (20) miles on another state's river, and thirty (30) miles on a river which divides Idaho from another state. If the outfitter's invoice to his client separately states the Idaho portion of the charge from the out-of-state charges, only the Idaho fees will be subject to Idaho sales tax. The invoice should show the following:

FLOAT TRIP	FEE	IDAHO SALES TAX
50 miles Idaho river	$500	$25.00 (on 100%)
20 miles out-of-state	$200	$ 0.00 (none)

FLOAT TRIP	FEE	IDAHO SALES TAX
30 miles border river	$300	$ 7.50 (on 50%)

(7-1-93)

03. Charter Aircraft. When an outfitter hires a charter aircraft to transport his customer within Idaho, the outfitter must charge the customer tax on the fee for the charter service. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

04. Government Use Fee. Land and water use fees imposed on outfitters, such as the three percent (3%) fee paid to the U.S. Forest Service, are not subject to the sales tax when separately stated on the customer's invoice. (6-23-94)

05. Prepaid Travel Expense. When an outfitter's invoice separately states prepaid travel expenses such as lodging, and the outfitter has paid sales tax, when applicable, to vendors providing the travel services, the outfitter will not be required to tax that portion of his bill to the customer. Example: An outfitter's bill to a client for a seven (7) day hunt and prepaid travel expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	$ 500	$ 0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	$ 50	$ 0.00 (none)
7 Day Hunt	$1,500	$75.00 (on 100%)

(7-1-93)

06. Lodging. If an outfitter provides overnight lodging for a client at a facility operated by the outfitter, charges for the lodging are subject to sales tax and hotel/motel taxes as provided by Idaho Hotel/Motel Room Sales Tax Rule IDAPA 35.01.06.011. (6-23-94)

07. Equipment Rental. When an outfitter rents equipment such as ground sheets, sleeping bags, rain gear, boots and dry bags, to his client for use during the recreational activity, sales tax must be charged on the equipment rental. (7-1-93)

08. Game Processing, Packing, And Taxidermy. When an outfitter bills a client for game processing, packing, or taxidermy services, sales tax must be charged on the entire fee to the client. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

09. Pre-Purchased Hunting And Fishing Licenses. When an outfitter purchases a hunting or fishing license for a client and separately states the fee on the billing to the client, no sales tax applies to the license fee. (7-1-93)

10. Travel Agency Services. (7-1-93)

a. When outfitter services are purchased by a client through a travel agency and the outfitter bills the travel agency for the fee, the amount billed to the travel agency is subject to tax. In this case, the agency is acting as an agent for the client and the additional fee charged by the agency to the client is not subject to the sales tax. (7-1-93)

b. When outfitter services are arranged for a client by a travel agency but the outfitter bills the client, the amount billed to the client is subject to tax. In this case, the agency is acting as the agent of the outfitter and the fee paid to the travel agency by the outfitter cannot be deducted from the measure of the taxable sale. Even if the

outfitter separately states the travel agency fee on his billing to the client, he must charge tax on the total amount. (7-1-93)

c. When an outfitter, Outfitter X, books a client and hires a second outfitter, Outfitter Y, to provide the services to the client, Outfitter X must charge the client tax on the full fee. Outfitter Y must obtain a resale certificate from Outfitter X. If this form is not obtained, Outfitter Y must charge sales tax on the services provided to Outfitter X. (7-1-93)

11. Purchases By Outfitters And Like Operations. (7-1-93)

a. Outfitters must pay tax when purchasing equipment and supplies for use in their business. Examples include boats, rafts, oars, motors, horses, tack, llamas, transportation equipment, camp gear, cooking gear, animal feed, brochures, and promotional give-away items. (7-1-93)

b. When an outfitter purchases food that will be prepared and furnished to clients, no sales tax applies if the outfitter provides a resale certificate. (7-1-93)

c. When an outfitter maintains an inventory of gear, such as ground sheets, sleeping bags, boots, rain gear, and dry bags, which is exclusively held for rental to clients, the outfitter may purchase the gear without tax in the manner previously described. The outfitter may purchase gear without paying tax ONLY if the gear is rented to clients as a separate line item on the invoice to the client and sales tax is charged to the client. If gear is provided to clients as a part of the outfitter package fee, the outfitter must pay tax when purchasing the gear. (7-1-93)

d. When an outfitter purchases the services of a charter aircraft to transport his clients within Idaho, he will not pay tax to the charter service by providing the service with a properly completed resale certificate. The outfitter must then charge tax to his client on this fee. (7-1-93)

e. When an outfitter arranges travel accommodations for his client and pays the vendors of the meals and services, he must pay sales tax, as well as other applicable hotel/motel taxes, to the vendors. (7-1-93)

f. When an outfitter purchases the services of a taxidermist or meat processor on behalf of his client, he should not pay tax to the vendor by providing the vendor with a properly completed resale certificate. The outfitter must charge tax to his client on this fee. (7-1-93)

048. MANUFACTURED HOMES (MOBILE HOMES) AND MODULAR BUILDINGS (Rule 048).

01. New Manufactured Home. When a manufactured home is sold at retail for the first time, it is subject to sales tax on fifty-five percent (55%) of the purchase price. The purchase price of a new manufactured home shall include all component parts. Set up and transportation fees charged by the dealer shall be included in the purchase price. No trade-in allowance is permitted. (7-1-93)

02. New Modular Building. When a modular building is sold at retail for the first time, it is subject to sales tax on fifty-five (55%) of the purchase price including all component parts. No trade-in allowance is permitted. (7-1-93)

03. Used Modular Buildings Or Manufactured Home. A modular building or manufactured home is subject to sales tax only once. After the unit has been sold at retail, any subsequent retail sale of the unit shall be a sale of a used modular building or manufactured home. The sale of a used modular building or manufactured home is exempt from tax, whether or not the original retail sale was subject to sales taxes and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used modular buildings or manufactured homes must maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes. (7-1-93)

04. Sale Of Office Trailer. An office trailer does not qualify as a manufactured home, because it is not designed for use as a dwelling, nor does it qualify as a modular building, because it is not designed to be affixed to real property. When an office trailer is sold at retail, it is subject to sales tax on one hundred percent (100%) of the

purchase price, including all furniture, fixtures, and appliances, whether the office trailer is new or used. (7-1-93)

05. Component Parts. Component parts include items incorporated by the manufacturer which remain unchanged at the time of the original retail sale, such as sinks, cabinetry, closet doors, central heating and cooling, garbage disposals, water heaters, and carpeting. Refrigerators, ranges, draperies, and wood burning stoves placed in the unit by the manufacturer are considered to be component parts. (7-1-93)

06. Noncomponent Parts. All fixtures, furniture, furnishings, appliances, and attachments not incorporated as a component part of a new modular building or manufactured home shall be subject to tax separately and distinctly from the sales price of such modular building or manufactured home. Such items shall be separately stated on the sales invoice and tax shall be assessed on the separately stated items on their full retail value. (7-1-93)

07. Repairs. Repairs to or renovations of used modular buildings or manufactured homes are repairs to real property, whether or not the unit is affixed to real property and whether or not the unit is held for resale. Materials used to repair or renovate a used modular building or manufactured home shall be subject to sales tax at the time of purchase or use tax at the time of use. (7-1-93)

049. WARRANTIES AND SERVICE AGREEMENTS (Rule 049).

01. Warranties And Service Agreements. Warranties or service agreements may be furnished by the manufacturer or seller upon the sale, lease, or rental of tangible personal property by any of the following means: (7-1-93)

a. Including the price of the warranty or service agreement as part of the sales, lease, or rental price of the tangible personal property. (7-1-93)

b. Separately stating the price of the warranty or service agreement, but requiring the purchase of the warranty or service agreement as a condition of the sale, lease, or rental of tangible personal property. (7-1-93)

c. Allowing the purchaser the option of purchasing a separately stated warranty or service agreement. (7-1-93)

02. Separate Optional Contract. Service agreements may also be offered as a separate optional contract on tangible personal property not owned or sold by the seller of the service agreement. (7-1-93)

03. Services Agreed To Be Rendered. Services agreed to be rendered as a condition of a warranty or service agreement may be performed by the seller of the warranty or service agreement or by any dealer or repair facility that the seller may appoint to perform the repair or service. (7-1-93)

04. Non-Optional Warranty Or Service Agreement. If the warranty or service agreement is required as a condition of the sale, lease, or rental of tangible personal property, the gross sales price is subject to the sales tax whether or not the charge for the warranty or service agreement is separately stated from the sales price of the tangible personal property. (7-1-93)

a. When parts are replaced by the seller of the warranty or service agreement, no tax is imposed on the purchase of the parts by the seller. The parts replaced are considered to have been taxed at the time the warranty or service agreement was sold. (7-1-93)

b. When a third-party dealer or repair facility performs the repair, the seller of the warranty or service agreement may provide the repairer with a resale certificate. See ISTC 071. (7-1-93)

05. Optional Warranty Or Service Agreement. If the warranty or service agreement is optional to the purchaser, no sales tax shall be charged on the sale of the warranty or service agreement. A taxable transaction does occur with regard to the seller of the warranty or service agreement upon performance of the repair. (7-1-93)

a. If the seller of the warranty or service agreement performs the repair and purchases parts for the repair or uses parts from his inventory, he will pay sales or use tax upon the parts when they are applied by him.

(7-1-93)

b. When a third-party dealer or repair facility performs the repair and bills the seller of the warranty or service agreement, the third-party dealer or repair facility will separately state and charge sales tax on the parts to the seller of the warranty or service agreement. (7-1-93)

c. The seller of the warranty or service agreement will pay sales or use tax on parts for the repairs, whether or not the purchaser qualifies for any exemption under the Idaho Sales and Use Tax Act or rules. (7-1-93)

06. Parts In Addition To Warranty Fee. Regardless of any of the above, if the seller of the warranty or service agreement bills the purchaser for parts over and above the agreed upon warranty or service agreement fee, sales tax shall be charged to the purchaser on the sales price of the parts. (7-1-93)

07. Replacement Parts And Maintenance Supplies. As used in this rule, a warranty or service agreement applies to replacement parts and maintenance supplies that become a part of the tangible personal property that is being serviced. The sale of other tangible personal property, such as paper for a copy machine, must be separately stated from any warranty or service agreement fee and sales tax charged to the purchaser. (7-1-93)

050. VETERINARIANS AND VETERINARY SUPPLIES (Rule 050).

01. In General. Fees charged by a veterinarian for professional services are not subject to sales or use taxes. Tangible personal property used or consumed by a veterinarian or sold by a veterinarian are taxable in accordance with the provisions of this rule. (7-1-93)

02. Drugs And Other Supplies. Drugs and other supplies used by a veterinarian while treating animal patients are tangible personal property consumed by the veterinarian in the course of providing services. If the veterinarian has not paid sales tax on his purchase of the drugs or supplies, a use tax is payable by the veterinarian. (7-1-93)

03. Services Provided To Exempt Customers. The veterinarian is taxable even though he may be providing services to a cattle rancher, dairyman or other producer because the drugs are consumed by the veterinarian and not by the producer. Since the production exemption is available only to persons engaged in a production business, the veterinarian does not benefit from the exemption. (7-1-93)

04. Retail Sales Of Drugs And Supplies. The sale of drugs and veterinary supplies by a veterinarian is a retail sale. Veterinarians making such sales must obtain a seller's permit and must charge and remit the sales tax on such sales. However, the sale of drugs and veterinary supplies, except hand tools with a unit price of less than one hundred dollars ($100), to a cattle rancher, dairyman or other person operating for gain or profit a stock, dairy, poultry, fish, fur or other ranch is exempt if documented by an exemption certificate as provided in ISTC Rule 075. (7-1-93)

05. Equipment And Supplies. Tangible personal property purchased or acquired by the veterinarian for the operation of his business including professional instruments and supplies, and office furnishings and equipment are taxable. (7-1-93)

051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES (Rule 051).

01. Adjustments That Apply After Tax Calculation. Tax must be charged BEFORE deducting the following: (7-1-93)

a. Cash discounts. Sales tax must be computed on the full amount of the purchase price before the cash discount is subtracted. When an invoice or other billing document states that a discount will be allowed if payment is made before a certain date, then the discount is presumed to be a cash discount. Discounts allowed on payments received after the stated date are presumed to be cash discounts unless proven to the contrary by clear and convincing evidence. (7-1-93)

b. Manufacturer's rebates. Except as provided by Subsection 051.02 of this rule, sales tax must be

computed on the full amount of the purchase price without regard to the manufacturer's rebate. Any rebate received by the purchaser from the manufacturer, distributor, or any person other than the retailer will not reduce the retail sales price subject to tax. (7-1-93)

c. Manufacturer's discount coupons. Sales tax must be computed on the full amount of the purchase price before subtracting the coupon amount. This includes coupons issued by a manufacturer allowing the purchaser to buy one item and get a second item free if the retailer will be reimbursed by the manufacturer. (7-1-98)

d. Food Stamps and WIC. Purchases of food with coupons issued under the Federal Food Stamp Program or food checks issued by the Federal Special Supplemental Food Program for Women, Infants, and Children, (WIC), are exempt from sales or use tax. When a purchaser uses manufacturer's discount coupons along with food stamps or WIC checks to purchase food items that qualify under these programs, the discount value of the coupon is subject to sales tax. For example, a food stamp recipient purchases fifteen dollars ($15) worth of eligible food, surrenders manufacturer's discount coupons valued at two dollars ($2), and pays with thirteen dollars ($13) in food stamps. Sales tax is due on the two dollar ($2) discounted amount. The purchaser may not use food stamps or WIC checks to pay sales tax due. (7-1-98)

02. Adjustments That Apply Before Tax Calculation. Tax is charged AFTER the deduction of the following: (7-1-93)

a. Trade discounts. A trade discount is a reduction from the posted or listed price offered by a retailer which is not an inducement for prompt payment and which, when applied to the posted or listed price, establishes the true selling price to be paid by the purchaser. (7-1-93)

b. Retailer's rebates. A retailer's rebate is an amount of money or property paid by a retailer to a purchaser which is conditioned upon the recipient making a purchase from the retailer. (7-1-93)

c. Retailer discount coupons. Retailer discount coupons are coupons issued by a retailer which entitle the holder to purchase the issuing retailer's products at less than the posted or listed retail price. (7-1-93)

d. Manufacturer's motor vehicle rebates. Effective July 1, 1990, a manufacturer's rebate offered to a purchaser of a motor vehicle may be deducted from the purchase price of the vehicle before computing the tax IF the rebate is used to reduce the retail sales price of the vehicle, or is used as a down payment on the purchase. The dealer's customer invoice must show the manufacturer rebate as a deduction to, or down payment on, the purchase price of the vehicle. Only manufacturer rebates offered on motor vehicles qualify for the exclusion from tax. Manufacturer rebates offered on trailers, off-highway equipment, and other property will be treated as discussed in Subsection 051.01.b. of this rule. (7-1-96)

03. Coupon Books. A coupon book is a set of two (2) or more coupons sold to a purchaser who may use the coupons as all or part of the purchase price of tangible personal property subject to sales taxes. The sale of coupon books is not subject to sales tax. When a retailer discount coupon from a coupon book is used to purchase merchandise, the discount allowed by the coupon is not included in the purchase price subject to tax. Sales tax applies to the amount paid by the purchaser to the retailer after allowance of the discount permitted by the coupon. (7-1-98)

04. Donated Goods. The donor is the consumer of donated goods and must pay sales or use tax on the purchase price of the goods. (7-1-98)

05. Gift Certificates. A gift certificate purchased from a vendor entitles a recipient to tangible personal property or services when presented to the vendor. The purchase of a gift certificate is not a taxable transaction. When the gift certificate is presented for redemption a sale is consummated. If the sale is a transfer of tangible personal property, the vendor must collect sales tax at the time of sale. Tax applies to the purchase price of the tangible personal property, irrespective of any cash refunded on any difference between the face value of the gift certificate and the purchase price. If the sale is for services not subject to tax under the Sales Tax Act, the vendor will not collect sales tax. (7-1-93)

06. Discount Purchasing Memberships And Cards. The purchase of a card or membership which entitles the holder to purchase tangible personal property at a discounted price is a sale subject to sales tax, if the

seller of the membership is the same as the seller of the merchandise. Examples of taxable fees include membership fees to rent or purchase from video rental stores, discount lumber retail outlets, and discount dry goods outlets. (7-1-98)

052. SALE OF TANGIBLE PERSONAL PROPERTY RELATING TO FUNERAL SERVICES (Rule 052).

01. In General. The sale of tangible personal property relating to funeral services by a licensed funeral establishment is exempt from tax. (7-1-99)

02. Sales By Licensed Funeral Directors. The exemption applies only when, at the time of sale, the seller is a person holding a valid funeral director's license issued pursuant to the authority of Title 54, Chapter 11, Idaho Code. A sale made by any seller not so licensed is not exempt under this provision. For example, a casket sold by a licensed funeral director as part of a funeral service is exempt. The funeral director's purchase of the casket is a purchase for resale and, therefore, excluded from the tax. The purchase of a memorial marker is not an integral part of the funeral service. Accordingly, it is not included within the exemption for tangible personal property related to a funeral service. The purchase of a memorial marker, therefore, is a taxable transaction regardless of whether it is sold by a licensed funeral director or by another. Sales of tombstones and grave markers, which are embedded in the sod or set on foundations, are subject to tax. The retail selling price includes the charge for cutting, shaping, polishing and lettering. (7-1-93)

03. Purchases By Licensed Funeral Directors. The exemption does not include the sales to and purchases by funeral directors of equipment and supplies used and consumed by funeral directors in the course of providing funeral services. The funeral director's purchase of equipment and supplies used for embalming and preparing bodies for burial and all other tangible personal property used or consumed by the funeral director in the course of his business operations to which title does not pass from the funeral director is taxable. (7-1-99)

04. Caskets, Vaults, And Burial Receptacles. Caskets, vaults and burial receptacles are exempt when sold by a licensed funeral director as a part of funeral services, even though they may be improvements to real property. The funeral director is not a person engaged in improving real property within the meaning of Section 63-3609(a), Idaho Code; and, therefore, his purchase of these items is not subject to tax. However, the construction of a building for use as a mausoleum is an improvement to real property and the sale or use of the materials for the construction of the mausoleum creates a taxable incident and shall be generally taxed in the same manner as other persons improving real property. See Rule 012 of these rules. (7-1-99)

05. Use Tax. When licensed funeral directors purchase equipment and supplies from suppliers who do not collect and remit Idaho sales tax, the funeral directors will be required to report and remit use tax on their taxable purchases. (7-1-93)

06. Documenting Purchases For Resale. Funeral directors purchasing tangible personal property for resale will be required to document the purchase for resale by providing their seller with a resale certificate. See Rule 071 of these rules. The purchase by the funeral director of such items as caskets and special clothing is a purchase for resale, even though the sale of the same property by the funeral director is exempt. (7-1-99)

07. Seller's Permit Required. A funeral director must apply for and maintain a valid seller's permit. The seller's permit number and sales tax returns shall be used to report use tax on those items which are subject to use tax. The funeral director should also report sales tax on the isolated retail sales of tangible personal property which may be made but which are not related to the providing of any funeral service. (7-1-93)

053. FEES CHARGED FOR FAX SERVICES (Rule 053).

01. Sending A Fax. A fee charged for sending a fax is a fee for a service and is, therefore, not subject to sales tax. (7-1-93)

02. Receiving A Fax. A fee charged by a print shop, hotel, or other retailer to a person receiving a fax is similar to a fee charged for a photocopy and is a taxable sale of tangible personal property. (7-1-93)

054. PERSONS ENGAGED IN PRINTING (Rule 054).

01. Private Printing Plants. Persons operating private printing plants in conjunction with their principal business must pay sales or use tax on the purchase of equipment and supplies used to produce display signs, advertising brochures, and other materials for their own consumption. (7-1-97)

02. Printing Upon Special Order. Persons primarily engaged in the printing of tangible personal property upon special order for a consideration may purchase equipment and supplies directly used to produce such property exempt from sales or use tax. (7-1-93)

a. The sale of typography, art work, photoengraving, electros, mats, stereotypes, hand or machine composition, lithographic plates or negatives, electrotypes, etc., to a person primarily engaged in the printing of tangible personal property for a consideration, and to be used directly by such person shall be deemed essentially sales of service or exempt materials and not taxable. (7-1-93)

b. When purchasing goods exempt from tax, the printer must provide the seller with a properly completed exemption certificate. See Idaho Sales Tax Administrative Rule 075. (7-1-97)

03. Sales By Persons Engaged In Printing. Fees charged to ultimate consumers for printing of tangible personal property upon special order are taxable. (7-1-97)

a. Printing of tangible personal property shall include imprinting and all processes or operations connected with the preparation of paper or paperlike substances, the reproduction thereon of characters or designs and the alteration or modification of such substances by finishing and binding. (7-1-93)

b. Upon such final sales, charges for materials, labor and production of fabrication or typography, author's alterations, art work, photoengravings, electros, mats, stereotypes, hand or machine composition, lithographic plates or negatives, electrotypes, etc., and binding and finishing services shall be included in the selling price and the tax shall be computed upon such selling price whether the various charges are separately stated or not. (7-1-93)

c. The following charges, if separately stated, shall not be included in the selling price: charges for furnishing government postage as part of the printed item, and charges for addressing, stamping, sealing, inserting or wrapping in connection with the operation of a direct mail advertising in which items of tangible personal property and service are supplied. (7-1-93)

04. Advertising Inserts. As used in this rule, advertising inserts means printed advertising distributed concurrently with, but printed separately from, a newspaper, magazine, or other publication. (7-1-93)

a. The sale of advertising inserts by a printer or other supplier to an advertiser for use by the advertiser in the promotion of its business or products, and not for resale by the advertiser, is a retail sale of tangible personal property subject to sales tax. If, for any reason, the seller of the advertising inserts fails to collect sales tax on the sale of the advertising inserts to the advertiser, the advertiser is subject to use tax on its use of advertising inserts in Idaho. (7-1-93)

b. When an advertiser contracts for the distribution of advertising inserts to locations within this state, a taxable use by the advertiser occurs. The contracted distribution constitutes an exercise of right or power over the advertising inserts by the advertiser. The person performing the distribution services may be a publisher, printer, distributor of a newspaper, magazines, or other publication, or any other person performing distribution services. (7-1-93)

c. A contract between an advertiser and a publisher of a newspaper, magazine, or other publication, whereby the publisher sells advertising space in its publication is not a sale subject to sales or use tax. (7-1-93)

05. Labels And Other Printed Matter Sold To Manufacturers. Sales of labels or name plates, and the printing thereon, to manufacturers, producers, or wholesale merchants where the purpose of the purchaser is to affix the label or name plate to his own product, or the container thereof will not be taxable. (7-1-93)

a. Sale of package inserts, individual folding boxes and setup boxes, and the printing thereon to manufacturers, or producers, to accompany their own manufactured products, and to pass to the ultimate consumer upon final sales of the manufactured product contained or described therein, shall be deemed made for the purpose of resale. (7-1-93)

b. Sale of direction sheets, instruction books, or manuals to a manufacturer, producer, wholesale or retail merchant, to be supplied with his product at no separate charge, are not taxable. If a separate charge is made for such sheets, books, manuals, or pamphlets, the manufacturer, etc., shall collect the tax from the consumer. (7-1-93)

055. PERSONS ENGAGED IN ADVERTISING (Rule 055).

01. In General. Advertising agencies, television stations, radio stations, graphic artists, and other persons engaged in advertising may be engaged in either the rendering of professional services or the sale of tangible personal property or both. When such persons are engaged in the sale of tangible personal property, they are retailers and must collect and remit sales tax on the property sold. When such persons are engaged in the rendering of professional services, no sales tax applies to the service. Whether the sale is a sale of professional services or of tangible personal property is determined by the object of the transaction, i.e., is the object sought by the buyer the service per se or the tangible personal property produced by the service. Determining whether the sale is a sale of professional services or of tangible personal property is a question of fact which must be determined in view of all the facts and circumstances of each transaction. (7-1-93)

02. Advertising Agency As Agent Of Client Or As Non-Agent. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies may act as agents on behalf of their clients in dealing with third persons or they may act on their own behalf. To the extent advertising agencies act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals. To the extent advertising agencies act on their own behalf in acquiring tangible personal property they are purchasers of the property with respect to the supplier. Generally, they are sellers of any of the property so acquired which they deliver to, or cause to be delivered to, their clients or to third parties for the benefit of their client. They are also sellers of any of the property which they retain but title to which they transfer to their client. (7-1-93)

a. Items acquired from outside sources. All acquisitions by advertising agencies of tangible personal property are purchases by the agencies on their own behalf for resale or use unless the agency clearly establishes with respect to any acquisition that is acting as agent for its client. (7-1-93)

b. To establish that a particular acquisition was made as agent for its client 1) the agency must clearly disclose to the supplier the name of the client for whom the agency is acting as agent; the agency must obtain, prior to the acquisition, and retain written evidence of agent status with the clients; and the agency must clearly state on the billing to its client that it is acting as agent for its client and that tax has been paid to the supplier or use tax has been accrued by the agency on behalf of the client. The agency fee billed to the client, whether or not separately stated, is not subject to the tax. The agency, in its records, must retain evidence of the payment of the tax. The agency may make no use of the property for its own account, such as charging the item to the account of more than one client. An advertising agency purchasing tangible personal property as an agent on behalf of its client may not issue a resale certificate, as provided by ISTC Rule 071, to the supplier. It will be presumed that an advertising agency who issues a resale certificate to its supplier is purchasing the tangible personal property on its own behalf for resale and is not acting as an agent for its client. (7-1-93)

03. Items Prepared By Agency. Advertising agencies are sellers of all items of tangible personal property produced, printed, or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees. (7-1-93)

04. Media Advertising And Advertisements. Media advertising is the use of mass media as a means by which to reach a wide audience, viewers, listeners, or readers, with an advertisement to promote a product, service, issue, or personality. Mass media is defined as radio, television, cable television, newspapers, periodicals, trade journals, or other such media which is capable of reaching a mass audience with an identical message. The object

sought by the buyer purchasing media advertising is the intangible professional service of the seller. The sale of media advertising is a sale of professional service and is a nontaxable transaction. The transfer of tangible personal property is inconsequential to the services rendered. (7-1-93)

a. Radio and television advertisement. Sales tax does not apply to the amount charged to produce or create advertisements which are to be broadcast by a radio or television station. It makes no difference whether the producer or creator sends the advertisement directly to the broadcast facility or to the advertiser, who in turn distributes the commercial to a broadcast facility. (7-1-93)

b. Radio and television dubs. Charges for dubs which are produced from a master copy of a radio or television commercial or broadcast are not subject to sales tax so long as they are for distribution to other broadcasting facilities. Sales tax will apply to the sale of radio or television commercial or broadcast dubs which are not for distribution to a broadcast facility and are sold to a customer for another use. The measure of the tax will be the total price charged for the copies. (7-1-93)

c. Magazine, newspaper, and periodical advertisements. Sales tax does not apply to the amount charged to a customer to produce camera ready artwork, veloxs, and other forms of artwork which are to be reproduced in and distributed as part of a mass media publication. Examples of such media publications are magazines, newspapers, trade journals, and periodicals. (7-1-93)

d. Print media advertisement copies. Sales tax will apply to charges for reprints of a print media advertisement sold to a customer. The measure of the tax will be the price charged for the reprints. (7-1-93)

05. Sales Of Non-Media Advertising. Non-media advertising is any form of advertising which does not use the mass media in reaching the targeted audience. Examples of such advertising are posters, brochures, pamphlets, handbills, displays, business forms, stationery, business cards, key chains, cups and glasses, pens, pencils, t-shirts, and other similar items. The object sought by the buyer is the tangible personal property. If the advertising agency is the agent of its client, the sale is between the supplier of the tangible personal property and the client and is subject to tax based on the price charged by the supplier to the client. If the advertising agency is NOT the agent of its client, then the purchase from the supplier is for resale. The sale from the agency to its client is a retail sale and is subject to tax based upon the entire amount charged to the customer by the advertising agency, including separately stated fees for: (7-1-93)

a. Artwork produced by the advertising agency, including all materials, design fees, and labor to develop and produce the artwork, lettering, and designs used in the finished non-media advertising. (7-1-93)

b. Artwork, lettering, and designs purchased from a graphic artist. (7-1-93)

c. Photographs, negatives, and other similar items whether purchased from a commercial photographer or produced in-house by the advertising agency. (7-1-93)

d. Professional modeling fees. (7-1-93)

e. Printing charges, whether printed by the advertising agency or a commercial printer, including any markup or service charge. (7-1-93)

f. All other charges to the customer for services agreed to be rendered by the advertising agency as part of the sale of non-media advertising. (7-1-93)

06. Sale Of Custom Made Audio-Visual Films And Audio Recordings. A custom made audio-visual film or audio recording is a film or recording whose intended purpose is not for media advertising. Examples of custom audio recordings include those to be used with a slide show presentation, designed to be played alone for information purposes or in-store advertising, or other similar purposes. Examples of custom films are safety films, training films, filmed newsletters, in-store audio-visual advertising, and other audio-visual films not sold for media advertising. (7-1-93)

a. The object of the purchaser is to obtain the tangible personal property. The fact that the charge for

the tangible personal property, the film or recording, is principally derived from labor or creativity of the maker of the property does not transform the sale of the tangible personal property into a sale of services. (7-1-93)

b. If the advertising agency is the agent of its client, the sale is between the supplier of the tangible personal property and the client and is subject to tax based on the price charged by the supplier to the client. If the advertising agency is NOT the agent of its client, then the purchase from the supplier is for resale. The sale from the agency to its client is a retail sale and is subject to tax based upon all charges for copy writing, directing, producing, photographing, acting, vocal artists, recording, editing, mixing, and other similar charges to produce a finished film or audio recording. (7-1-93)

07. Sales Of Design Services. Determining whether design fees are subject to the sales tax will depend on the object of the transaction. A fee charged to a customer for creation and design of a logo, product or business trademark, letterhead, or similar item which does not involve the transfer of tangible personal property beyond that which is required to convey the design to the customer, is a sale of services not subject to the sales tax. When design fees are services agreed to be rendered as a part of the sale of tangible personal property, sales tax will apply to the design fee. Tax does not apply to such fees when an agency acts as an agent. See Subsection 055.06.e. (7-1-93)

a. Example 1: A graphic artist is commissioned to design a business logo for a client. The artist completes the design and delivers it to the client. The transaction is a service transaction. The transfer of the tangible personal property is inconsequential to the services rendered. No sales tax is due on the transaction. (7-1-93)

b. NOTE: Subsections 055.06.b. through 055.06.d. assume no agent relationship. Example 2: An advertising agency is commissioned by a client to design a trademark for its business and provide stationery with the trademark printed on it. On the charges billed to the client, the design fee is separately stated from the charges for printing the stationery and the paper stock. The advertising agency must charge sales tax on the entire amount charged. The object of the transaction is to obtain tangible personal property, the stationery. The services agreed to be rendered, the design, are inconsequential to the transaction. (7-1-93)

c. Example 3: An advertising agency is commissioned by a client to design a logo for its business and provide stationery printed with the logo. The advertising agency commissions a graphic artist to design the logo. The sale of the design by the graphic artist to the advertising agency is a sale of services not subject to the sales tax. The object sought by the advertising agency is the services of the graphic artist. The advertising agency then prints the stationery and bills the client. As the object sought by the client is tangible personal property, the stationery, the advertising agency must charge the client sales tax on the entire fee billed, including the design fee. (7-1-93)

d. Example 4: An agency is commissioned to design, produce, and provide one thousand (1,000) copies of a corporation's annual report. As the object sought by the client is the tangible personal property, annual reports, the entire fee to the client will be subject to the sales tax. (7-1-93)

e. NOTE: This subsection assumes an agent relationship. Example 5: An advertising agency is commissioned to design an annual report. As agent for its client, the agency orders one thousand (1,000) copies from a printer. The charge for the design is a nontaxable service. The charge for the printed reports is taxable. (7-1-93)

08. Purchases By Radio And Television Broadcasters. Section 63-3622S, Idaho Code, provides an exemption from tax for purchases of tangible personal property directly used and consumed in the production and broadcasting of radio and television programs by businesses primarily devoted to such production and broadcasting. (7-1-93)

a. When broadcasters purchase tangible personal property to be directly used and consumed in the production of television or radio advertising, no sales tax applies if they give their vendors a properly executed exemption certificate. See ISTC 075. (7-1-93)

b. When a radio or television broadcaster produces custom films or audio recordings that will not be broadcast, the exemption provided by Section 63-3622S, Idaho Code, does not apply. Purchases of tangible personal property will be taxed as provided by Subsection 055.08.b. of this rule. (7-1-93)

09. Purchases By Advertising Agencies, Graphic Artists, And Similar Operations. Persons

engaged in advertising and graphic artists may provide both nontaxable services and taxable sales of tangible personal property. (7-1-93)

a. When providing nontaxable services, including producing media advertising and providing design services which do not involve the sale of tangible personal property, the agency/artist must pay tax on purchases of: Art supplies, such as poster board, paper products, inks, letters, and paints; amount charged by others to produce veloxs, negatives, lithographic plates, electrotype, and other such items; photographic work; prerecorded music and sounds; and props, costumes, and backdrops. (7-1-93)

b. When engaged in the retail sale of tangible personal property, such as the sale of non-media advertising items, custom films, custom audio recordings, or printed goods, the producer/agency/artist, when purchasing tangible personal property to be incorporated into the product for resale, may provide vendors with a properly executed resale certificate. See ISTC Rule 071. Items considered to be directly incorporated into the product for resale include purchases of: Art supplies such as poster board, paper products, inks, letters, and paints; amounts charged by others to produce veloxs, negatives, lithographic plates, electrotype, and other such items; photographic works; prerecorded sounds and music; and printing charges. (7-1-93)

c. Purchases from photographers. The sale of photographic prints, photostats, negatives, film, and other articles of tangible personal property are retail sales subject to sales tax. See ISTC 056. Photographs, film, negatives, photostats, and other tangible personal property purchased by an advertising agency which are to be incorporated into media advertising are subject to sales tax. The total selling price on which sales tax will be charged is the amount charged by the photographer for shooting, developing, processing, and printing the photograph, film, negative, etc. Separately stated charges for travel expenses incurred by the photographer while under contract to an advertising agency for such items as travel, food, and lodging which are reimbursed by the advertising agency are not subject to sales tax. Photographs, film, negatives, photostats, and other tangible personal property purchased for resale, see, Subsection 055.08.b. (7-1-93)

d. Rental of recording or production studios and equipment. Sales tax will apply to the rental of a recording studio, audio-visual production studio, recording equipment, and audio-visual production equipment, when the owner of the equipment does not furnish the personnel to operate the equipment and relinquishes total operational control of the equipment. A taxable rental also occurs if the studio personnel merely render incidental services such as maintenance and repair. No sales tax will apply to the rental of a recording studio, audio-visual production studio, recording equipment, and audio-visual production equipment when the personnel to operate the equipment is furnished with the rental of the equipment. (7-1-93)

e. Accounting. Persons engaged in the rendering of advertising or graphic artist services may elect to follow any consistent procedure in purchasing art supplies and other tangible personal property from their vendors which are to be incorporated into services or tangible personal property sold to their customers. The artist/agency may wish to purchase all art and graphics supplies without tax from their vendors by issuing a resale certificate. In this case the artist/agency will keep a record of all supplies withdrawn from inventory for use in nontaxable advertising services and pay use tax on these supplies. If the bulk or majority of the artist/agency's work is nontaxable media advertising or design services, the artist/agency may wish to pay tax on all of their purchases, keep a record of all retail sales, and regularly take a credit against the sales and use tax due for tax originally paid upon purchases. If the artist/agency engages in major jobs, they may want to use separate accounting procedures and make purchases of supplies for inventory without tax by issuing a resale certificate. Purchases for a specific job would be made with or without tax dependent upon the taxable nature of the sale to the client. In all cases, art and graphic supplies are those items which are directly incorporated into the artwork or advertisement, such as paint, ink, colored pencils and markers, lettering, poster board, and other such consumable items. Items on which tax must be paid include rulers, triangles, t-squares, paint brushes, razor or artist knife blades, any other artist tool, office supplies and equipment, props, sets, wardrobes, costumes, and other equipment. (7-1-93)

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

a. Persons engaged in printing. See ISTC Rule 054. (7-1-93)

b. Signs. See ISTC Rule 036. (7-1-93)

c. Newspapers and periodicals. See ISTC Rules 033 and 079. (7-1-93)

d. Motion picture films. See ISTC Rule 087. (7-1-93)

e. Resale certificates-purchases for resale. See ISTC Rule 071. (7-1-93)

056. PHOTOGRAPHERS AND PHOTOFINISHERS (Rule 056).

01. Sales By Photographers And Photofinishers. Photographers and photofinishers are engaged in the business of producing and selling tangible personal property. (6-23-94)

a. When such persons develop and/or print pictures, and sell films, frames, cameras, completed photographs, photostats, blueprints, etc., they are making a sale of a completed article of tangible personal property in every case and they must collect the tax on the total selling price unless an exemption applies. (6-23-94)

b. When such persons render service, such as retouching and tinting or coloring of photographs belonging to others, they are performing taxable processing services and must collect the tax from their customers unless an exemption applies. (6-23-94)

c. Photographers may charge a sitting fee to cover the cost of taking the picture, which may be separately stated from any charges for developing and printing photographs. Such fees are charges for producing or fabricating tangible personal property and are therefore subject to sales tax. See Idaho Sales Tax Administrative Rule 029. (6-23-94)

02. Sales To Photographers And Photofinishers. (6-23-94)

a. Photographers who are in the business of selling photographs may qualify for the production exemption. The production process begins when the film is exposed. Therefore, photographers must pay sales or use tax on purchases of props, backdrops and other items used prior to the start of production of the photograph. Equipment and supplies including cameras, lights, lenses, film, paper, fix, developer, and enlargers used to produce photographs are used during the production process and are exempt. (6-23-94)

b. Photofinishers may purchase equipment and supplies exempt from sales or use tax as long as the equipment and supplies are directly used to produce photographs which they will sell and they otherwise qualify for the production exemption provided by Section 63-3622D, Idaho Code. (6-23-94)

057. DRY CLEANERS, LAUNDRIES, LAUNDROMATS, AND LINEN SUPPLIERS (Rule 057).

01. Dry Cleaners And Laundries. Dry cleaners perform a service and are not required to collect tax from their customers. Dry cleaners must pay sales or use tax on purchases of cleaning supplies, hangers, plastic bags and other supplies used in the performance of this service. As of July 1, 1997, purchases of dry-to-dry transfer systems by dry cleaners are exempt from sales and use tax. This exemption applies only to the purchase of entire systems and does not apply to purchases of repair parts for such systems. (7-1-98)

02. Linen Suppliers. (7-1-93)

a. Linen supply firms or laundries which furnish such items as sheets, pillowslips, towels, uniforms, diapers, etc., must collect and remit sales tax based on the rental charge. The sales tax will also apply to the rental of shop towels, floor mats for building entrances, dust mops, room deodorizers and any other tangible personal property rented or leased for building maintenance or service. The entire price charged for such rentals is taxable unless a reasonable charge for cleaning is separately stated. If the allocation between rental and cleaning fees is unreasonable, the State Tax Commission may deem the entire fee, or any portion thereof, to be taxable. (7-1-98)

b. Items acquired by these firms which are purchased for resale, rental or lease in the ordinary course of business, may be purchased exempt from sales tax if a properly executed resale certificate is provided to the seller, in accordance with Idaho Sales Tax Administrative Rule 071. (7-1-98)

03. Laundromats. (7-1-93)

a. Receipts from coin-operated washers and dryers are not subject to the sales tax. Sales of cleaning supplies such as soap or bleach through coin operated vending machines, are subject to the tax as provided by Idaho Sales Tax Administrative Rule 058. (7-1-98)

b. Persons engaged in the laundromat business must pay sales or use tax when purchasing washers, dryers, and other tangible personal property for the operation of their business. (7-1-98)

058. SALES THROUGH VENDING MACHINES.

01. In General. The sale of tangible personal property through a vending machine is a taxable transaction. The term vending machine shall mean any mechanical device which, without the assistance of a human cashier, dispenses tangible personal property to a purchaser who deposits cash in the device. (7-1-93)

02. Effective Dates Of Taxable Sales. (7-1-93)

a. Effective July 1, 1977, through June 30, 1984, sales of items through a vending machine for amounts from sixteen cents ($0.16) through one dollar ($1.00) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for fifteen cents ($0.15) or less are not taxable. Items sold for one dollar and one cent ($1.01) or more are taxable on the retail sales price. (7-1-93)

b. Effective July 1, 1984, through June 30, 1986, sales of items through a vending machine for amounts from twelve cents ($0.12) through seventy-six cents ($0.76) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for eleven cents ($0.11) or less are not taxable. Items sold for seventy-seven cents ($0.77) or more are taxable on the retail sales price. (7-1-93)

c. Sales of items through a vending machine for amounts from twelve cents ($0.12) through one dollar ($1.00) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for eleven cents ($0.11) or less are not taxable. Items sold for one dollar and one cent ($1.01) or more are taxable on the retail sales price. (7-1-93)

03. Requirement To Obtain A Seller's Permit. Vendors who sell tangible personal property through a vending machine are required to obtain a seller's permit. Only one seller's permit is required; however, each vending machine operated by the vendor must conspicuously display the vendor's name, address, and seller's permit number. When a number of vending machines are placed in a single location, the owner's name, address, and seller's permit number need be displayed only once. (7-1-93)

04. Calculation Of Tax. Sales and use taxes due by the vending machine operator shall be computed as shown in the following examples: (7-1-93)

a. Example 1: Corporation A's business activity consists only of sales through vending machines in various locations in the state of Idaho. All of the items sold in the vending machines are sold for a unit price of twelve cents ($0.12) or more but none are sold for a price greater than one dollar ($1). During the month of July, 1989, Corporation A's gross receipts from the vending machine sales were ten thousand dollars ($10,000). Corporation A purchased the items sold during that one (1) month period for eight thousand dollars ($8,000). The company made no nontaxable or exempt sales. Corporation A should file a sales and use tax return for the month of July, 1989, computing and reporting its taxable sales as follows. Numbers correspond to line numbers on the return.

Line 1.	Total sales	$10,000
Line 2.	Less nontaxable sales	640
Line 3.	Net taxable sales	$ 9,360
Line 2 computed as follows:		

	8,000 x 117% = 9,360 10,000 - 9,360 = 640	

(7-1-93)

b. Example 2: During the month of July, 1989, Corporation B had total Idaho sales in the amount of ten thousand dollars ($10,000). In addition to sales through vending machines, the corporation made over-the-counter sales, all of which were taxable, in the amount of two thousand dollars ($2,000). The remaining eight thousand dollars ($8,000) constituted sales through vending machines, of which one thousand dollars ($1,000) was for items with a unit retail price of over one dollar ($1). The other seven thousand dollars ($7,000) were sales of items through vending machines with a unit retail price of fifty cents ($0.50) each. The items sold during the month for fifty cents ($0.50) each were purchased by Corporation B for five thousand dollars ($5,000). Corporation B should file a sales and use tax return for the month, computing and reporting its taxable sales as follows:

Line 1.	Total sales	$10,000
Line 2.	Less nontaxable sales	1,150
Line 3.	Net taxable sales	$ 8,850
Line 2 computed as follows:		
	7,000 (117% of 5,000) = 1,150	

Note, that if a vendor sells some items for more than one dollar ($1), no special computation is required for those items if they are included on line 1, total sales. (7-1-93)

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

a. Amusement devices, see ISTC Rule 109. (7-1-93)

b. Money operated dispensing equipment, see ISTC Rule 095. (7-1-93)

059. SALES BY FLORISTS (Rule 059).

01. Sales. Florists are engaged in the business of selling tangible personal property and must collect the tax from the purchaser. (7-1-93)

a. Charges for creating, processing, fabricating, or setting up floral or plant arrangements are taxable, even if separately stated. (7-1-93)

b. Separately stated delivery charges, relating only to the transportation of the product after the sale, are not subject to the tax. (7-1-93)

02. Rentals. Whenever florists rent or lease potted plants, palms, artificial wreaths and flowers, or other tangible personal property, they are making a sale within the meaning of Section 63-3612, Idaho Code, and must collect the tax on the amount charged. (7-1-93)

03. Telegraphed Sales. The tax shall be collected on orders taken by an Idaho florist or nurseryman to be telegraphed to the second florist or nurseryman, whether the delivery is to be made within or without the state. (7-1-93)

a. Telephone, wire, and handling charges in connection with such sales must be included in the sales price subject to the tax. (7-1-93)

b. A florist or nurseryman making deliveries pursuant to telegraph orders received from another

florist or nurseryman, shall not collect the tax regardless of whether the florist or nurseryman forwarding the order is within or without the state of Idaho. (7-1-93)

04. Street Vendors. The above applies to individuals and street vendors as well as florists who maintain a regular place of business. (7-1-93)

060. FEDERAL EXCISE TAXES AND RETAILERS TAXES (Rule 060).

01. General Rule. The measure upon which Idaho sales or use tax is imposed shall include any amount required to be paid by a retailer or his customer as a federal importer's or manufacturer's excise tax. (7-1-93)

a. Such federal taxes include those on: Tobacco products, distilled spirits, beer, cheese, mixed flour, processed and renovated butter. (7-1-93)

b. Any federal tax payable to the wholesaler, importer, manufacturer or other producers, such as taxes on gasoline, automobiles, tires, sporting goods, or other tangible personal property when sold by the wholesaler, importer, manufacturer, or other producer. (7-1-93)

02. Excluded Federal Taxes. Federal taxes imposed directly on retail sales, such as those imposed by Section 4051, Internal Revenue Code, are excluded from the measure of sales or use tax. (7-1-93)

061. TRANSPORTATION, FREIGHT, AND HANDLING CHARGES.

01. In General. Whether or not transportation and handling charges are separately stated, the sales price includes any charges made for delivery of goods to the seller. Charges for transportation and handling of goods to the consumer are not included as a part of the sales price regardless of when title passes. (7-1-97)

02. Charges Not Separately Stated. Regardless of other provisions of this rule, transportation and handling charges which are not separately stated are included in the sales price subject to tax. (7-1-97)

03. Example 1: Charges For Delivery To The Seller. A customer orders goods from a retailer. The goods are shipped to a catalog store where the customer picks them up. A charge to the customer for delivery to the store is a charge for delivery to the seller and is included in the sales price subject to sales tax. (7-1-97)

04. Example 2: Freight-In Taxable. A seller of construction equipment orders a part for a customer. The seller separately states on the invoice charges for freight-in to the seller and freight-out to the consumer. The charges for freight-in are part of the sales price subject to sales tax. The charges for freight-out are not subject to sales tax. (7-1-97)

05. Example 3: Delivery By Retailer. A consumer orders building materials from a retailer. The retailer delivers the goods to the purchaser by means of the retailer's delivery van. The retailer separately states the charge for transportation and handling of the building materials. Since the charge is for delivery to the consumer, it is not subject to sales tax. (7-1-97)

06. Example 4: Use Of Transportation Charges As A Means Of Avoiding Sales Tax. Seller offers to give away merchandise worth approximately twenty dollars ($20) if the purchaser pays shipping of nineteen dollars and ninety five cents ($19.95). The entire price of nineteen dollars and ninety five cents ($19. 95) is subject to sales or use tax. (7-1-97)

062. REPAIRS SALE OF PARTS AND MATERIAL (Rule 062).

01. In General. Repairs normally require both material and labor. Persons engaged in the business of repairing, renovating or altering tangible personal property owned by others are required to collect sales tax upon the parts or material required in the repair or renovation of the property. (7-1-93)

02. Separate Statement Of Parts Or Materials. The sales price of parts or materials must be separately stated and sales tax must be charged on these parts or materials. Separately stated repair labor, except as

discussed in Subsection 062.07 of this rule, is not taxable. If parts and materials are not separately stated from the repair labor, the total amount for parts and repair labor is subject to sales tax. (7-1-93)

03. Repairs Covered By Insurance Benefits. Repairs, the costs of which are covered by insurance benefits, are treated the same as otherwise described in this rule. Sales tax is to be collected on the parts and materials. Separately stated repair labor is not taxable, except as discussed in Subsection 061.07 of this rule. (7-1-93)

04. Incidental Material. In some instances because of the small amount of materials used in a repair job, the value of the material may be insignificant to the entire repair cost. For example, incidental amounts of material are sometimes used in repairs made to tires, clothing, watches, and shoes. If materials such as buttons, thread, watch parts, tire valve cores and stems are incidental to the repair they will be taxed when purchased by the repairman. Other examples of materials which are incidental to repairs are touch-up paint and soldering materials used in car repairs. Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined. (7-1-93)

05. Shop Supplies. Dealer/repair shops should not charge sales tax on shop supplies that are consumed during the repair, such as spray bottles, buffer pads, towels, masking tape, solvents, sandpaper, and other items that have no specific identifiable value billed to the customer and which do not become a part of the item being repaired. These supplies are subject to tax when purchased by the dealer/repair shop and should not be included as part of the taxable amount billed to the customer. (7-1-93)

06. Repairs Versus Fabrications. Repairs and renovations to tangible personal property must not be confused with fabrications of tangible personal property. Fabricated tangible personal property is subject to sales tax on the entire price whether the parts and materials are separately stated or not. See ISTC 029 and 011. (7-1-93)

07. Recreation Related Vehicles. Beginning July 1, 1988, and ending March 31, 1989, both the parts and the labor charges for repairs to recreation-related vehicles were subject to the Idaho sales tax. Before July 1, 1988, and after March 31, 1989, the provisions of Subsections 062.01 through 062.05 of this rule apply to charges for repairs to recreation-related vehicles. (7-1-93)

08. Parts For Resale. When a repair shop buys parts that will be resold to its customers or an auto dealer buys parts to install in a car which is being reconditioned for sale, they should not pay tax to the supplier if they provide the documents required by ISTC Rule 071. (7-1-93)

063. BAD DEBTS AND REPOSSESSIONS (Rule 063).

01. In General. Sales tax must be collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer. (7-1-93)

02. Rules For Unsecured Credit Sales. The following rules apply to unsecured credit sales: (7-1-93)

a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he may make an adjustment on his sales tax return or apply for a refund of taxes according to this rule. (7-1-93)

b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought must be included in the amount which is financed and which is charged off as a bad debt for income tax purposes. (6-23-94)

c. A written claim for the refund may also be filed with the Commission within three (3) years after the due date of the applicable sales tax return. All such claims will be reviewed by the Commission. See Idaho Sales Tax Administrative Rule 117, Refund Claims. (6-23-94)

03. Rules For Secured Credit Sales. The following rules apply to secured credit sales: (7-1-93)

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit

sale. (7-1-93)

b. If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. (7-1-93)

c. If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment the same as an unsecured credit sale. (7-1-93)

d. If merchandise is repossessed and is subsequently resold at retail, sales tax is computed on the sales price and collected and remitted the same as on other retail sales. (7-1-93)

04. Application To Taxpayers. The following rules apply to taxpayers who remit sales tax on an accrual basis but report income tax on a cash basis or are not required to file income tax returns. (7-1-93)

a. Retailers are required to remit sales tax on an accrual basis, even though their accounting records and income tax returns may be prepared on the cash basis of accounting. (7-1-93)

b. For taxpayers who keep their records and file income tax returns on a cash basis, a worthless account cannot be written off as a bad debt because it has not been recognized as income in the taxpayer's books. These retailers may still claim a bad debt for sales tax purposes. The claim should be made at the same time and in the same way discussed in Subsections 063.02 and 063.03 of this rule, even though the bad debt does not appear on the retailer's income tax return. (7-1-93)

c. For taxpayers who are not required to file income tax returns, the claim should be made the same way discussed in Subsections 063.02 and 063.03 of this rule. (6-23-94)

d. As these claims cannot be verified against the income tax returns of these taxpayers, sufficient evidence must be attached to the sales tax return to prove that the account has become worthless, that the tax was remitted by the retailer, and that the retailer did not receive payment of the tax from the buyer. (7-1-93)

05. Amount Of Credit Allowed. The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax. (7-1-93)

a. Example: A taxable sale is made of a thirty thousand dollar ($30,000) forklift, thirty-one thousand five hundred dollars ($31,500) including sales tax, with a five thousand dollar ($5,000) down payment, financing the balance on a sixty (60) month contract. The forklift is repossessed by the retailer after twenty (20) months. The remaining principal balance is seventeen thousand two hundred forty-five dollars ($17,245) including the financed sales tax. The sales tax bad debt write off is eight hundred twenty-one dollars ($821).

Total taxable sale	$30,000
5% sales tax	1,500
Total sale	31,500
Down payment	(5,000)
Total financed	$26,500
Payment to principal after sale	(9,255)
Total bad debt	$17,245
Sales tax portion of bad debt $17,245 - (17,245 / 1.05)=	$821
OR	
$17,245 - $16,424=	$821

($16,424 + 5% tax = $17,245)	

(7-1-93)

b. Example: A car dealer makes a taxable sale of an automobile for fifteen thousand dollars ($15,000) along with an extended warranty for five hundred dollars ($500) and credit insurance for one hundred dollars ($100). The customer pays one thousand dollars ($1,000) cash and trades in a car worth ten thousand dollars ($10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars ($6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand eight hundred fifty dollar ($10,850) loan after paying five hundred dollars ($500) towards the principal. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars ($5,000) of the total fifteen thousand eight hundred fifty dollar ($15,850) cost was taxable.

Sales price of vehicle	$15,000
Extended warranty	$500
Credit insurance	$100
Trade-in	($10,000)
Sales tax	$250
Subtotal	$5,850
Down payment	($1,000)
Invoice total	$4,850
Amount financed	$10,850
Payment to principal after sale	($500)
Amount of bad debt	$10,350
Amount of down payment used to pay sales tax (250 / 5850) = 4.27% .0427 x $1,000 = $42.70	
Amount of sales tax financed $250 -$42.70 = $207.30	
Percentage of loan representing sales tax $207.30 / $10,850 = 1.91%	
Sales tax paid by payments to principal $500 x .0191 = $ 9.55	
Amount of bad debt write-off $207.30 -$9.55 = $197.75	

(7-1-93)

06. Bad Debt Collected At A Later Date. If a bad debt account is collected later, the retailer must pay tax on the amount collected. (7-1-93)

07. To Claim Credit For A Bad Debt. Credit for bad debts for sales tax purposes may be claimed ONLY by the retailer that made the original sale and paid the sales tax to the state. Financial institutions may not claim a bad debt for sales tax on property for which they provided financing but did not sell. When a finance company acts as a retailer, making sales and remitting tax to the state, it may claim a bad debt write-off for accounts that become worthless. (7-1-93)

08. Cross-Reference. Rescinded Sale. See Idaho Sales Tax Administrative Rule 045. (6-23-94)

064. DEMURRAGE.
Demurrage charges are not subject to sales or use tax if right, power, and control of the ship, freight car, or truck remains with the transportation company. Demurrage is defined as a charge by a transportation company to its customer for detaining a ship, freight car, or truck beyond the time allowed for loading or unloading. (7-1-93)

065. TIRES BALANCING, STUDDING, AND SIPING (Rule 065).

01. Services Subject To Sales Tax. Sales tax applies to the amount charged for services agreed to be performed in conjunction with the sale of a tire. Examples of such taxable services are balancing, studding, siping, or similar charges. Sales tax will apply to the total amount charged for the tire, the services, and the materials used to perform the services. (7-1-93)

02. Services Not Subject To Sales Tax. (7-1-93)

a. Sales tax does not apply to the amount charged for balancing, studding, or siping a tire owned by the customer. (7-1-93)

b. Sales tax does not apply to a separately stated fee to mount or install a tire whether sold new or owned by the customer. (7-1-93)

c. The person performing the nontaxable service must pay use tax on the value of the materials used in performing the service. (7-1-93)

03. Materials Used In Performing A Service. Studs, wheel weights, valve stems, cores, patches, and similar items are materials that may be used to perform both a taxable and nontaxable service. The seller may elect to use any consistent method in determining the value and the amount of materials used in performing taxable and nontaxable services. (7-1-93)

a. The allocation of materials may be determined using a percentage basis. Example: The seller determined through some reasonable basis that sixty percent (60%) of the studs purchased for resale are used in tires that are purchased from him. The remaining forty percent (40%) are used in tires owned by customers and brought in for studding. Use tax will apply to the forty percent (40%) used in studding customer owned tires. As sales tax applies to the entire fee charged for studding a tire sold to a customer, the remaining sixty percent (60%) of the studs will not be subject to use tax, but are included in the amount subject to sales tax imposed on the purchaser. (7-1-93)

b. The allocation may be determined based on the value of the material used in performing both taxable and nontaxable services. (7-1-93)

c. The allocation may be determined using any other method that will allow a reasonable allocation of materials used in both a taxable and nontaxable service. (7-1-93)

04. Cross-Reference. Repairs. See ISTC Rule 062. (7-1-93)

066. CONTRACTOR'S USE OF TANGIBLE PERSONAL PROPERTY (Rule 066).

01. Use. The term use includes the exercise of any right or power over tangible personal property in the performance of a contract, regardless of whether title to the tangible personal property is vested in the contractor or the tangible personal property is leased. (7-1-93)

02. Contractors Use Of Tangible Personal Property. If title to the tangible personal property is vested in an entity not entitled to the production exemption, use tax will apply to the contractor. For contractors improving real property, see ISTC Rule 012. (7-1-93)

03. Exception. The Sales Tax Act provides only one (1) exception. If title to the tangible personal

property is vested in a person entitled to the production exemption, see ISTC Rule 079, the contractor's use of the property will also be exempt. (7-1-93)

067. REAL PROPERTY (Rule 067).

01. Improvements Or Fixtures. Improvements or fixtures to real property include: (7-1-93)

a. Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)

b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)

c. Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)

02. Three Factor Test. A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

a. Annexation to the realty, either actual or constructive. (7-1-93)

b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

c. Intention to make the article a permanent addition to the realty. (7-1-93)

03. Example 1: The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)

04. Example 2: The three (3) factor test would not be met in Subsection 067.03, Example 1, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (7-1-93)

05. Personal Property Incidental To The Sale Of Real Property. This rule does not affect the provisions of Section 63-3609(c), Idaho Code. (7-1-93)

068. COLLECTION OF TAX (Rule 068).

01. In General. Idaho Sales Tax is an excise tax which is imposed upon each sale at retail. The tax is computed at the time of each sale and the tax on the total sales for the reporting period, usually monthly, will be reported and paid on or before the due date as established by ISTC 105. (7-1-93)

02. Sales Tax To Be Collected By Retailer. Sales tax shall be collected by the retailer from the customer. The tax will be computed on and collected for all credit, installment, conditional or similar sales when made or, in the case of rentals, when the rental is charged. (7-1-93)

03. Computation Of Tax. The retailer will compute the tax upon the total sale to a purchaser at a given time and not upon each individual item purchased. (7-1-93)

04. Bracket System For Five Percent Tax Rate. The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale. (7-1-93)

a. Multiply five cents ($0.05) for every whole dollar included in the sale, AND (7-1-93)

b. Add for each additional fractional dollar amount of sale the corresponding tax below:

AMOUNT OF SALE	TAX
$0.00 - $0.05	$.00
0.06 - 0.25	.01
0.26 - 0.45	.02
0.46 - 0.65	.03
0.66 - 0.85	.04
0.86 - 0.99	.05

HOWEVER, sales to a total amount of eleven cents ($0.11) or less are exempt from tax. (7-1-93)

05. Tax To Be Separately Displayed. The amount of tax collected by the retailer must be displayed separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale. The retailer may retain any amount collected under the bracket system which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting that tax. (7-1-93)

06. Unit Sales At Single Price. When transactions involve unit sales at a single price, such as admission tickets, the requirement to calculate and itemize the sales tax can be met by showing the total cost separately in a statement of the price on the ticket. (7-1-93)

a. Example 1: The ticket price for admission to a high school basketball game is two dollars ($2). The separate statement of tax may be shown as:

Admission	$1.90
Tax (5%)	.10
Total	$2.00

Ten cents ($0.10) must be set aside and held as state money arising from tax on the admission. (7-1-93)

b. Example 2: The ticket price to a movie theater is four dollars ($4.). The separate statement of tax may be shown as:

Admission	$3.81
Tax (5%)	.19
Total	$4.00

Nineteen cents ($0.19) must be set aside and held as state money arising from tax on the admission. (7-1-93)

07. Reimbursement Of Tax From The Purchaser To The Seller. If the seller does not collect the

sales tax at the time of the sale and it is later determined that sales tax should have been collected, the seller can then collect the sales tax from the purchaser if the delinquent tax has been paid by the seller. The legal incidence of the tax is intended to fall upon the buyer, Section 63-3619, Idaho Code. (7-1-93)

a. Example: The Commission determines that certain nontaxed sales by a seller are subject to sales tax and that the seller did not collect the tax and did not have documentation supporting exemption from the sales tax. The Commission issued a Notice of Deficiency Determination to the seller imposing the tax and interest. The assessment then paid by the seller entitles the seller to reimbursement from the buyer. (7-1-93)

b. The seller is also entitled to collect reimbursement from the buyer of the interest paid on the taxes assessed. (7-1-93)

c. The seller is not entitled to reimbursement from the buyer for penalties imposed as part of the assessment against the seller. (7-1-93)

d. The receivable established by the seller seeking reimbursement from the purchaser is not subject to expiration of the statute of limitations provided in Section 63-3633, Idaho Code. (7-1-93)

069. INTERSTATE COMMERCE (Rule 069).

When tangible personal property is located within the state of Idaho at the time of sale and is delivered within the state of Idaho, such sale is taxable irrespective of where the parties to the contract of sale are located and where the contract was made or accepted or the funds paid. Example: A Washington-based interstate trucking firm hires an Idaho repair facility to install parts on a disabled truck. The trucking firm takes delivery of the repaired vehicle in Idaho. The sale of the parts is subject to Idaho sales tax. (7-1-93)

070. PERMITS (Rule 070).

01. Requirements For Obtaining Permits. All retailers, wholesalers and other persons required to collect sales tax must obtain a permit from the Tax Commission before engaging in business. No fee is required for the initial sales tax permit. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

a. Every wholesaler, retailer or other person required to collect sales tax must apply for a permit on the form prescribed by the Commission. The application for a permit must list each place of business operated by the same person, firm or corporation. The permit must be posted in a conspicuous place at each location for which it is issued. A separate permit number must be obtained for each business name. (7-1-93)

b. Example 1: Corporation A operates the businesses named B, C, and D. Three permit numbers are required, regardless of how many locations operate using the business names B, C, and D. (7-1-93)

c. Example 2: Corporation E operates three locations, using the business name F. Only one permit number is required, since all locations have the same business name. (7-1-93)

02. Out-Of-State Seller. An out-of-state seller desiring to conduct business as a seller within Idaho must obtain a seller's permit. This requirement also applies to any salesmen user's agents who solicit orders for nonresident sellers. (7-1-93)

03. Sales In Leased Premises. When any established business leases a portion of its shelves, counters or floor space to other persons selling tangible personal property to consumers, the sales from such leased department may be included in the tax return of the lessor. When the lessee conducts the leased department in the same manner as a separate business and keeps separate business records, the lessee must apply for a sales tax permit. (7-1-93)

04. Cancellation Of Sales Tax Permits. It is the responsibility of a permit holder to notify the Tax Commission in writing immediately upon any change in ownership of the permitted business or upon complete or partial termination of the permit holder's business. Complete or partial termination of a permit holder's business includes the lease of part or all of the business or business location to another party who will be responsible for remitting the sales tax. This notice must include the following information. (7-1-93)

a. This notice must include the date of closure, date of sale or date of lease. If the permit holder does not continue to operate a business under that permit number, the notice must state that the permit should be canceled. The permit holder must return the permit or send a written statement that the permit has been destroyed. If the permit holder has sold or leased his business, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's or operator's permit, without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated a business under the previous owner's permit. (7-1-93)

05. Suspension Of Sales Tax Permits. The permit holder must notify the Tax Commission in writing of the anticipated discontinuation of a business due to seasonal operation or for any other reason. This notice must contain the date of closure and anticipated date of reopening. Upon receipt of this information, returns will be suspended during the period of closure. (7-1-93)

06. Requirements Of Holding A Seller's Permit. A seller's permit may be held only by persons actively engaged in making retail sales subject to Idaho sales tax. Any person holding a permit who fails to meet this requirement must surrender the permit to the Commission for cancellation. If a permit is held by a person who has reported no sales for a period of twelve (12) consecutive months, the Commission may revoke the permit and require the holder to return the permit to the Commission or provide a sworn statement that the permit has been destroyed by the holder. (7-1-93)

07. Seller's Permit And Sales Tax Permit. The terms seller's permit and sales tax permit may be used interchangeably. Both refer to the permit issued to a person desiring to engage in business in Idaho as a retailer. (7-1-93)

071. RESALE CERTIFICATES-PURCHASES FOR RESALE (Rule 071).

01. In General. This rule applies only to proper documentation for purchases of tangible personal property for resale. Proper documentation for retail sales exempted for other reasons is discussed in ISTC Rule 075. All forms approved by this rule may be reproduced. (7-1-93)

02. Effective Date. Subsections 071.03 through 071.08 apply to sales made on and after December 31, 1991. (7-1-93)

03. Burden Of Proof. All sales of tangible personal property made within Idaho are presumed to be retail sales and subject to sales tax unless an exemption is established as provided in ISTC Rule 075. The burden of proving that a sale is not a retail sale is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on a resale certificate form approved by the Commission that the sale is a purchase for resale. When a resale certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the tangible personal property or services sold are taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate. (7-1-93)

04. Qualified Users. Resale certificates may be completed when buying goods for resale by the following purchasers: (7-1-93)

a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. (7-1-93)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (7-1-93)

c. An out-of-state retailer who makes not more than two sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (7-1-93)

05. Approved Forms. The resale certificate forms approved by the Commission are: (7-1-93)

a. Sales Tax Resale or Exemption Certificate, Form ST-101. (7-1-93)

b. Certificate of Purchase for Resale, Form ST-103. Beginning April 1, 1992, this form is replaced by Form ST-101, Sales Tax Resale or Exemption Certificate. The Commission will no longer make Form ST-103 available to the public. However, any properly completed Form ST-103 issued by a purchaser to a retailer before or after April 1, 1992, will be considered a valid form for making a resale exemption claim. (7-1-93)

c. Sales Tax Exemption Claim Form-Grocer, Form ST-111. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept this form from a purchaser if the retailer has a properly executed resale certificate (Form ST-101 or ST-103) on file from the purchaser. (7-1-93)

d. The Uniform Sales and Use Tax Certificate Multi-jurisdiction adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form. (7-1-93)

06. Seller's Responsibility. With respect to 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 resale certificate 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. (7-1-93)

a. Example: A restaurant operator completes a resale certificate for his supplier claiming exemption from sales tax for reason of resale. 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. (7-1-93)

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. (7-1-93)

07. Properly Executed Forms. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 071.04 of this rule. The following information must be provided on the approved certificates. (7-1-93)

a. The Sales Tax Resale or Exemption Certificate, Form ST-101; the Certificate of Purchase for Resale, Form ST-103; and the Uniform Sales and Use Tax Certificate Multi-jurisdiction are properly executed if they are completed with: the purchaser's name and address; the nature of the purchaser's business and the general character of the goods sold or rented in the regular course of business; the Idaho seller's permit number issued to the purchaser, unless the purchaser is a wholesaler or out-of-state retailer described in Subsection 071.04 of this rule; and the signature of the purchaser or his agent. (7-1-93)

b. The Sales Tax Exemption Claim Form-Grocer, Form ST-111, is properly executed if it is completed with the purchaser's name, 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. (7-1-93)

c. An Idaho seller's permit number has up to nine (9) digits followed by an "S." Example: 123456-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. (7-1-93)

08. Timely Acceptance Of Certificates. A seller may accept a resale 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 resale claim. However, if no approved resale certificate is obtained from the purchaser in the manner provided or permitted by this rule, then the sale is presumed to be taxable. (7-1-93)

a. Resale 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 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. (7-1-93)

b. Example: Retailer X sells goods to Customer Y without charging the sales tax but does not obtain a resale certificate from Customer Y. Instead, Customer Y writes his seller's permit number on the invoice when he signs for the goods. Retailer X is later audited by the Tax Commission and attempts, but is unable, to obtain a resale certificate from Customer Y. Retailer X argues that the seller's permit number written on the invoice is clear and convincing evidence that Customer Y purchased the goods for resale. However, by itself, the number does not establish that Customer Y is in a business which sells the type of goods purchased from Retailer X. Even if it is more likely than not that Customer Y intended to resell the goods, Retailer X has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale. Retailer X is liable for the tax on the sale to Customer Y. (7-1-93)

c. When a notice of deficiency determination has been issued to a seller by the Commission, and the seller petitions for redetermination as provided by ISTC 121, he may submit resale certificates obtained from his customers as evidence of exemption claims, but only if the resale certificates are presented to the Tax Commission within ninety (90) days of the date of the notice of deficiency determination. (7-1-93)

09. Effective Date. Subsections 071.10 through 071.15 of this rule apply to sales made before January 1, 1992. (7-1-93)

10. Burden Of Proof. All sales of tangible personal property made within Idaho are presumed to be retail sales and subject to sales tax unless an exemption is established as provided in ISTC 075. The burden of proving that a sale is not a retail sale is upon the seller. The seller may overcome the presumption by obtaining at the time of sale a written statement from the purchaser on the form approved by the Commission that the sale is a purchase for resale. The form generally approved by the Commission is the Certificate of Purchase for Resale, Form ST-103.

(7-1-93)

11. Seller's Responsibility. A properly executed Certificate of Purchase for Resale obtained by the seller at or before the time of sale from a person engaged in the business of selling or renting tangible personal property and who holds a seller's permit issued by the Commission establishes a presumption that the sales transaction is not a retail sale. However, presumption of exclusion from the tax arises only if the certificate is taken by the retailer in good faith. (7-1-93)

a. A Certificate of Purchase for Resale is not taken in good faith if the retailer actually knew or reasonably should have known that the representation made by the purchaser on the certificate is erroneous as a matter of fact or that the exclusion claimed by the purchaser is not available as a matter of law. (7-1-93)

b. Example: A retailer is in the business of selling automobile parts. A purchaser buys a twelve (12) volt automobile battery and provides the seller with a Certificate of Purchase of Resale, Form ST-103, claiming that the battery is to be resold. However, retailer's employee installs the battery in a pickup truck of the purchaser. The retailer is required to collect and remit sales tax on the transaction, even though the purchaser has provided a certificate. The retailer through its employee had actual knowledge that the property purchased became part of the purchaser's motor vehicle. The certificate does not protect the retailer from the obligation to collect and remit taxes.

(7-1-93)

12. Seller's Permit Required. Other than as provided by Subsection 071.13 of this rule, a Certificate of Purchase for Resale must show the purchaser's sales tax permit number. Contractors or other people who are required to report use tax but who are not retailers cannot purchase tangible personal property tax exempt by using their use tax account number on a Certificate of Purchase for Resale. These purchasers are not retailers and do not have a seller's permit number. A use tax number may be distinguished from a seller's permit number by the suffix letter following the arabic numerals. A seller's permit number is identified by the suffix "S." A use tax account number is identified by the suffix "U" and a withholding account number is identified by the suffix "W." A certificate showing a number with a suffix of "U" or "W" is not a valid certificate. (7-1-93)

13. Wholesalers And Out-Of-State Retailers. Two (2) kinds of businesses, wholesalers and out-of-state retailers, are not required to have an Idaho seller's permit but may validly make purchases of tangible personal property for resale tax exempt. (7-1-93)

a. Wholesalers, whose business is strictly limited to making sales of tangible personal property to others who purchase the property for resale, are not required to obtain a seller's permit. Such wholesalers must not hold themselves out as being in the business of making retail sales and must not make more than two (2) retail sales in Idaho within any twelve (12) month period. (7-1-93)

b. Out-of-state retailers who make no more than two (2) retail sales in Idaho in any twelve (12) month period and do not hold themselves out as being in the business of making retail sales in Idaho are not required to obtain a seller's permit. (7-1-93)

c. A wholesaler or out-of-state retailer may purchase tangible personal property for resale tax exempt by providing to its Idaho vendor a Certificate of Purchase for Resale, Form ST-103, without a seller's permit number if the certificate is otherwise properly executed and in the space provided for the seller's permit number the purchaser issuing the certificate inserts the words None--out-of-state or None--wholesaler only, as appropriate. (7-1-93)

14. Failure To Obtain Certificate. If no Certificate of Purchase for Resale is obtained from the purchaser at the time of sale in the manner provided or permitted by this rule, then the sale is presumed to be taxable. The presumption may be overcome only by clear and convincing evidence. Certificates obtained by a seller from a purchaser at a time subsequent to the sale will be considered by the 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 transaction is exempt from tax. (7-1-93)

15. Resale Stamp. Retailers or purchasers may stamp or imprint on their purchase orders, sales invoices, or other document evidencing the sale the following statement:

Check if applicable:

A valid resale certificate for this purchaser is on file with this seller and the merchandise listed on this invoice is being purchased for resale.

This resale certificate is valid if: properly executed ST-103 is on file with the seller; the statement is checked and signed by the purchaser in addition to any other signature on the document; and the purchaser's name and address appear on the document. (7-1-93)

16. Other Approved Forms. During the period January 1, 1992, through March 31, 1992, the legislature authorized, and then repealed, the issuance of tax exemption cards. Purchasers issued these cards, making purchases for resale, were required to complete Form ST-105, Idaho Sales Tax Exemption Claim Form; or Form ST-107, Blanket Sales Tax Exemption Claim. These forms are valid documentation to support exemptions claimed during this three (3) month period. (7-1-93)

072. APPLICATION AND PAYMENT OF USE TAX (Rule 072).

01. Imposition Of Use Tax. Use tax is imposed upon the privilege of using, storing, or otherwise consuming tangible personal property within Idaho. The tax is imposed on the value of the tangible personal property. A recent sales price is presumptive evidence of the value. In the absence of a recent sales price, the value of the property subject to the use tax will be the fair market value at the time of first use in Idaho. Special rules apply to transient equipment which is present in Idaho ninety (90) days or less in any consecutive twelve (12) months. See Section 63-3621A, Idaho Code. (7-1-93)

02. Use. Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term "use" does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Idaho State Administrative Sales Tax Rules 012, 077, and 079. (6-23-94)

03. Storage. Storage is any keeping or retention of tangible personal property in this state, except as inventory for the purpose of sale in the regular course of business or for subsequent use solely outside Idaho. (7-1-93)

04. Specifically Excluded From The Definition Of Both Use And Storage Are: (7-1-93)

a. Retention or use of property for subsequent transportation outside the state; or (7-1-93)

b. Processing, fabricating, repairing, or manufacturing property for subsequent transportation and use or resale solely outside the state. (7-1-93)

05. Receipt Showing Sales Tax Paid. If the property is purchased from an Idaho retailer and Idaho sales tax is charged by and remitted to the retailer, then no use tax will apply to the property. A purchase order issued by the purchaser advising the retailer to charge or include the Idaho sales tax is not sufficient evidence that the tax has been paid. The retailer's receipt provided to the purchaser must display separate statement of the tax to relieve the purchaser of the use tax requirements. (6-23-94)

06. Out-Of-State Purchases. If the property is purchased outside the state or from a retailer not subject to the Commission's jurisdiction and is subsequently used, stored, or otherwise consumed in this state, then a use tax will apply. The purchaser must report and remit the use tax directly to the state by filing a use tax return on the forms prescribed by the Commission. (6-23-94)

07. Taxes Paid To Another State. The taxpayer may offset from the use taxes payable to Idaho any amount of general sales or use taxes paid to another state on the purchase or use of the same property if paid by the same taxpayer. A credit may not be claimed for taxes erroneously paid to another state if no taxable sale or use under the laws of that state occurred. In determining whether a tax is due in the state where paid, the Commission will be bound by the laws, rules, and administrative rulings of the state to which tax is paid. (7-1-93)

a. If the amount of tax levied by the state to which it is paid is less than the amount of the Idaho tax due, then the balance must be paid as Idaho tax. (6-23-94)

b. If the amount of tax levied by the state to which it is paid is equal to or greater than the Idaho tax, then there will be no taxes due to Idaho in regard to the same transaction or subsequent use of the property. (6-23-94)

c. If the taxes paid to the other state are greater than the Idaho tax, the amount of offset available is limited to the amount of Idaho tax due on the same transaction or use of the property. (6-23-94)

08. Use Undeterminable At Time Of Purchase. In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Idaho State Administrative Sales Tax Rule 071. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (6-23-94)

09. Removal From This State. If property is held in this state solely for the purpose of subsequent transport and use outside Idaho or is to be processed, fabricated, attached to, or incorporated into property that is to be transported outside and used or sold outside the state, a use tax will not apply. (7-1-93)

a. Example 1. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory. (7-1-93)

b. Example 2. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees.

(7-1-93)

c. Example 3. A retailer purchases shirts without paying tax for his resale inventory. The shirts cost the retailer ten dollars ($10) each. He withdraws ten (10) of the shirts from inventory and donates them to a sports team he is sponsoring. The retailer owes use tax on one hundred dollars ($100). (7-1-93)

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (Rule 073).

01. Equipment Brought Into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03, below. For property a contractor fabricates to install into Idaho real property, see ISTC 12. (7-1-93)

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and ISTC Rule 072. The use tax does not apply to items purchased before July 1, 1965, or items excluded from tax by Idaho Code. (7-1-93)

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

a. Beginning July 1, 1992, a nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (7-1-93)

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars ($100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars ($15,000). Idaho use tax on the fair market rental value, at the rate of five percent (5%), totals seven hundred fifty dollars ($750). The contractor paid three thousand five hundred dollars ($3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (7-1-93)

e. Example: The same contractor takes a second job in Idaho within the same twelve (12) months and brings the same equipment, now with a fair market value of ninety-five thousand dollars ($95,000), to Idaho for the job. As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's five percent (5%) use tax on its fair market value ninety-five thousand dollars ($95,000) x five percent (5%) = four thousand seven hundred fifty dollars ($4,750). Credit of two thousand seven hundred fifty dollars ($2,750) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars ($3,500) less the seven hundred fifty dollar ($750) credit already used on rentals. The contractor owes two thousand dollars ($2,000) of use tax to Idaho. (7-1-93)

04. Licensed Motor Vehicles. A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once

the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents of Idaho. See ISTC 107. (7-1-93)

074. DONATIONS TO POLITICAL SUBDIVISIONS AND CERTAIN NONPROFIT ORGANIZATIONS OF TANGIBLE PERSONAL PROPERTY USED FOR IMPROVEMENTS TO REAL PROPERTY (Rule 074).

01. Donated Property. Effective July 1, 1991, there is an exemption from the use tax for the donation of tangible personal property which is incorporated into real property, when donated to the state of Idaho, political subdivisions of this state, or a nonprofit organization as defined in Section 63-3622O, Idaho Code. The exemption applies whether the tangible personal property is incorporated into real property by the donee, a contractor or subcontractor or any other person. (7-1-93)

02. Purchase Of Donated Items. This exemption does not apply to sales tax which is applicable to the purchase of tangible personal property which will be donated to the state of Idaho, its political subdivisions, or qualified nonprofit organizations, for incorporation into real property. (7-1-93)

03. Property Not Incorporated Into Real Property. This exemption does not apply to the sales or use tax applicable to tangible personal property donated to the state of Idaho, its political subdivisions, or qualified nonprofit organizations when the property donated will not be incorporated into real property. (7-1-93)

a. Example 1: A concrete company removes from inventory and donates twenty (20) yards of redi-mix concrete to a nonprofit Idaho college for the footings of a storage building. Another contractor who is donating labor for erection of the building places the redi-mix concrete. Neither the redi-mix concrete company nor the contractor are subject to use tax. (7-1-93)

b. Example 2: The same concrete company donates twenty (20) yards of redi-mix concrete to a nonprofit organization which is not listed in Section 63-3622O, Idaho Code. The concrete company must declare and pay use tax on the cost of the materials removed from inventory for the donation. (7-1-93)

c. Example 3: A contractor purchases materials from a local lumber yard which he donates to the nonprofit Idaho college to be used in building a storage building. This contractor must pay sales tax on the material because the law provides exemption only from use tax. (7-1-93)

d. Example 4: A local automobile dealer takes three vehicles from inventory and donates them to the athletic department of an Idaho university. The exemption does not apply. The automobile dealer is subject to use tax on his cost of the vehicles because the vehicles will not become improvements to real property. (7-1-93)

075. EXEMPTION CERTIFICATES-EXEMPTION CLAIMS OTHER THAN RESALE (Rule 075).

01. In General. This rule applies only to proper documentation for claiming exemption from sales tax when purchasing tangible personal property for reasons other than resale. Proper documentation for claiming exemption when purchasing for resale is discussed in Idaho Sales Tax Administrative Rule 071. All forms approved by this rule may be reproduced. (6-23-94)

02. Effective Date. Subsections 075.03 through 075.07 of this rule apply to sales made after December 31, 1991. (7-1-93)

03. Burden Of Proof. All sales of tangible personal property delivered within Idaho are presumed to be retail sales subject to sales tax unless an exemption is established. The burden of proving that a sale is exempt from sales tax is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on an exemption certificate form approved by the Commission that the sale is exempt. When an exemption certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the tangible personal property or services sold are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate. (7-1-93)

04. **Approved Forms**. The forms approved by the Commission are: (7-1-93)

a. Sales Tax Resale or Exemption Certificate, Form ST-101. (7-1-93)

b. Sales Tax Exemption Certificate, Form ST-104. Beginning April 1, 1992, this form is replaced by Form ST-101, Sales Tax Resale or Exemption Certificate. The Commission will no longer make Form ST-104 available to the public. However, any properly completed Form ST-104 issued by a purchaser to a retailer before or after April 1, 1992, will be considered a valid form for making an exemption claim. (7-1-93)

c. Sales Tax Exemption Claim Form-Grocer, Form ST-111. Retailers of food products who have been granted records reduction authority by the Commission may accept this form from a purchaser if the retailer has a properly executed exemption certificate, Form ST-101 or ST-104, on file from the purchaser. (7-1-93)

d. The Uniform Sales and Use Tax Certificate Multi-jurisdiction. Adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form. (7-1-93)

e. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G. Only government agencies may complete this form. This form is required when a government agency is making purchases with cash. (7-1-93)

f. Sales Tax Exemption Certificate Vehicle, Form ST-104-MV. This form must be completed by a purchaser claiming exemption from tax under Section 63-3622R, Idaho Code, when purchasing a motor vehicle or trailer. (7-1-93)

g. Motor Vehicle Transfer Affidavit, Form ST-133. This form 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 to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle to another. (7-1-93)

h. In the case of exemptions claimed under the production exemption, 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: (7-1-93)

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.

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NATURE OF BUSINESS

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BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. The proper use of this certificate will eliminate the requirement to complete a Form ST-101 or ST-104. 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. (7-1-93)

05. **Seller's Responsibility**. With respect to 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 exemption certificate has been obtained if the nature of the exemption claimed is available to the purchaser as a matter of law and the nature of the goods purchased qualify for the particular exemption claimed on the

certificate. (7-1-93)

a. A retailer must collect tax on 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 exemption on those items that are specifically excluded from the exemption by the law, such as hand tools with a unit price not in excess of one hundred dollars ($100), maintenance and janitorial equipment and supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in research and development, property used in transportation activities, equipment or other property used to make repairs, tangible personal property which becomes a component of any real property or any improvement or fixture thereto, licensed motor vehicles, aircraft, and recreational vehicles. (7-1-93)

b. Example: A farmer completes an exemption certificate claiming an exemption from sales tax for reason of the production exemption when purchasing a fifteen dollar ($15) hammer and a case of motor oil. The retailer must collect the sales tax on the hammer, but is not liable for the collection of the sales tax on the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, hand tools with a unit price of one hundred dollars ($100) or less are 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, oil for a tractor, or taxable, oil for a licensed pickup truck, use. (7-1-93)

c. Additionally, when a retailer sells merchandise under the production exemption in Section 63-3622D, Idaho Code, which may be used for either a taxable or a nontaxable purpose, such as 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, as long as the use described qualifies for the production exemption as a matter of law. (7-1-93)

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. (7-1-93)

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 exemption certificates to purchase construction materials for specific jobs in nontaxing states claiming an exemption from tax under Section 63-3622B, Idaho Code and Idaho Sales Tax Administrative Rule 012. 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. (6-23-94)

06. Properly Executed Form. (7-1-93)

a. Form ST-101, Sales Tax Resale and Exemption Certificate; Form ST-104, Sales Tax Exemption Certificate; and the Uniform Sales and Use Tax Certificate - Multi-jurisdiction are properly executed if they are completed with: the purchaser's name and address; the reason for and the nature of the claimed exemption; and the signature of the purchaser or his agent. (7-1-93)

b. Form ST-111, Sales Tax Exemption Claim Form-Grocer, is properly executed if it is completed with the purchaser's name, the signature of the individual claiming the exemption, and the total purchase price, date of purchase, and general nature of the products sold. (7-1-93)

c. All other forms are properly executed if they are fully completed with the information required on the form. (7-1-93)

07. Timely Acceptance Of Certificates. A seller may accept an exemption 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. However, if no approved exemption certificate is obtained from the purchaser in the manner provided or permitted by this rule, then the sale is presumed to be taxable. (7-1-93)

a. Exemption 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 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 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 that the fact is true is not sufficient to establish clear and convincing evidence. (7-1-93)

b. Example: Retailer X sells a truck load of hay to Customer Y and does not charge sales tax on the transaction. Retailer X fails to obtain an exemption certificate from Customer Y. Retailer X is later audited by the Tax Commission and is unable to obtain an exemption certificate from Customer Y as he is no longer at the address shown on the invoice. Retailer X argues that hay is a farm supply and this alone should establish clear and convincing evidence that the sale is exempt. However, Customer Y may not be in a business which qualifies for the farming production exemption, such as racing or showing horses. Or, Customer Y 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 Customer Y is in the business of farming, Retailer X has not provided clear and convincing evidence that the hay was purchased for use in a farming operation. Retailer X is liable for the tax on the sale to Customer Y. (7-1-93)

c. When a notice of deficiency determination has been issued to a seller by the Commission, and the seller petitions for redetermination as provided by Idaho Sales Tax Administrative Rule 121, he may submit exemption certificates obtained from his customers as evidence of exemption claims, but only if the exemption certificates are presented to the Tax Commission within ninety (90) days of the date of the notice of deficiency determination. (6-23-94)

08. Effective Date. Subsections 075.09 through 075.14 of this rule apply to sales made before December 31, 1991. (7-1-93)

09. Burden Of Proof. All retail sales of tangible personal property made within the state of Idaho are presumed to be taxable. The presumption may be overcome in one of two (2) different ways: (7-1-93)

a. The seller may obtain from the purchaser at or before the time of sale a written statement from the purchaser on the form approved by the Commission that the sale is an exempt sales transaction. (7-1-93)

b. In the absence of such an exemption certificate, the retailer has the burden of establishing, by clear and convincing competent evidence, that a particular sales transaction is exempt from sales taxes. (7-1-93)

10. Seller's Responsibility. A properly executed approved sales tax exemption certificate obtained by the seller at or before the time of sale establishes a presumption that the sales transaction is exempt. However, the presumption of exemption arises only if the exemption certificate is taken by the retailer in good faith. An exemption certificate is not taken in good faith if the retailer actually knew or reasonably should have known that the representation made by the purchaser on the certificate is erroneous as a matter of fact or that the exemption claimed by the purchaser is not available as a matter of law. (7-1-93)

a. Example 1: A retailer is in the business of selling automobile parts. A purchaser buys a twelve (12) volt automobile battery and provides the seller with an exemption certificate, Form ST-104, claiming that the battery is to be primarily and directly used in a farming operation. However, retailer's employee installs the battery in a pickup truck which is a licensed motor vehicle. The retailer is required to collect and remit sales tax on the transaction even though the purchaser has provided an exemption certificate. Because no production exemption is available for licensed motor vehicles, and the retailer through its employee had actual knowledge that the property purchased became part of a licensed motor vehicle, the exemption certificate does not protect the retailer from the obligation to collect and remit taxes. (7-1-93)

b. Example 2: A hardware store sells, among other things, hand tools. A purchaser buys several hand tools, each costing less than one hundred dollars ($100), and provides the retailer with an exemption certificate, Form ST-104, claiming the tools will be primarily and directly used in a manufacturing operation. Because there is no production exemption for hand tools with a unit price of less than one hundred dollars ($100), the retailer is required to collect sales tax on the sale. If no tax is collected and remitted, the retailer may not rely on the exemption certificate to defend against any assessment made by the Commission of tax on that sale. (7-1-93)

c. Example 3: A farm equipment dealer sells a farm tractor to a purchaser who provides the dealer with an exemption certificate, Form ST-104, claiming the tractor will be primarily and directly used in farming. Purchaser claims, in the space provided on the form for nature of his business, that he is a farmer. In fact, the purchaser is not a farmer but operates a commercial golf course. The tractor is used solely on the golf course. The retailer may accept the certificate in good faith unless 1) he actually knows the purchaser is not a farmer or actually knows the intended use of the tractor, or 2) circumstances relating to the sale would cause a reasonable person to question the validity of the claim, for example, the purchaser's name is Acme Golf Course, Inc. When a certificate is accepted in good faith, the retailer need not charge tax nor can he be subsequently assessed tax on the sale by the Commission. (7-1-93)

11. Approved Forms. Only two (2) forms are generally authorized by the Idaho Tax Commission for use as a sales tax exemption certificate, except as provided in Subsection 075.13 of this rule. The first is Idaho Tax Commission Form ST-104. Supplies of this form may be obtained from any Idaho Tax Commission office. Retailers engaged in business in more than one state may, in lieu of Form ST-104, use the second authorized form, the uniform sales tax exemption form adopted and approved by the Multi-state Tax Commission. Only multi-state taxpayers may use this form and those choosing to use it are responsible for obtaining their own supply of blank forms. Other forms may be used if they have first been approved by the Commission. Form ST-104 may be reproduced. (7-1-93)

12. Property Executed Forms. When the Form ST-104 is used to claim a sales or use tax exemption, all relevant information must be included on the form, including the seller's name and address, the purchaser's name and address, which must be printed, a signature by the purchaser or the purchaser's authorized agent, and the specific ground upon which the exemption is claimed. The latter requirement is met by completing one (1) or more of items one (1) through four (4) on the exemption form. If an exemption is claimed under Item No. 1 Production Exemption, the spaces for indicating the nature of the property sold and the nature of the purchaser's business must be completed. (7-1-93)

13. Production Exemption Stamp. In the case of exemptions claimed under the production exemption, retailers may stamp or imprint on the face of their sales invoices 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.

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NATURE OF BUSINESS

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BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. The proper use of this certificate will eliminate the requirement to complete a Form ST-104. If no Form ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (7-1-93)

14. Failure To Obtain Certificate. If no exemption certificate is obtained from the purchaser at the time of sale in the manner required or permitted by this rule, then the sale is presumed to be taxable. The presumption may be overcome only by clear and convincing evidence. Exemption certificates obtained by a retailer from a purchaser at a time subsequent to the sale, will be considered by the Commission in conjunction with all other evidence available to determine whether or not a retailer has established, by clear and convincing evidence, that a sales transaction is exempt from tax. (7-1-93)

15. Other Approved Forms. During the period January 1, 1992, through March 31, 1992, the legislature authorized, and then repealed, the issuance of tax exemption cards. Purchasers issued these cards claiming exemption from tax for reasons other than resale were required to complete Form ST-105, Idaho Sales Tax Exemption Claim Form; Form ST-106, Sales Tax Exemption Declaration; or Form ST-107, Blanket Sales Tax Exemption Claim. These forms are valid documentation to support exemptions claimed during this three (3) month period. (7-1-93)

076. USE OF EXEMPTION CERTIFICATE FOR CASH PURCHASES BY GOVERNMENT AGENCIES, FORM ST-104G (Rule 076).

01. Cash Sales To Government Agencies. Tax exempt cash sales to government agencies must be supported by a Form ST-104G, furnished to the vendor at the time of sale. Blank forms will be furnished to government agencies upon their request to the Tax Commission. A separate exemption certificate is required for each transaction. (7-1-93)

02. Exempt Cash Sales. Tax exempt cash sales to government agencies will be valid, only if: (7-1-93)

a. An original ST-104G is on file with the vendor for each separate transaction and is obtained at the time of sale. Photocopies are not valid. (7-1-93)

b. The form is legible, fully completed, and signed by the agency purchasing agent and the employee/purchaser. (7-1-93)

03. Entities Entitled To Use Form ST-104G. Retailers may accept this form from the state of Idaho, its agencies, departments and political subdivisions, and from the federal government. States other than Idaho, their agencies, departments, and political subdivisions CANNOT use this form as these entities are subject to sales tax on all purchases within Idaho. (7-1-93)

077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INEEL (Rule 077).

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

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

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

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

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

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

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

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

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

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

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

078. MOTOR FUELS (Rule 078).

01. Exemptions. (7-1-93)

a. Motor fuels, including gasoline, diesel and gaseous fuels, upon which the taxes are imposed by Title 63, Chapter 24, Idaho Code, are exempt from sales and use taxes. The Idaho Motor Fuels Tax Rules, IDAPA 35.01.05, explain in detail which petroleum and gaseous products are subject to taxation as motor fuel. Also exempt are purchases upon which motor fuels taxes have actually been paid. If such purchases are later included in credits or refunds for motor fuels taxes 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. (7-1-93)

b. Fuel may be exempt under Section 63-3622(D), Idaho Code. (7-1-93)

c. Fuel used as heating fuel may be exempt if it qualifies under the exemption for space heating materials. See ISTC 88. (7-1-93)

d. The sale or use of fuel for subsequent use outside this state and fuel brought into this state in the fuel tanks of vehicles in interstate commerce may be exempt. Carriers engaging in interstate commerce are required to maintain sufficient verifiable statistical data to substantiate any exemption claimed for fuel purchased in Idaho for use outside this state. In the case of a substantial change in the mode of operation of the carrier or other circumstances that would cause the statistical data to be invalid, the carrier is required to review and adjust the exemption claimed accordingly. (7-1-93)

02. Exclusion From Exemption. Purchase or use of any fuels may be subject to sales and use taxes if no other exemption applies. Examples include, without limitation: (7-1-93)

a. Fuel used by a road contractor in the operation of construction equipment or operation of stationary engines to generate electricity, unless all of the electricity generated is used primarily and directly in the processing, manufacturing or fabricating of tangible personal property to be sold at retail. (7-1-93)

b. Fuel used by private contractors in off-road vehicles in the performance of contracts with any governmental instrumentality. (7-1-93)

079. PRODUCTION EXEMPTION (Rule 079).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (7-1-93)

a. A manufacturing, processing, or fabrication operation devoted to producing tangible personal property for resale. (6-23-94)

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

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

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

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

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

03. Exempt Property. As applied to manufacturing, processing, mining, or fabrication operations, the following items of tangible personal property are exempt, except as limited by other subsections of this rule: (7-1-93)

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

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

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

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

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

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

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

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

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

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

05. Taxable Property. The production exemption does not include any of the following: (7-1-93)

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

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

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

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

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

f. Equipment and supplies used in selling and distribution activities. (7-1-93)

g. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

h. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

i. Transportation equipment and supplies. (7-1-93)

j. Aircraft of any type and supplies. (7-1-93)

k. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

l. Research equipment and supplies, all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41 of the Internal Revenue Code. (7-1-93)

m. Other incidental items not directly used in production. (7-1-93)

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

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

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

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

06. Real Property. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or

fixtures to real property. (7-1-93)

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

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

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

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

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Idaho Sales Tax Administrative Rule 083 regarding farming. (6-23-94)

09. Exemption Certificate. To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Idaho Sales Tax Administrative Rule 075. (6-23-94)

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

080. LUMBER MANUFACTURING (Rule 080).
This rule is intended to illustrate the application of the production exemption to the lumber manufacturing industry. The provisions of this rule are based upon the usual methods of doing business used in the industry generally. Factual differences in the manner in which a specific taxpayer may conduct its business can result in determinations different from those stated in this rule. In cases not covered by this rule, the general principles stated in ISTC 079 will control. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. This rule is limited in application to the manufacturing of rough and finished lumber and does not encompass the manufacturing of plywood, particleboard, veneer, or paper products. (7-1-93)

01. Nontaxable Activities. Generally considered as nontaxable activities are the following: (7-1-93)

a. Log receiving including log loaders, cranes, and front end loaders. (7-1-93)

b. Log deck/log pond including log loading equipment and boats moving logs from the storage area to the debarker; sprinkler equipment when used for prevention of product deterioration; and devices used to detect metal in logs. (7-1-93)

c. Debarking equipment used to strip bark from logs including conveyor equipment for moving debarked logs further into the mill or for conveying bark when bark is used as boiler fuel or when conveying bark to a further processing stage. (7-1-93)

d. Chipper, used to produce chips including chip storage bins and pneumatic conveyors. (7-1-93)

e. Mill deck, as used for grading and cutting to length. (7-1-93)

f. Headrig/shotgun, as used for sawing logs. (7-1-93)

g. Edger, as used for edging rough lumber. (7-1-93)

h. Trimmer, as used for trimming to length. (7-1-93)

i. Resaw, as used for producing the proper thickness. (7-1-93)

j. Green chain, as used to determine according to size and species the amount of time required in the dry kiln. (7-1-93)

k. Dry kiln, as used to reduce moisture content. This exemption encompasses fire brick, steam pipe and fans inside the kiln but does not include improvements to real property. (7-1-93)

l. Unstackers. (7-1-93)

m. Planers, as used for finishing, grading and grade stamping of specialty products. (7-1-93)

n. Boiler when used for the generation of steam used to operate production equipment. (7-1-93)

o. Powerhouse when used to generate power used to operate production equipment. (7-1-93)

p. Waste collection, as used for the collection of waste products for use as fuel for the boiler, generally referred to as hog fuel. (7-1-93)

q. Lumber wrap and steel strapping used for packaging material. (7-1-93)

r. Pollution control equipment when required by a state or federal agency. (7-1-93)

s. Equipment used primarily to install exempt equipment. (7-1-93)

t. Equipment used primarily to fabricate exempt equipment. (7-1-93)

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

02. Taxable Activities. Generally considered as taxable activities are the following: (7-1-93)

a. Saw filing activities using saw filing equipment and saw filing supplies. (7-1-93)

b. Shipping, including loading equipment and strapping, seals, and binders used in shipping activities to secure lumber on railroad cars, trucks, etc. (7-1-93)

c. Cleanup. (7-1-93)

d. Equipment used to repair or maintain production equipment. (7-1-93)

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

f. Safety equipment and supplies used in an area where no manufacturing occurs such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)

g. Other items specifically identified as taxable in ISTC 079. (7-1-93)

03. Exemption Certificate. Persons engaged in lumber manufacturing who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See ISTC 075. (7-1-93)

081. UNDERGROUND MINING (Rule 081).
This rule is meant to show how the production exemption applies to the underground mining industry. This rule is based on the usual methods of doing business. Differences in the way a specific taxpayer conducts his business can result in determinations different from those in this rule. In cases not covered by this rule, the general principles in ISTC 079 apply. Determinations of taxability are based on the primary use of equipment. (7-1-93)

01. Nontaxable Purchases. The following are generally considered nontaxable: (7-1-93)

a. Development of known ore deposits, including diamond drilling and other activities to develop levels, laterals, crosscuts, drifts, stopes, raises and shafts. (7-1-93)

b. Support materials, including, timber, concrete, rock bolts, shotcrete, matting, and equipment used to install them. (7-1-93)

c. Drilling of blast holes to facilitate the extraction of ore including pneumatic rock drills and compressors used to supply compressed air to operate pneumatic rock drills. (7-1-93)

d. Blasting to facilitate the extraction of ore using explosives, caps, fuses, etc. (7-1-93)

e. Slushing/mucking to convey broken ore and waste to passes and chutes using scrapers, slushers, muckers, hoists and loaders, and backhoes used to recover both ore and waste. (7-1-93)

f. Hauling, horizontal transportation, to transport ore, waste, men or materials from chutes into cars and the movement of the cars to shaft stations using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)

g. Haulage, vertical transportation, to hoist ore, waste, men or materials in skips, using skips, hoists, hoist cable, shafts, shaft timbers, shaft stations, shaft pockets, shaft guides, concrete, etc. (7-1-93)

h. Transportation to the surface to load the ore, waste, men or materials into main haulage cars for transportation using locomotives, haulage cars, track and track spikes, fuel batteries used to power locomotives, and conveyors and conveyor belts. (7-1-93)

i. Backfilling to pump tailings back underground as hydraulic sandfill to backfill mined-out areas using, pumps, sumps, pipe, and concrete. (7-1-93)

j. Personal equipment including hard hats, miners' lights, belts, and batteries, except any hand tool costing one hundred dollars ($100) or less. (7-1-93)

k. Sampling/assaying for quality control purposes. (7-1-93)

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

m. Equipment used primarily to install production equipment. (7-1-93)

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

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

a. Diamond drilling activities used for exploration. (7-1-93)

b. Air ventilation and conditioning if an improvement to real property including fans, motors, vent ducts; coolers; and air doors. (7-1-93)

c. Water lines and pumps used to remove water from the mine if improvements to real property. (7-1-93)

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

e. Maintenance and cleanup using backhoes, except when the primary use is to recover ore or waste; equipment used to repair or maintain mining equipment; battery maintenance equipment including battery chargers, and shop supplies and other materials or supplies which do not become a component part of production exempt equipment. (7-1-93)

f. Sampling/assaying for purposes other than quality control. (7-1-93)

g. Other items specifically identified as taxable in ISTC Rule 079. (7-1-93)

03. Exemption Certificate. To claim this exemption underground miners must complete an exemption certificate for the seller's records. See ISTC 075. (7-1-93)

082. ABOVEGROUND, OPEN PIT, MINING (Rule 082).
This rule is meant to show how the production exemption applies to the aboveground, open pit, mining industry. This rule is based on the usual methods of doing business in the industry. Differences in the way a specific taxpayer conducts his business can result in determinations different than those stated in this rule. In cases not covered by this rule, the general principles stated in ISTC 079 apply. Determinations of taxability are made based on primary use of the equipment. This rule applies only to aboveground mining activities commonly referred to as open pit mining. (7-1-93)

01. Exempt Purchases. The following are generally considered nontaxable: (7-1-93)

a. Drilling and blasting, to loosen overburden for removal or, to define limits of existing ore bodies using track drills, rotary drills, and compressors to operate them, drill rods, drill bits, explosives, caps, fuses, etc., for this purpose. (7-1-93)

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

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

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

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

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

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

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

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

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

b. Real property improvements, construction, and maintenance activities, including materials and

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

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

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

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

f. Equipment and supplies used in transportation activities where ore or overburden is moved between geographically separated mine sites, processing plants or disposal sites, if 1) a substantial break in the production activities occurs, and 2) the activity does not sort, grade, size, crush, or in some other way further process the ore. Transportation activities including loading, transporting, unloading, and stockpiling. A substantial break in the production activities occurs when the product is transported between geographically separated production sites by means of public roads, waterways, airways, railways, or any other public means. The production facility to which the product is transported is a separate processing facility, and the equipment and supplies used to transport the product are subject to tax. Examples of taxable equipment include: trucks and trailers, whether licensed or unlicensed; railroad equipment; barges and other watercraft; pipelines; conveyors; front end loaders; and bulldozers. If the means of transport to processing plants, smelters, etc., does not constitute a substantial break in the process, such as a slurry line directly from the mine to the plant, then the loading and unloading activities are not taxable. (7-1-93)

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

h. Other items specifically identified as taxable in ISTC Rule 079. (7-1-93)

03. Exemption Certificate. To claim the production exemption, above ground miners must complete an exemption certificate for the seller's records. See ISTC Rule 075. (7-1-93)

083. FARMING AND RANCHING (Rule 083).

This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in ISTC Rule 079. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (7-1-93)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. A hand tool, regardless of how necessary its use may be to production or how directly it may be used, is specifically excluded from the production exemption if the unit price of the tool is one hundred dollars ($100) or less. A hand tool is an instrument used or worked by hand. Examples of hand tools in the farming and ranching industry include emasculators, branding irons, tattoo kits such as crimpers and rollers, eartag applicators, calf pullers, syringes and needles, buckets, sponges, balling guns, shovels, wheelbarrows, ropes, cattle prods, whips, wrenches, drills, and power tools. Hand tools do not include such things as feed bags, tack, halters and lead ropes, cow magnets, and weaning rings. These items, depending on use, may qualify for the exemption. If a halter and lead rope are purchased by a horse trainer, no exemption applies. If a halter and lead rope are purchased by a rancher to be used on his stock horse, no tax applies. (7-1-93)

f. Other items specifically identified as taxable in ISTC Rule 079. (7-1-93)

09. Exemption Certificate. Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See ISTC Rule 075. (7-1-93)

084. CONTAINERS RETURNABLE NONRETURNABLE (Rule 084).

01. Container. A container encloses or will enclose tangible personal property which is sold at wholesale or retail. A container may be comprised of one or more components. Items used as shipping supplies which do not enclose the product are not considered to be containers. Example: Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container. (7-1-93)

02. Containers Exempt From Tax. The following containers are exempt from sales or use tax: (7-1-93)

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the container and sells the contents with the container at retail or wholesale, including cans, barrels, boxes, cartons, grocery sacks, disposable soft drink cups and lids, and other to-go fast food containers; and gift wrap and gift boxes, but only when the gift wrapping of merchandise is offered as a regular service to all purchasers of merchandise at no additional charge. (7-1-98)

b. Returnable containers when the container, along with the contents, is sold at retail if the fee for the container is separately stated, including returnable beer kegs, returnable barrels, and returnable pallets. (7-1-98)

c. Returnable containers when sold back to retailers or manufacturers for refilling. (7-1-93)

d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the container is separately billed, including containers for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. (7-1-93)

03. Taxable Containers. Containers subject to sales and use tax include containers used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners. (7-1-98)

04. Supplies. Shipping, Selling, or distribution supplies are not considered to be containers and are subject to the tax when purchased by the shipper, seller, or distributor, such as: (7-1-93)

a. Shipping pallets and lumber stickers when not banded or shrink wrapped to the product to be sold, thereby NOT becoming a part of the container. (7-1-93)

b. Gift wrap and boxes when not regularly offered to all purchasers of merchandise or when a fee is charged for the service of gift wrapping. (7-1-93)

c. Banding or binders used to secure goods to transportation equipment. (7-1-93)

d. Price stickers and address labels affixed to containers that do not provide any product information such as weight, quantity, nutritional value, or other necessary product description. See Idaho Sales Tax Administrative Rule 042. (7-1-98)

e. Example: Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a shipping supply subject to the tax. (7-1-93)

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (Rule 085).

01. In General. The Sales Tax Act does not provide any GENERAL exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions

for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See Idaho Sales Tax Administrative Rule 086. (6-23-94)

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in Idaho Code Section 63-3622O(a), are exempt from Idaho sales or use taxes. (6-23-94)

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-3622O(c) are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. (6-23-94)

04. Hospitals. In addition to the health related entities listed in Section 63-3622O(c), Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital must be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in Title 39, Chapter 13, Idaho Code or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities. (7-1-96)

05. Idaho Foodbank Warehouse, Inc., Food Banks, And Soup Kitchens. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. Also exempt are sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to store, prepare, or serve food. This exemption does not extend to the sale, purchase, use or other consumption by food banks other than the Idaho Foodbank Warehouse, Inc., of licensed motor vehicles. (7-1-96)

a. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. (6-23-94)

b. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Food and goods used to store, prepare, or serve food which are donated to these organizations are exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (7-1-96)

c. Example 1: A grocer removes food from his inventory of goods held for resale to donate to the Idaho Foodbank Warehouse, Inc. The grocer is exempt from the use tax on his cost of the inventory donated. (7-1-93)

d. Example 2: The XYZ Corporation purchases food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax must be paid on the purchase. (7-1-93)

06. Red Cross. Sales to the American Red Cross are exempted from state sales tax by federal law. (7-1-93)

07. Nonsale Clothiers. Beginning March 12, 1992, nonprofit organizations, one of whose primary functions is to provide clothing to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (7-1-93)

a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. (7-1-93)

b. Example 2: A nonprofit, nonsale clothier purchases clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store must charge the organization sales tax on the bed sheets. (7-1-93)

08. Exemption Certificate. The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Idaho Sales Tax Administrative Rule 075. (6-23-94)

09. Literature. The sale or purchase, or the storage, use, or other consumption of literature, pamphlets, periodicals, tracts and books which are both published and sold by an entity qualified under Section 501(c)(3) of the Internal Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder. (7-1-93)

10. Sales By Nonprofit Organizations. An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to purchasers not exempt from tax. When an exempt organization qualifies as a retailer the organization must register with the Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There is one (1) exception to this rule. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes as of March 20, 1995. (7-1-96)

086. SALES AND PURCHASES BY RELIGIOUS ORGANIZATIONS (Rule 086).

01. In General. The Sales Tax Act does not provide a GENERAL exemption from sales or use tax for religious organizations. Other than the exemptions discussed in this rule, sales and purchases by religious organizations are subject to tax. (7-1-93)

02. Meals Sold By A Church To Members Only. An exemption is provided by Section 63-3622J, Idaho Code, for the sale of meals by a church to its members at a church function. For the exemption to apply, the meals must be sold to members only. (7-1-93)

a. If the meal is open to members only, the church may purchase the food without paying tax by providing the vendor of the food with a properly completed exemption certificate or, if the church holds an Idaho seller's permit number, it may provide the vendor with a properly completed resale certificate. See ISTC Rules 071 and 075. (7-1-93)

b. If the meal is open to persons other than members of the church, this exemption does not apply. See Subsection 086.03. (7-1-93)

c. Food purchased to prepare meals which are not sold by the church, such as meals for resident pastors or for nuns living in a convent or associated with a hospital, is subject to tax. (7-1-93)

03. Incidental Sales By Religious Corporations Or Societies. Incidental sales by religious organizations are exempt from sales taxes by Section 63-3622KK, Idaho Code, beginning July 1, 1990. The exemption applies to sales of tangible personal property and other sales defined as subject to sales tax by the Idaho Code, including taxes imposed on providing hotel/motel and campground accommodations. For the exemption to apply, the following conditions must be met: (7-1-93)

a. If selling tangible personal property, the goods sold must either have been taxed when purchased by the organization or received as a gift. (7-1-93)

b. The proceeds from the sales made by the organization must be used exclusively in the programs of the organization which may include any combination of religious worship, education, and recreation. (7-1-93)

c. The sale may not be made to the general public in the open market in regular business competition. (7-1-93)

d. Example 1: A church has a used clothing store. The items sold are not exempt from the sales tax because the store makes sales to the general public in regular competition with similar enterprises. (7-1-93)

e. Example 2: A church holds an annual pancake breakfast in its basement. The meal is advertised and

open to the public. If the church pays tax on the breakfast ingredients, it is not required to collect sales tax on the sale of the meals. Although the meal is open to the general public, the church is not in REGULAR competition with other food-serving enterprises. (7-1-93)

f. Example 3: A school owned by a religious corporation sells school supplies and meals only to its students. If the school pays tax when it purchases these items, it is not required to collect sales tax on the sales to its students. If, however, the school has a bookstore or cafeteria which is open to the general public, it must collect the sales tax. (7-1-93)

g. Example 4: A school owned by a religious corporation sells admissions to its students to attend athletic events through the sale of activity cards, and also sells admissions to the general public. The school must collect sales tax. The sale is open to the general public and is in regular competition with other recreational events to which admissions are charged. (7-1-93)

04. Sales Of Literature By A Nonprofit Corporation. Literature which is both published and sold by qualifying nonprofit corporations is exempt from sales tax. Refer to ISTC 085. (7-1-93)

087. LEASE OR RENTAL OF MOTION PICTURE TELEVISION FILM (Rule 087).

The sales tax or use tax is not applicable to rentals or leases of motion picture film to theaters or other exhibiting enterprises where admission to the showing of films is subject to the sales tax. In the case of radio and television stations, the purchase of films, tapes or records is exempt. (7-1-93)

088. SALE OR PURCHASE OF MATTER USED TO PRODUCE HEAT BY BURNING (Rule 088).

01. Scope. Matter used to produce heat by burning shall include natural gas, liquified propane, coal, wood, oil, petroleum, and their by-products. (7-1-93)

02. Limitation. The phrase used to produce heat by burning shall mean the act of incineration of materials defined in Subsection 088.01 of this rule in a furnace or similar device for the purpose of raising or maintaining the temperature in an enclosed space, dwelling, or building including a building under construction, and shall also include heating water and cooking. Heating fuel delivered in bulk to a dwelling or building for this purpose and properly identified as such by the vendor in his books and records, on the delivery ticket, and invoice to the customer relieves the vendor of the responsibility to obtain a sales tax exemption certificate, from the purchaser. (7-1-93)

03. Liquified Propane. Sales of liquified propane in units of fifteen (15) gallons or less, identified in the vendor's records as cylinder sales, will be considered to be used to produce heat by burning as defined in Subsection 088.02 above. These sales will not require that a sales tax exemption certificate be obtained from the purchaser, and shall be exempt from the tax regardless of the use to which the purchaser places the liquified propane. (7-1-93)

04. Documentation Of Other Exempt Sales. All other sales of natural gas, liquified propane, coal, wood, oil, petroleum, and its by-products are subject to the tax, unless specifically exempted or excluded elsewhere in the Sales Tax Act. Such exempted or excluded sales must be documented in the following manner: (7-1-93)

a. If purchased for resale, the vendor must obtain a properly executed resale certificate. See ISTC Rule 071. (7-1-93)

b. If purchased to produce heat by burning as defined in Subsection 088.02 of this rule and not bulk delivered to the customer by the vendor, the vendor must either obtain a properly executed exemption certificate from the purchaser, or require the purchaser to complete a stamped or imprinted statement on the face of the sales invoice containing the following language:

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

This tax exemption statement qualifies if this statement is signed by the purchaser and the name and address

of the purchaser is shown on the invoice.

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

_____
BUYER'S SIGNATURE

The signature of the purchaser on this statement must be in addition to any other signature required on the invoice. (7-1-93)

c. If the purchaser claims an exemption from the tax for reasons other than heat by burning, a properly executed exemption certificate must be obtained. See ISTC Rule 075. (7-1-93)

089. BOY SCOUT, GIRL SCOUT AND 4-H GROUP SALES AND PURCHASES (Rule 089).

01. Sales By Scout And 4-H Groups. In general, when a Scout or 4-H group makes retail sales to their members or to the public, they are a retailer and must obtain an Idaho seller's permit number. (7-1-93)

a. Sales to Members. Tangible personal property sold to members is subject to sales tax, including badges, insignia, uniforms, and magazines. Camp fees are subject to sales tax. Dues charged to members are not taxable. (7-1-93)

b. Sales by Members. Sales of tangible personal property by members, such as cookies, food, and magazines are subject to the sales tax. The club is responsible for the collection and remittance of the tax. (7-1-93)

c. Sales of Animals. Sales of animals in conjunction with a fair or at the Western Idaho Spring Lamb Sale by 4-H or FFA club members are not taxable. (7-1-93)

02. Purchases By Scout And 4-H Groups. (7-1-93)

a. When a fee is charged to members to attend a camp, the food for the camp may be purchased by the club without paying tax. The club must provide the retailers of the food a validly executed resale certificate. See ISTC Rule 071. (7-1-93)

b. Other tangible personal property purchased for resale to members of the club or to the public may be purchased without tax as in Subsection 089.02.a. above. (7-1-93)

c. Materials and supplies purchased by the club for its own use and not for resale are subject to the tax. The club must pay tax to the vendor. (7-1-93)

090. GAS, WATER, ELECTRICITY DELIVERED TO CUSTOMERS (Rule 090).

01. In General. Gas, water and electricity delivered to customers shall include those products of public or private utility service or user's cooperative or similar organizations when sold to customers for such customer's use. (7-1-93)

02. Telephone Service. Electricity shall also include the dial tone for telephone utility service. (7-1-93)

091. SALES TO INDIANS (Rule 091).

01. Sales To Indians. Indians may make sales tax free purchases if these purchases are made within the boundaries of an Indian Reservation. The retailer must insist upon proof of the fact that a purchaser is an enrolled member of an Indian tribe. Presentation of an identification card issued by one (1) of the Indian tribes will be acceptable for this purpose. (7-1-93)

02. Records. The retailer must maintain records in support of these exempt sales. Any of the following methods may be accepted by the Tax Commission: (7-1-93)

a. Recording of the purchaser's name and number from the purchaser's tribal identification card on the sales slip. (7-1-93)

b. Recording the name and number from the purchaser's tribal identification card on the cash register tape beside the record of the purchase. (7-1-93)

c. Completion of an exemption certificate recording the number from the purchaser's tribal identification card. (7-1-93)

03. Sales Of Motor Vehicles To Indians. See ISTC 107. (7-1-93)

092. OUT-OF-STATE SALES (Rule 092).

01. Out-Of-State Sales. Section 63-3622Q, Idaho Code, does not distinguish between purchases made by Idaho residents and nonresidents. The purchase of tangible personal property for delivery by the seller outside the state through either a common carrier, U.S. mails or seller's delivery service is not subject to sales tax. (7-1-93)

02. Records.The seller must maintain records to support the exemption claimed in this fashion. Shipping data in the form of bills of lading, postal receipts or invoices setting forth the out-of-state destination with adequate supporting documentation will be accepted as evidence of the exemption. (7-1-93)

093. SALES AND USE TAX LIABILITY OF FEDERAL AND STATE CREDIT UNIONS, NATIONAL AND STATE BANKS, AND FEDERAL AND STATE SAVINGS AND LOAN ASSOCIATIONS (Rule 093).

01. Purchases By Credit Unions. Purchases by Federal Credit Unions are exempt from sales and use tax under the provisions of 12 U.S.C. 1768. Purchases by state-chartered credit unions are exempted from sales and use tax by Section 26-2138, Idaho Code, and purchases by Idaho corporate credit unions are exempted from sales and use tax by Section 26-2186, Idaho Code. (7-1-93)

02. Purchases By Banks And Savings And Loan Associations. Purchases by national and state banks, as well as federal and state savings and loan associations, are subject to sales and use tax. (7-1-93)

03. Sales By Credit Unions, Banks, Savings And Loan Associations. When acting as a retailer, all retail sales made by credit unions, banks, and savings and loan associations are subject to sales tax. (7-1-93)

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, 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)

095. MONEY OPERATED DISPENSING EQUIPMENT (Rule 095).

01. Money Operated Dispensing Equipment. Effective July 1, 1990, the sale, purchase, lease, or rental of money-operated dispensing equipment is exempt from tax if the equipment is only used to dispense a

tangible product, amusement, or service on which a retail sales tax is imposed by the state of Idaho. (7-1-93)

02. Parts, Kits, Or Supplies. This exemption does not apply to parts, kits, or supplies used to repair, refurbish, or upgrade the dispensing equipment. Refer to Section 63-3622II, Idaho Code. (7-1-93)

096. IRRIGATION EQUIPMENT AND SUPPLIES (Rule 096).

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

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

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

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

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

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

05. Exemption Certificate. A purchaser's right to the exemption shall be documented by the use of an exemption certificate in the manner prescribed by ISTC Rule 075. (7-1-93)

097. YARD SALES (Rule 097).

01. In General. Tangible personal property may be sold tax exempt at a home yard sale if the yard sale meets the qualifications specified in this rule. A home yard sale is characterized by the following: (7-1-93)

a. The sale must be of short duration lasting no more than a few days. (7-1-93)

b. The seller may not be in the business of regularly selling the same or similar property as that which is offered for sale at the yard sale. (7-1-93)

c. The items offered for sale at the yard sale may not be items which are specifically purchased for the purpose of reselling them. (7-1-93)

d. The items offered for sale must be owned by the seller, no consignment sales may be made. (7-1-93)

e. The sale must be conducted on the residential premises of the seller. (7-1-93)

02. Exempt Yard Sales. An individual seller may only conduct two (2) exempt yard sales in the course of one (1) calendar year. Two (2) or more sellers may join together to conduct a single yard sale which will be considered to be a sale conducted by both such sellers. A home yard sale will include sales referred to as garage sales,

moving sales, and other similar such sales if the prerequisites of this rule are otherwise met. (7-1-93)

098. FOREIGN DIPLOMATS (Rule 098).

01. In General. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card 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. (7-1-93)

02. Federal Tax Exemption Cards. Federal tax exemption cards are coded with colored stripes. Cards with a blue stripe exempt the bearer from all sales taxes, including taxes on hotel rooms. Cards with a green stripe exempt the bearer from all sales taxes, excluding taxes on hotel rooms. Cards with a red stripe exempt the bearer from sales taxes when the total items purchased in a single transaction exceed the dollar amount indicated on the card. The dollar amount may be fifty dollars ($50), one hundred dollars ($100), one hundred fifty dollars ($150), or two hundred dollars ($200). (7-1-93)

03. Official Purchases. Foreign diplomat federal tax exemption cards may only be used by the bearer for official foreign mission purchases, and may not be used for personal purchases. (7-1-93)

04. Documentation. Retailers must document an exempt sale to a foreign diplomat by: (7-1-93)

a. Retaining a photocopy of the front and back of the federal tax exemption card to support the exempt sale; or (7-1-93)

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

099. OCCASIONAL SALES (Rule 099).

01. Occasional Seller. Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108BT to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (7-1-98)

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Idaho Sales Tax Administrative Rule 020. (7-1-97)

02. Change In The Form Of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

03. Bulk Sale - Sale Of An On-Going Business. The sale of substantially all of the operating assets of

a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-98)

a. The purchaser continues the same type of business operation; and (7-1-93)

b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

04. Sale Of A Motor Vehicle Between Family Members. Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars ($5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar ($5,000) purchase price of the automobile. (7-1-93)

05. Transfers Between Related Parties. Effective July 1, 1990, the transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made ONLY in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made ONLY in exchange for stock or securities. (7-1-93)

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

06. Sales And Rentals To Related Parties. The sale of a capital asset to a related party qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. Effective January 1, 1996, rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (7-1-97)

a. Sales to family members, but only if ALL parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

b. Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

07. Motor Vehicles. Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, written clearance must be obtained from the State Tax Commission prior to applying for an Idaho motor vehicle title. See Idaho Sales Tax Administrative Rule 107 regarding sales of licensed motor vehicles that do not qualify as occasional sales. (7-1-98)

08. Sales Of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

09. Taxable Sales Of Aircraft, Boats, And Recreation Related Vehicles. The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

a. Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

b. Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

c. All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

d. Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

e. Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

f. Motor homes. (7-1-93)

g. Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four (4) of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Idaho Sales Tax Administrative Rule 037 regarding other exemption provided for aircraft. (7-1-97)

i. Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

10. Exempt Sales Of Aircraft, Boats, And Recreation-Related Vehicles. Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

100. PRESCRIPTIONS (Rule 100).

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

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

b. Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state under Title 54, Idaho Code, to prescribe such items. (7-1-93)

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

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

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

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

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

03. Purchases By Practitioners. A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Idaho Sales Tax Administrative Rule 075. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (6-23-94)

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

a. The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)

b. The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)

c. An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule 075 of these rules. (7-1-99)

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

a. Amounts charged for professional services in examining the patient and prescribing and dispensing the ophthalmic appliance are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient. (7-1-93)

b. Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost. (7-1-93)

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

07. Fillings. The practitioner is the consumer of the material used to produce fillings he provides to his patients and must pay tax when he purchases such material. (7-1-99)

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (Rule 101).

01. In General. An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. The exemption is effective beginning April 1, 1989. Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (7-1-93)

02. Motor Vehicles. An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; and (7-1-93)

b. Register the vehicle under the International Registration Plan, IRP, or other similar proportional or pro rata registration plan; and (7-1-93)

c. Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any calendar year. (7-1-93)

03. Trailers. An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan, IRP, or other similar proportional or pro rata registration plan; and (7-1-93)

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any calendar year. (7-1-93)

04. Title Or Base Plate. The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

05. Documentation. Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

06. Repair Parts And Supplies. The exemption does not apply to parts, glider kits as defined by Section 49-123, Idaho Code, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. (7-1-93)

102. LOGGING (Rule 102).

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

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See ISTC Rules 010 and 067 for a definition of real property. (7-1-93)

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

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

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

a. Chain saws with a unit price of more than one hundred dollars ($100) and tree harvesters. (7-1-93)

b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)

c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)

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

e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

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

a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)

b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. Any portion of the quality control function that is related to research and development is excluded from this exemption. (7-1-93)

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

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

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

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

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

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

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

g. Research equipment and supplies all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41(f) of the Internal Revenue Code. (7-1-93)

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

i. Recreation-related vehicles, as defined in Section 63-3622H, Idaho Code, regardless of use, such as All Terrain Vehicles, ATV's, snowmobiles, and off-highway motorbikes. (7-1-93)

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

08. Election To Pay Sales Tax. Effective April 6, 1988, the owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (7-1-93)

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

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

103. HAND TOOL, COMPONENT, AND UNIT PRICE (Rule 103).

01. Exempt Hand Tools. The Idaho sales tax law exempts hand tools with a unit price of over one hundred dollars ($100) if the hand tools are used directly and primarily in any of the following operations: (7-1-93)

a. Manufacturing, processing, mining, farming or fabricating, Section 63-3622D, Idaho Code; (7-1-93)

b. Broadcasting, Section 63-3622S, Idaho Code; (7-1-93)

c. Certain newspaper publishing, Section 63-3622T, Idaho Code; (7-1-93)

d. Agricultural irrigation, Section 63-3622W, Idaho Code; (7-1-93)

e. Logging, Section 63-3622JJ, Idaho Code. (7-1-93)

02. Unit. A unit, as applied to hand tools, means a single, distinct part or object which can be used by itself to perform a specific function. For example, a screwdriver can be used by itself to tighten or loosen a screw. When units, such as screwdrivers, are sold in sets to a manufacturer who will use the tools primarily and directly in the production process, i.e., to assemble product, a per unit price must be computed to determine if the purchase qualifies for the over one hundred dollars ($100) per unit exemption. When a manufacturer purchases a set of twenty (20) wrenches for one hundred twenty-five dollars ($125) to be used in product assembly, the purchase is taxable because the per unit price of the hand tools is less than one hundred dollars ($100). (7-1-93)

03. Component. A unit may be composed of two (2) or more components. A component is a distinct part which must be physically attached to another part to perform a specific function. A component alone has no utility. For example, a drill bit must be physically attached to a drill in order for the bit or the drill to have utility. Together they become a unit which can perform a specific function. Single components or sets of components, sockets, drill bits, etc., are taxable unless they will be physically joined to another component, ratchet, drill, etc., to form a unit which exceeds one hundred dollars ($100) in cost. For example, drill bits which are physically attached to a five hundred dollar ($500) drill press to perform a specific function in a production process are exempt from the tax. (7-1-93)

04. Unit Price. The total amount extended on a purchase invoice for multiple units is not the unit price. The unit price must be computed to determine whether the hand tool exceeds one hundred dollars ($100) and qualifies for a given exemption. (7-1-93)

104. RAILROAD ROLLING STOCK, PARTS, MATERIALS AND EQUIPMENT (Rule 104).

01. In General. Sections 63-3622CC and 63-3622DD, Idaho Code, provide exemptions from sales or use tax for rebuilt or remanufactured railroad rolling stock which was previously used in interstate commerce more than three (3) consecutive months, and for parts, materials, and equipment primarily used to rebuild or remanufacture such railroad rolling stock. (7-1-93)

02. Definitions. As used in this rule, the following terms have the following meanings. (7-1-93)

a. Railroad rolling stock. Flanged-wheel locomotives, railroad cars, maintenance of way equipment and other flanged-wheel vehicles designed and manufactured specifically for use on railroad tracks and railroad systems, including component parts thereof. (7-1-93)

b. Remanufacture/rebuild. To reconstruct, remake, reassemble or reprocess railroad rolling stock to materially extend the life of the equipment. This process requires extended removal of the railroad rolling stock from the transportation stream. (7-1-93)

c. Equipment. All equipment, other than railroad rolling stock, which is used in the actual remanufacturing/rebuilding process. (7-1-93)

d. Parts. Tangible personal property which becomes part of the remanufactured/rebuilt railroad rolling stock or which becomes part of the equipment described in Subsection 104.02.c. above. (7-1-93)

e. Materials. Tangible personal property which is used or consumed in the actual process of remanufacturing/rebuilding railroad rolling stock. (7-1-93)

f. Used in interstate commerce. Railroad rolling stock is used in interstate commerce when it actually performs a function which is necessary to the operation of a business which transports goods or people between two (2) or more states. (7-1-93)

g. Repair. To mend or restore to good usable condition railroad rolling stock which has not been damaged to an extent requiring extended removal from the transportation stream. (7-1-93)

h. Maintenance. Routine, periodic activities, such as lubrication and filter and oil changes, which are necessary to the continued use and operation of railroad rolling stock. (7-1-93)

i. Primary or primarily. Used more than fifty percent (50%) of the time to remanufacture/rebuild railroad rolling stock. (7-1-93)

03. Generally, Included Within The Exemption: (7-1-93)

a. Equipment necessary to, and primarily used in the process of, remanufacturing/rebuilding railroad rolling stock. (7-1-93)

b. Tangible personal property which become part of the remanufacture/rebuilt railroad rolling stock or which becomes part of the equipment identified in Subsection 104.03.a., above. (7-1-93)

c. Tangible personal property which is consumed or primarily used in the remanufacturing/rebuilding process. (7-1-93)

d. Fuel used in testing remanufactured/rebuilt engines which are railroad rolling stock, and fuel used in equipment which is necessary to, and primarily used in, the remanufacturing/rebuilding process. (7-1-93)

04. Generally, Excluded From This Exemption: (7-1-93)

a. Motor vehicles and trailers which are licensed or required to be licensed even though they may have flanged-wheel attachments which enable travel on railroad tracks. (7-1-93)

b. Tangible personal property which is used in such a way that it becomes a fixture to, or an improvement to, real property. (7-1-93)

c. Tangible personal property, equipment, parts, materials, used or consumed in an activity which is primarily repair or maintenance of railroad rolling stock. (7-1-93)

d. Fuel used in activities other than those stated in Subsection 104.03.d. of this rule and which is not exempt under other provisions of the Sales Tax Act. (7-1-93)

e. Tangible personal property used in related activities which are not primarily remanufacturing/rebuilding activities, including: office equipment and supplies; safety equipment and supplies; equipment, other than

railroad rolling stock, which is primarily used to construct, improve, alter or repair real property; and chemicals, solvents, and other cleaning agents used primarily for maintenance of the remanufacturing/rebuilding processing area. (7-1-93)

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

01. Time And Imposition Of Tax. (7-1-93)

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

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

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

02. Returns. (7-1-93)

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

b. Request to File Quarterly or Semi-annually. Retailers or persons who owe five hundred dollars ($500) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semi-annually instead of monthly. (6-23-94)

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

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

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

a. The sales and use tax return form must be completed and, if required, copies of all pertinent

supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

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

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

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

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

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

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

b. If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (7-1-93)

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

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

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

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

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

c. Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made

on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

07. Payment Of Tax. (7-1-93)

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

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

c. Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Idaho Sales Tax Administrative Rule 68. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Idaho Sales Tax Administrative Rule 117. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Idaho Sales Tax Administrative Rule 068. (6-23-94)

08. Partial Payment. If penalties or interest accrue as a result of any deficiency or underpayment in tax, partial payments made by the taxpayer shall apply first to the penalties, next to the interest accrued and thereafter to the payment of the tax. (7-1-93)

09. Filing Dates--General Rule. The filing date for all sales or use tax returns is the twentieth (20th) day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semi-annual, and annual accounts. If the twentieth (20th) is a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (7-1-93)

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

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

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

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

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

c. Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle, used by persons claiming exemption under Section 63-3622, Idaho Code. (7-1-93)

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

03. Vehicles Purchased From Idaho Dealers. When a dealer of new or used motor vehicles sells any motor vehicle for delivery in Idaho, he must collect sales or use tax at the rate in effect on the date the motor vehicle

is delivered to the buyer, unless an exemption applies. He must also prepare a title application form and include the dealer's Idaho seller's permit number, gross sales price, trade-in allowance, net sales price, and total tax collected. A title application form which is completed by the dealer and displays Idaho sales tax collected is evidence that the buyer paid sales tax to the dealer. (7-1-93)

04. Vehicles Purchased From Out-Of-State Dealers. Title applications for vehicles purchased from out-of-state dealers must be made according to Idaho Transportation Department instructions. Any trade-in allowance must be shown on the original bill of sale, voucher, or other receipt from the out-of-state dealer. If sales tax was correctly paid to a dealer in another state, a credit is allowed against sales or use tax payable to Idaho. Refer to ISTC Rule 107. (7-1-93)

05. Vehicles Purchased From Nondealers. (7-1-93)

a. Title applications for vehicles purchased from nondealers, who are not required to have an Idaho seller's permit, must be made according to Idaho Transportation Department instructions. The buyer must present a bill of sale or receipt as proof of the gross sales price. Canceled checks will not be accepted in lieu of a bill of sale. In the absence of a bill of sale, sales tax is collected on the value established as the average retail price in the most recent N.A.D.A. Official Used Car Guide, published by the National Automobile Dealers Used Car Guide Company. Where there is a sale by a nondealer, a trade-in allowance is not allowed. See ISTC Rule 044. The county assessor or Idaho Transportation Department must collect sales tax on the gross sales price and remit the tax to the Tax Commission. Barters of motor vehicles are taxable on the full value of each vehicle or other property which is the object of barter. Sales tax shall be collected on the value established as the average retail price stated for similar makes and models with comparable options in the most recent N.A.D.A. Official Used Car Guide. (7-1-93)

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

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

06. Vehicles Rented Or Leased. (7-1-93)

a. A lease-purchase and lease with option to purchase have separate definitions and tax applications. See ISTC 24. A lease-purchase is subject to sales or use tax on the full purchase price at the time the vehicle is delivered to the lessee. A true lease and a lease with an option to purchase are subject to sales tax on each lease payment and on the buy-out or residual value when a lessee exercises his option to buy. The information in this section deals with rentals, true leases, and leases with an option to buy. (7-1-93)

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

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

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

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

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

g. When a vehicle is traded in as part payment for the rental or lease of another vehicle, a deduction is allowed before computing the sales tax. The methods of applying the trade-in value to the lease are found in ISTC Rule 044. (7-1-93)

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

a. ISTC Rule 024. Rentals or leases of tangible personal property. (7-1-93)

b. ISTC Rule 044. Trade-ins, trade-downs, and barter. (7-1-93)

c. ISTC Rule 099. Occasional sales. (7-1-93)

d. ISTC Rule 091. Sales to indians. (7-1-93)

e. ISTC Rule 101. Motor vehicles and trailers used in interstate commerce. (7-1-93)

f. ISTC Rule 107. Motor vehicles gifts, military personnel, and exemptions. (7-1-93)

g. ISTC Rule 108. Motor vehicles manufacturer's, rental company's and dealer's purchase or use of motor vehicles. (7-1-93)

107. MOTOR VEHICLES - GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO INDIANS, AND OTHER EXEMPTIONS.

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Idaho Sales Tax Administrative Rule 106 for general information on purchases, sales, rentals, and leases of motor vehicles. (6-23-94)

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 both complete a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, have it notarized, and submit it to the county assessor or Idaho Transportation Department along with the title to the vehicle being transferred. (7-1-93)

03. Nonresidents. A nonresident does not owe use tax on a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months, and is not required to be registered or licensed under Idaho law. For purposes of this subsection, 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. (6-23-94)

04. New Residents. A new resident of Idaho does not owe tax on a private automobile if he acquired it

while he resided in another state and used it primarily outside Idaho. If the 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. (6-23-94)

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. This exclusion from the tax does not apply to motor vehicles owned by a business. A private automobile is one which is owned by, and titled to, a private individual or individuals. (7-1-93)

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 sales tax has been properly imposed by another state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. (7-1-93)

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 Wyoming resident buys a vehicle there for ten thousand dollars ($10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming 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. (7-1-93)

c. Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho. The applicant paid three percent (3%) Colorado state sales tax, six one-hundredths of one percent (.06%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was five and two tenths percent (5.2%). Since the Idaho tax rate is five percent (5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. (7-1-93)

d. 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)

e. 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)

f. 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 Form ST-133 and have their sworn statements notarized. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (7-1-93)

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 dollars ($10,000) purchase price of the vehicle. (7-1-93)

08. Sales To Indians. An enrolled 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 purchaser must complete Form ST-133 and have their sworn statements notarized. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (7-1-93)

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 Idaho Sales Tax Administrative Rule 099, is exempt from tax. The buyer must obtain written clearance from the Tax Commission to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must present written evidence to the Tax Commission to support the exemption. (6-23-94)

10. Vehicles Purchased In Idaho For Use Outside Idaho. (7-1-93)

a. The sale of an on-road trailer or the sale of a motor vehicle is exempt from tax if the buyer can claim that immediately upon delivery the vehicle will be taken directly to another state or nation and titled and licensed there; the vehicle will not be required to be titled by the laws of Idaho; and no more than twenty-five percent (25%) of the vehicle's mileage will be accumulated in Idaho during any calendar year. (7-1-97)

b. The buyer must make these claims on Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle, and give the form to the dealer. The motor vehicle must then be taken out of Idaho and titled in another state or nation.

(7-1-93)

c. This exemption does not apply to off-highway vehicles such as ATV's, snowmobiles, boats, and off-road bikes. (7-1-93)

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. See Idaho Sales Tax Administrative Rule 101.

(7-1-97)

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 Idaho Sales Tax Administrative Rule 099. The new owner must obtain written clearance from the Tax Commission to present to the Idaho Transportation Department or county assessor when applying for title transfer. Also, the new owner must present written evidence to the Tax Commission to support the exemption claimed, including proof that the prior owner paid sales or use tax on the vehicle, and proof of the related party relationship between the transferor and transferee. (7-1-97)

108. MOTOR VEHICLES MANUFACTURER'S, RENTAL COMPANY'S, AND DEALER'S PURCHASE OR USE OF MOTOR VEHICLES (Rule 108).

01. Purchases Of Motor Vehicles For Resale. Licensed motor vehicle dealers, motor vehicle rental companies, and manufacturers of motor vehicles may purchase and hold motor vehicles tax exempt when the vehicles

are held for resale or rental and are used for no purpose other than retention, demonstration, or display while holding the vehicles for sale or rental in the regular course of business. (7-1-93)

02. Titling A Motor Vehicle. Under the Sales Tax Act, no motor vehicle may be titled without documentation establishing that any sales or use taxes which may be due have been paid. However, certain vehicles may be titled by dealers and rental companies with no tax applying. (7-1-93)

a. Motor vehicle rental companies may title and register motor vehicles held in their rental inventory in their company name with no tax applying. (7-1-93)

b. Idaho dealers may title motor vehicles held for resale in their dealer name to ensure clear title to the vehicle. However, the vehicle CANNOT be registered in the dealer's name. If the dealer applies for registration, tax applies. (7-1-93)

03. Dealer Plates. Any vehicle upon which a dealer's plate may be lawfully displayed, as provided by Section 49-1628, Idaho Code, shall be considered, for purposes of the Sales Tax Act, to be inventory held for sale and not subject to sales or use tax. If any use of a vehicle displaying a dealer plate requires that the dealer provide the user with a compensation form for federal income tax purposes, the amount so reported is subject to the use tax. The use tax must be paid by the dealer in the month immediately following the issuance of the compensation form. The unauthorized use or display of a dealer's plate on the motor vehicle which is otherwise required to be titled or licensed under the laws of the state of Idaho may subject the dealer to a use tax liability. (7-1-93)

04. Service Vehicles. Vehicles, such as work or service vehicles, which are not held in stock for sale or rental are subject to sales or use tax at the time of their purchase. The use tax shall be reported and paid on the sales tax return relating to the period during which the vehicle was purchased. In titling the vehicle, the motor vehicle dealer may report his seller's permit number to the county assessor or Department of Transportation as evidence that sales or use tax has been paid. (7-1-93)

05. Inventory Withdrawals By Dealers. Motor vehicle dealers may withdraw motor vehicles from inventory and put them to a use for which a dealer's plate is not authorized. Such vehicles must be titled and licensed. Vehicles which are required to be titled and licensed are subject to tax. The taxpayer may choose one (1) of two (2) methods for reporting the tax: (7-1-93)

a. The taxpayer may report and pay use tax on his acquisition cost of the vehicle at the time the vehicle is withdrawn from resale inventory. This should be done in the same manner as prescribed for work and service vehicles, above. (7-1-93)

b. During each month or part of a month during which a motor vehicle is held for purposes other than resale, the taxpayer may report and pay use tax on a reasonable monthly rental value. A reasonable monthly rental value shall be an amount equal to rentals actually charged for vehicles of like or similar make and model when such vehicles are leased or rented by the taxpayer or by other persons in the community in the business of leasing or renting such vehicles. (7-1-93)

06. Inventory Withdrawals By Rental Companies. Motor vehicle rental companies that withdraw motor vehicles from their rental inventory and put them to a use subject to use tax may elect either method of reporting tax discussed in Subsection 108.05. (7-1-93)

07. Applicability Of ISTC Rule 108. The provisions of this rule apply only to motor vehicle dealers or manufacturers licensed as such by the Department of Transportation, and to companies engaged in the business of renting motor vehicles without operators. (7-1-93)

109. AMUSEMENT DEVICES.

01. Currency Operated Amusement Devices. "Amusement device" means all currency or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal

property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (6-30-95)

02. Requirement To Obtain Permit. The owner or operator of amusement devices is required to obtain a seller's permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller's permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. On or after July 1, 1995, owners or operators of amusement devices are required to pay a fee of thirty five dollars ($35) per machine in service or use. Upon receiving payment, the Tax Commission will issue to the owner or operator of one or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed near the currency slot of the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. (7-1-98)

b. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

c. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require a full-year, thirty five dollar ($35) permit. (7-1-97)

03. Noncoin Operated Amusement Machines Or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-Reference. See Idaho Sales Tax Administrative Rule 095 regarding purchases of Money-Operated Dispensing Equipment. (6-23-94)

110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (Rule 110).

01. Filing Returns. Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return County Assessors or Sheriffs, no less than monthly. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth (20th) day of the month following the month in which the tax was collected. (7-1-93)

02. Separate Forms For Each Tax Rate. A separate Form ST-852 must be prepared for each rate of tax collected. For example, if the majority of the transactions were collections of tax at five percent (5%), but one (1) transaction was the collection of tax at one percent (1%), as the applicant had paid tax to another state at the rate of four percent (4%), the assessor will prepare two (2) returns. One (1) for the transactions at five percent (5%) and one (1) for the transactions at one percent (1%). (7-1-93)

03. Reimbursement. The assessor will be reimbursed at the rate of one dollar ($1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property, and each Form ST-108BT, Boat-Trailer-Snowmobile-ATV-Camper Unit-Office Trailer Certificate, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (7-1-93)

04. Financial Institutions. Financial institutions collecting tax on tangible personal property which

they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth (20th) day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (7-1-93)

111. RECORDS REQUIRED AND AUDITING OF RECORDS (Rule 111).

01. In General. Every retailer doing business in this state and every purchaser storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep complete and adequate records as may be necessary for the Commission to determine the amount of sales and use tax for the payment and collection of which that person is liable under Title 63, Chapter 36, Idaho Code. (7-1-93)

a. Unless the Commission authorizes an alternative method of record keeping in writing, these records shall show gross receipts from sales or rental payments from leases of tangible personal property, including any services that are a part of the sale or lease, made in this state, irrespective of whether the retailer or purchaser regards the receipts to be taxable or nontaxable; all deductions allowed by law and claimed in filing the return; and the total purchase price of all tangible personal property purchased for sale or consumption or lease in this state.(7-1-93)

b. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account, together with all schedules or working papers used in connection with the preparation of tax returns. (7-1-93)

02. Microfilm And Microfiche Records. Records, including general books of account, such as cash books, journals, voucher registers, ledgers, and like documents may be microfilmed or microfiched, as long as such microfilmed and microfiched records are authentic, accessible, and readable, and the following requirements are fully satisfied: (7-1-93)

a. Appropriate facilities are to be provided for preservation of the films or fiche for the periods required and open to examination and the taxpayers must agree to provide transcriptions of any information on microfilm or microfiche which may be required for verification of tax liability. (7-1-93)

b. All microfilmed and microfiched data must be indexed, cross-referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and must be systematically filed to permit ready access. (7-1-93)

c. Taxpayer must make available upon request of the Commission a reader/printer in good working order at the examination site for reading, locating, and reproducing any record concerning sales or use tax liability maintained on microfilm or microfiche. (7-1-93)

d. Taxpayer must set forth in writing the procedures governing the establishment of its microfilm or microfiche system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partners, or owner, whichever is applicable. (7-1-93)

e. The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business. (7-1-93)

f. Taxpayer must establish procedures with appropriate documentation so that the original document can be followed through the microfilm or microfiche system. (7-1-93)

g. Taxpayers are responsible for the effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for as long as the contents may become material in the administration of any state revenue law. (7-1-93)

h. Taxpayer must keep a record identifying by whom the microfilm or microfiche was produced. (7-1-93)

i. When displayed on microfilm or microfiche reader, viewer, or reproduced on paper, the material 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. (7-1-93)

j. All production of microfilm or microfiche and processing duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth in the American National Standards Institute, National Micrographics Association, or Nation Bureau of Standards. (7-1-93)

03. Records Prepared By Automated Data Processing Systems, ADP. An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one taxpayer to another, all such systems must include a method of producing legible and readable records which will provide the necessary information for verifying such tax liability. The following requirements apply to any taxpayer who maintains any such records on an ADP system: (7-1-93)

a. Recorded or reconstructible data. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time when they are processed, the systems must have the ability to reconstruct these transactions. (7-1-93)

b. General and subsidiary books of account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically. (7-1-93)

c. Supporting documents and audit trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the Commission upon request. The system shall be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available. (7-1-93)

d. Program documentation. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate: The application being performed; the procedures employed in each application, which, for example, might be supported by flowcharts, block diagrams, or other satisfactory descriptions of the input or output procedures; the controls used to insure accurate and reliable processing; and important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. (7-1-93)

e. Data storage media. Adequate record retention facilities shall be available for storing tapes and printouts, as well as all supporting documents as may be required by law or this rule. (7-1-93)

04. Record Retention. All records pertaining to the transactions involving sales or use tax liability shall be preserved for a period of not less than four (4) years. If an assessment has been made and an appeal to the Commission or any court is pending, the books and records relating to the period under appeal by such proposed assessment must be preserved until final disposition of the appeal. (7-1-93)

05. Examination Of Records. All of the foregoing records shall be made available for examination on request of the Commission or its authorized representatives. (7-1-93)

06. Failure Of The Taxpayer To Maintain Or Disclose Complete And Adequate Records. Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Commission shall: (7-1-93)

a. Impose any penalty as may be authorized by law. (7-1-93)

b. Subpoena attendance of the taxpayer and any other witness when the Commission deems it necessary or expedient for examination and compel the taxpayer and witness to produce any documents within the scope of its inquiry relating in any manner to the sales and use tax. (7-1-93)

c. Enter such other order as may be necessary to obtain compliance with this rule in the future by any taxpayer found not to be in substantial compliance with the requirements of this rule. (7-1-93)

112. DIRECT PAY AUTHORITY.

01. In General. Direct Pay Authorization is issued to certain taxpayers where it is to the mutual convenience of the Tax Commission, the taxpayer, and the taxpayer's vendors to have the sales and use tax liability upon the taxpayer's purchases determined by the taxpayer and reported directly to the state in the form of a use tax. This allows vendors to sell all items of tangible personal property to the particular taxpayer without charging any sales tax. The only effect of this arrangement is to shift the reporting responsibility to the taxpayer holding the direct pay authority. (7-1-93)

02. Purchases Subject To Tax. If the particular transaction would have been one subject to the sales tax without the direct pay authorization, then the direct pay authorization holder must pay the sales tax to the state even if the use of the item is not subject to use tax. For example, if a direct pay authority holder purchases goods in Idaho from a retailer holding an Idaho seller's permit, then the purchaser must pay sales tax on the transaction even if the goods are intended for use solely outside the state. (7-1-97)

03. Documentation. To make a purchase without paying sales tax to the vendor, the taxpayer holding the direct pay authorization must furnish to each of his vendors a copy of the letter from the Commission granting the direct pay authority. (7-1-93)

04. Holder's Responsibilities. The direct pay authorization is granted only to those taxpayers who have demonstrated, to the Commission's satisfaction, the accounting and technical capability to comply with the Sales Tax Act. Direct pay authority holders must make all purchases of tangible personal property tax exempt and all taxes due as required by the Idaho Sales Tax Act will be remitted directly to the Commission by the direct pay authority holder. Vendors will be allowed to sell all items of tangible personal property to the direct pay authority holder without charging sales tax provided they obtain and keep on file a copy of the letter granting the direct pay authority.

(7-1-93)

05. Revocation. The Commission may revoke a direct pay authorization if it determines that the direct pay authority holder is not complying with this rule or if the holder is allowing contractors or other third parties to make exempt purchases under the holder's authority. Notice of revocation shall be given in the manner provided for deficiencies in taxes in Section 63-3629, Idaho Code, and shall be subject to review as provided in section 63-3631, Idaho Code. Should the Commission revoke a taxpayer's direct pay authority it shall be the taxpayer's responsibility to notify his vendors of the revocation. (7-1-97)

06. Tax Imposed By Hotel/Motel Room Sales Tax. Taxpayers granted direct pay authority may not use this authority for taxes imposed on hotel/motel room or campground space accommodations. State sales tax, Travel and Convention tax, and Greater Boise Auditorium District tax, when applicable, must be charged by and paid to the retailer by the direct pay permittee. (7-1-93)

07. Valid Only On Purchases Of Tangible Personal Property. The direct pay authority is valid only on purchases of tangible personal property. The holder may not use their direct pay authority when engaging contractors involved in improving real property. Special rules apply to contractors. Refer to Sales Tax Administrative Rules 012 through 15, and 66. (7-1-97)

08. Expiration. Direct pay authorizations are granted for a period of not more than two (2) years. If the authorization is not renewed at the end of the expiration period, the authorization will expire automatically. (7-1-97)

113. RECREATIONAL VEHICLE REGISTRATION (Rule 113).

01. Snowmobile, Motorbike, Or ATV. A new owner of a new or used snowmobile, motorbike, or ATV must obtain a title for the recreational vehicle according to the Idaho Transportation Department instructions. The buyer must present evidence that sales tax was paid to the seller of the recreational vehicle, or must pay any tax

due to the county assessor, Idaho Transportation Department, or Tax Commission before a title will be issued. (7-1-93)

02. **Boat**. A boat owner must register his boat each year with the Department of Parks and Recreation through authorized agents appointed by that department. (7-1-93)

a. When registering the boat for the first time or transferring the registration to a new owner, the owner must complete Form ST-109, Recreational Vehicle Registration Sales Tax Affidavit, except as provided in Subsection 113.02.c. of this rule. (7-1-93)

b. Each month the Department of Parks and Recreation will forward to the Tax Commission the copies of Form ST-109 submitted by its agents. (7-1-93)

c. When registering a boat with a county assessor acting as an authorized agent of the Department of Parks and Recreation, the requirements of this rule do not apply. The assessor will collect and remit to the Tax Commission any sales or use tax due, using Form ST-108-BT. See ISTC Rule 099. (7-1-93)

114. RECORDS REQUIRED, FOOD STAMPS, ELECTRONIC BENEFITS TRANSFERS, AND WIC CHECKS (Rule 114).

01. **In General**. The sale of food purchased with food stamps or with electronic benefits transfer cards issued under the Federal Food Stamp Program or, with food checks issued by the Federal Special Supplemental Food Program for Women, Infants, and Children, WIC, is exempt from the Idaho sales tax. (7-1-99)

02. **Records Required**. Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-99)

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

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

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

115. RECORDS REQUIRED, NONTAXED SALES BY RETAIL FOOD STORES (Rule 115).

01. **Petition For Reduced Record Keeping**. Retail food stores may petition the Commission to be relieved from the responsibility of retaining copies of detailed invoices for nontaxed sales. (7-1-93)

02. **Form Required**. A retail food store may apply for reduced record keeping requirements by submitting a completed Form ST-110, Petition for Sales Tax Records Reduction by a Retail Food Store, to the Commission. (7-1-93)

03. **Authority**. If authority for reduced record keeping is granted by the Commission, a retailer is not required to keep detailed sales invoices if he obtains a properly completed resale or exemption certificate from the customer and thereafter a properly completed Form ST-111, Sales Tax Exemption Claim Form-Grocer for each exempt sale. The completed Form ST-111 must include the following information: The name of the customer; the

total purchase price of the exempt items; the date of the sale; whether the nontaxed merchandise sold consisted of food, nonfood items or both; and the signature of the person making the exempt purchase. (7-1-93)

04. Standard Industry Code. For the purposes of this rule, retail food stores shall mean those retail stores described in major group fifty-four (54) of the Standard Industrial Classification Manual, SIC, of 1987 and whose sales of food for home preparation and consumption account for more than fifty percent (50%) of the store's total sales. Stores in major group fifty-four (54) consist of grocery stores; meat and fish markets; fruit and vegetable markets; candy, nut, and confectionery stores; dairy product stores; retail bakeries; and egg and poultry dealers. (7-1-93)

05. Review Of Petitions. The Commission will review all petitions for reduced record keeping requirements. The Commission may examine the books and records of the petitioner to ensure that the petitioner is primarily engaged in the business of selling food for home preparation and consumption. The Commission will give written notice of its determination to the petitioner within sixty (60) days after receiving the petition. (7-1-93)

116. BONDING (Rule 116).

01. Posting Security. The State Tax Commission may require a retailer to post security to insure collection and remittance of sales and use taxes for cause including: (7-1-93)

a. A retailer failing to file sales tax returns. (7-1-93)

b. A retailer failing to remit in full taxes due upon any sales tax return. (7-1-93)

c. A retailer with a consistent history of delinquency either in the filing of returns or payment of tax. (7-1-93)

d. The submission of a check for the payment of taxes which is subsequently dishonored. (7-1-93)

e. The filing of a fraudulent return or any return which fails to report all taxable transactions for the period for which the return relates. (7-1-93)

f. A retailer evidencing serious financial instability which, in the opinion of the Commission, creates reasonable doubt as to the ability of the retailer to pay over sales and use taxes collected by it. (7-1-93)

02. Amount Of Security. The amount of security will be fixed by the Commission but shall not exceed an amount equal to three (3) times the anticipated monthly sales tax liability or ten thousand dollars ($10,000), whichever is less, except in the case of retailers who are habitually delinquent in their submission of returns and/or taxes in which case the amount of security shall not be greater than five (5) times the estimated average monthly liability or ten thousand dollars ($10,000), whichever is less. (7-1-93)

03. Written Demand. Written demand for security will be sent to the retailer by the Commission by certified mail or by personal service upon the retailer. Failure of the retailer to post the demanded security can be grounds for revocation of the retailer's seller's permit following proper notice and hearing. (7-1-93)

04. Forms Of Security. The Commission will accept as security the following: (7-1-93)

a. Surety bond. A surety bond issued by a bonding company with the power of an attorney affixed thereto which grants the issuing agent the power to obligate the company for this type of liability. (7-1-93)

b. Cash bond. Preferably in the form of cashier's check. (7-1-93)

c. Pledged savings accounts. This type of security may be furnished, providing the savings account is opened with a bank or savings and loan association and an assignment of the account is executed by the taxpayer or authorized individual and accepted by the bank or savings and loan association. The savings account may be in the business name or individual's name, if a sole proprietorship; jointly in the names of the partners of a partnership; or in the name of a corporation with the assignment properly executed by the officer or officers with the delegated

authority to sign documents for the corporation. (7-1-93)

05. Release Of Security. Security which has been previously posted may be released by the Commission upon receipt of written request from the retailer if, after careful review of the circumstances, the Commission determines that security is not longer required. A request may be made one (1) year after posting the security. Security will also be released upon the retailer's termination of its retail activities. In either case, if the Commission deems necessary, an audit may be conducted prior to the release of any security. (7-1-93)

117. REFUND CLAIMS (Rule 117).

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

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

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

04. Bad Debts. Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by ISTC 63. (7-1-93)

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

06. Claim Form. Form TCR, Sales Tax Refund Claim, may be used to file for a refund from the Commission. Although this form is available for this purpose, it is not required. A refund claim, however, must be in writing. The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amounts refunded to the retailer have been or will be refunded by the retailer to the purchaser or that such taxes have never been collected from the purchaser. (7-1-93)

07. Credit Against Future Taxes Owed. A claimant who files a sales or use tax return may claim a refund in the form of a credit against sales or use taxes due. The credit may be claimed on the adjustments line of a sales or use tax return but the return must be accompanied by a claim for refund substantially in the form required by Subsection 117.02 of this rule. (7-1-93)

a. In instances where the amount of refund approved by the Commission exceeds the amount of current taxes due by more than twenty dollars ($20), a refund will be issued, unless the taxpayer requests that the amount be applied to a subsequent liability. (7-1-93)

b. In instances where the amount of refund approved by the Commission exceeds the amount of current taxes due by twenty dollars ($20) or less, the amount will be retained as a credit against future taxes due from the claimant, except in the case of semi-annual and annual filers. (7-1-93)

c. Approved credits retained by the Commission to be applied to subsequent filings of sales and use tax returns must be used within a reasonable period of time or will be refunded by the Commission. Monthly filers must use the full amount of the approved credit on the next monthly sales or use tax return they file after being notified of the approved credit by the Commission. Quarterly filers must use the full amount of the approved credit on the next sales or use tax return they file after being notified of the approved credit by the Commission. The balance of approved credit not used will be made by a direct refund. Approved refund amounts of twenty dollars ($20) or less

claimed by semi-annual and annual filers will not be retained, but will be made by a direct refund. (7-1-93)

d. No claim for refund or credit will be approved or issued if the claimant has outstanding liabilities for other taxes administered by the Tax Commission. (7-1-93)

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

09. Statute Of Limitations. A claim for refund will NOT be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the Commission. (7-1-93)

10. Taxes Paid In Response To A Notice Of Deficiency Determination. A claim for refund may NOT be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the Tax Commission in conformance with a notice of deficiency determination must seek a refund by using the appeal procedures outlined in ISTC Rule 121. (7-1-93)

11. Denial Of A Refund Claim. All claims for refund or credit will be reviewed by the Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant by return receipt requested delivery. The notice shall include a statement of the reasons for the denial. The notice of denial shall be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must file a petition for redetermination in the manner prescribed in ISTC Rule 121. A petition for redetermination must be filed no later than thirty (30) days from the date upon which the notice of denial is mailed to or served on the claimant. (7-1-93)

12. Interest On Refunds. See ISTC Rule 122. (7-1-93)

118. RESPONSIBILITY FOR PAYMENT OF SALES TAXES DUE FROM CORPORATIONS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS (Rule 118).

01. Corporate Officers Duty To Pay Sales Tax. Individuals including corporate officers and employees with the duty to cause a corporation or a limited liability company to file a sales tax return or to pay sales tax when due, or any partnership member or employee with such duty, shall become liable for payment of the tax, penalty and interest due from the corporation or partnership if he shall fail to carry out his duty. Any such responsible individual shall have the defenses, remedies and recourse provided in Sections 63-3045, 63-3049, 63-3065 and 63-3074, Idaho Code, and shall be afforded notice and opportunity to be heard on the question of such liability. (7-1-99)

02. Penalty For Failure To Collect. Any individual required to collect, account for and pay over any tax who willfully fails to carry out or execute his duty will be required to pay, in addition to the tax, penalty and interest, an additional amount equal to the total amount of tax involved. This penalty is in addition to all other penalties provided in Section 63-3634, Idaho Code. (7-1-93)

119. SUCCESSOR'S LIABILITY (Rule 119).

01. Making Inquiries. Section 63-3628, Idaho Code, provides that when a vendor sells out his business or stock of goods, the buyer shall make inquiry of the Commission and withhold from the purchase price any amount of tax that may be due until such time as the vendor, seller, produces a receipt stating that no tax is due. If the purchaser fails to withhold from the purchase price the tax due, he becomes personally liable for the tax. (7-1-93)

02. Written Inquiry Required. The purchaser must make written inquiry to the Boise Office of the Commission setting forth the following: (7-1-93)

a. The name, location, and seller's permit number of the business they are purchasing. (7-1-93)

b. A statement that they are purchasing the business or stock of goods. (7-1-93)

c. An inquiry as to any sales or use tax liability of the business they are purchasing. (7-1-93)

03. Copy Of Earnest Money. The purchaser must attach to the written inquiry a copy of any earnest money or similar agreement already entered into with the prospective seller. If no earnest money agreement has been entered into, then THE SELLER must provide written authorization to the Commission to release the information to the prospective buyer. (7-1-93)

04. Written Statement From Tax Commission. The Commission, after receiving the written inquiry from the purchaser as to the amount due, will issue a written statement to the purchaser setting forth the amount of tax due by the seller, if any. The Commission shall advise the prospective buyer ONLY of any amount of sales or use tax that may be due to the Commission under the Sales Tax Act. The release of any other information is not authorized. In the case that the prospective buyer requests to see the prospective seller's sales or use tax filing record in order to determine if the business is profitable, the prospective seller must provide a Power of Attorney appointing the prospective buyer as attorney in fact to receive confidential information regarding sales or use tax filings on behalf of the prospective seller. (7-1-93)

05. Application For Seller's Permit Number. Upon final sale, an application for a seller's permit number, Form TCA, must be filed with the Commission by the new purchaser and the seller shall forward his seller's permit to the Commission for cancellation. (7-1-93)

120. JEOPARDY DETERMINATION (Rule 120).

If collection of any part of a tax required to be paid to the state of if any determination or redetermination will be jeopardized by delay, the Tax Commission will make a determination of the tax or amount required to be collected noting the need for expeditious procedure and the amount of required security upon the assessment. The amount determined to be due the state is immediately payable and, if not paid immediately after service of notice of the deficiency, may be entered as a final assessment and collected by judgment processes or through use of any collection procedure available to the Tax Commission's office. If, within thirty (30) days, the taxpayer files for redetermination and deposits with his petition for redetermination such security as the Tax Commission may, in this specific case, deem necessary to ensure compliance with this act, collection of the deficiency assessment will be delayed pending redetermination. Hearings and other procedure will then proceed in accordance with the rules pertaining thereto. (7-1-93)

121. NOTICE OF DEFICIENCY ADMINISTRATIVE REVIEW AND APPEALS JUDICIAL REVIEW (Rule 121).

01. Notice Of Deficiency. When the State Tax Commission determines that a deficiency exists with respect to the tax liability of any taxpayer, notice shall be given to the taxpayer, return receipt requested delivery. This notice shall be mailed as soon as practical after determination of the tax deficiency, addressed to the taxpayer's last known address. (6-23-94)

02. Administrative Review. A review of a deficiency determination made by the State Tax Commission shall be made and conducted according to the procedures and practices described in this rule. (7-1-93)

a. A taxpayer desiring to seek a redetermination must, within sixty-three (63) days of the date of mailing of a notice of deficiency described in Subsection 121.01 of this rule, file a written protest with the State Tax Commission requesting a redetermination of the deficiency. The terms petition for redetermination and petition, as used in this rule, shall mean a written instrument which asks the State Tax Commission to review and redetermine the tax assessed by notice of deficiency, as provided in Subsection 121.01. A petition need not be accompanied by payment of the tax assessed in the notice of deficiency. Receipt of a petition meeting the requirements of Subsection 121.03, below, shall constitute the taxpayer's protest of the deficiency determination. (6-23-94)

b. Any taxpayer who pays the tax under protest may file a petition for redetermination of the taxes so paid. Under this circumstance, such a petition shall be considered a request or demand for refund, and the Tax Commission will proceed under this rule and Idaho Sales Tax Administrative Rule 117. (6-23-94)

c. In the event a taxpayer fails to timely file a written petition seeking redetermination with the State Tax Commission the deficiency shall be assessed and become due and payable upon notice and demand from the

State Tax Commission. (6-23-94)

03. Form Of Petition. A petition seeking redetermination of a deficiency must be in writing, and shall contain the taxpayer's name, address and permit or identification number; the time period to which the petition for redetermination relates; the specific item or items in the deficiency notice to which the taxpayer objects; and the factual or legal basis for the objections so made. (6-23-94)

04. Procedures. The taxpayer must file a written protest within the sixty-three (63) day period described in Subsection 121.02.a. If the Tax Commission determines that the protest does not meet the requirements of Subsection 121.03, above, the Tax Commission shall notify the taxpayer that his protest is inadequate. The written notice must be mailed to the taxpayer's last known address, return receipt requested, and must describe the reasons why the protest is inadequate and the steps which the taxpayer must take to perfect his protest. The taxpayer shall have twenty-eight (28) days from the date the notice is mailed to perfect his protest. If the taxpayer fails to perfect his protest within the twenty-eight (28) day period, the taxpayer will be deemed to have waived any right to be heard, even if the original sixty-three (63) day period, described in Subsection 121.02.a. above, has yet to expire. Upon filing a protest with the Tax Commission, the taxpayer may request either an informal conference or a specified time in which to submit additional documents. Any petitioner wishing to submit resale or exemption certificates in support of his petition, must do so within ninety (90) days of the date of the notice of deficiency determination to which the petition relates. (6-23-94)

05. Informal Conference. The State Tax Commission, any member, or any person designated by it shall conduct informal conferences. The protestant should make available at the conference any information in support of the issues under protest. (6-23-94)

06. Submission Of Additional Documents. If the protestant does not wish to appear in person, he may submit additional statements, documents, or other materials he desires the Commission to consider before issuing its decision, and no personal appearance by the taxpayer before the Commission will be required. The protestant must indicate the time within which he will submit such additional information. (7-1-93)

07. Failure To Appear, Produce Or Submit Materials. If any protestant fails to comply with a summons or subpoena issued by the Commission, or fails to appear for an informal conference or fails to timely submit additional information, or fails to perfect an inadequate protest, the protestant will be deemed to have waived rights to further opportunities to be heard, and the Tax Commission may issue a decision affirming the deficiency without further notice or hearing. (6-23-94)

08. Representation. The taxpayer has a right to be represented at an informal hearing by any person he chooses. If the representative is not an employee of the taxpayer, the taxpayer must execute a power of attorney authorizing that person to represent the taxpayer. The power of attorney shall be in such form as the Tax Commission finds acceptable. The Tax Commission may, in its discretion, limit the number of persons attending an informal hearing. (6-23-94)

09. Appeals Of Final Decisions. Appeals of final decisions of petitions for redetermination shall be made within ninety-one (91) days from date of receipt of such decision. If receipt is refused, the date of first refusal shall be deemed the date of receipt. Tax Commission decisions may be reviewed by the Board of Tax Appeals or by a District Court in Idaho. A Tax Commission decision may not be appealed to the Board of Tax Appeals when the amount of dispute exceeds twenty-five thousand dollars ($25,000) at the time the notice of deficiency determination is issued. See Section 63-3049, Idaho Code, and Income Tax Rule 113, which explain the means for judicial review of Tax Commission decisions. (6-23-94)

10. Administrative Review Procedures. The administrative review procedures set forth in Subsections 121.02 through 121.09 of this rule shall also apply to a taxpayer desiring to seek a redetermination of other decisions rendered by the Commission, including: Denial of a taxpayer's refund request; denial of a taxpayer's request for a seller's permit; and denial of a request for relief from the responsibility of retaining detailed invoices of nontaxed sales by a taxpayer engaged in business as a retail food store. (6-23-94)

122. INTEREST ON DEFICIENCIES, REFUNDS AND ESTIMATED RETURNS (Rule 122).

01. Interest Rate. From July 1, 1981, to December 31, 1993, the rate of interest on deficiencies or refunds of tax was twelve percent per annum. As of January 1, 1994, the rate of interest on deficiencies or refunds of tax is determined annually as provided in section 63-3045, Idaho Code and Idaho Tax Commission Administration and Enforcement Rule 310. All interest on sales or use tax deficiencies is simple interest. Interest applies only to tax and not to penalties. (7-1-97)

02. Interest Accruing During A Period Subject To Audit. Interest on deficiencies accrues from the due date of the return to which the deficiency relates. On refunds, the interest accrues from the due date of the return or date of payment, whichever is later. However, when a refund is claimed or a deficiency is asserted for a period of time which includes several reporting periods, in lieu of calculating interest for each reporting period, interest may be averaged over the interest rate period if no substantial distortion results from the averaging technique. When averaging interest, sales or purchases of extraordinary amounts outside the usual course of business which would substantially distort the result should be excluded from the averaging calculation and interest calculated separately on such transactions. Average interest, accruing during an interest rate period, may be calculated according to the following formula:

FORMULA: $\frac{(N \times R) - R}{2}$

N = Number of reporting periods in interest rate period.
R = Interest rate per reporting period, e.g., one percent (1%) for monthly filers, three percent (3%) for quarterly filers, at a 12% annual interest rate, etc. (6-23-94)

03. Alternate Formulas. Alternatively, interest may be calculated according to such other formula as the taxpayer and the Tax Commission's sales tax audit staff may agree to apply. (7-1-93)

04. Estimated Returns. Interest on estimated returns accrues at an annual rate as provided in Section 63-3045, Idaho Code and Idaho Tax Commission Administration and Enforcement Administrative Rule 310. (7-1-97)

05. Failure To Register. Taxpayers who failed to have a tax number in a period where a deficiency exists will be, for interest computation purposes, considered to be monthly filers. (7-1-93)

06. Judgments. Nothing in this rule is intended to effect interest rates on judgments pursuant to Section 28-22-104(2), Idaho Code. (7-1-93)

123. ADDITIONS AND PENALTIES (Rule 123).
All additions and penalties provided by Sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, are incorporated in the Sales Tax Act. (7-1-93)

01. Substantial Underpayment. For purposes of enforcing the substantial underpayment penalty provided by Section 63-3046(d), Idaho Code, the term taxable year shall, for purposes of the Sales Tax Act, mean the twelve (12) month calendar period for which an annual reconciliation is required. The return, for purposes of such taxable year, shall be the returns required to be filed under Idaho Sales Tax Administrative Rule 105. The taxpayer's entire calendar year or fiscal tax year shall be any fraction of a twelve (12) month period occurring prior to filing a final report. (7-1-97)

02. Repeated Or Intentional Invalid Exemption Claims. A purchaser who repeatedly or intentionally claims exemption from tax on purchases that are not exempt and has not reported and paid use tax on the purchases, shall owe the tax plus the interest prescribed in Idaho Sales Tax Administrative Rule 122 and may also be assessed a penalty of five percent (5%) of the purchase price of the goods or services, or two hundred dollars ($200), whichever is greater. (7-1-97)

124. COLLECTION AND ENFORCEMENT (Rule 124).
Incorporation of Rules. The rules promulgated by the State Tax Commission entitled “Idaho Tax Commission Administration and Enforcement Rules” apply to the administration and enforcement of the Idaho Sales Tax Act. (7-1-97)

125. DISTRIBUTION OF SALES TAX REVENUES (Rule 125).
Refer to Idaho Administrative Property Tax Rule 635 for information on distribution of sales tax revenues to cities, counties and other nonschool taxing districts. (6-23-94)

126. SALES TAX COLLECTED BY THE STATE LIQUOR DISPENSARY (Rule 126).

01. Liquor Subject To Sales Tax. All sales of liquor which includes alcohol, spirits, beer, and wine as defined in Sections 23-105(g), 23-1303(a), and 23-1001(a), Idaho Code, unless specifically exempt, are subject to the tax measured by the sales price. (7-1-93)

02. Sales For Resale. In the case of sales to persons licensed under the provisions of Title 23, Chapter 9, Idaho Code, only those purchases for resale by an establishment licensed to sell liquor will be exempt from the tax. If the licensee purchases liquor for any purpose other than for resale, the licensee is subject to the use tax. (7-1-93)

03. Posting Amount Of Tax. The liquor dispensaries shall cause to be posted, in addition to the current price, the amount of the tax and the total cost including the tax. For example:

Brand X Whiskey	$7.00
Idaho Sales Tax	.35
Total Price	$7.35

(7-1-93)

04. Identifying Code. If codes are used to identify the brands and/or prices of liquor, the price might be posted as follows:

Code 64	$7.00
Idaho Sales Tax	.35
Total Price	$7.35

(7-1-93)

05. Reporting. The superintendent of the State Liquor Dispensary shall forward monthly to the Tax Commission a report of all sales tax collected for the preceding month. All sales tax collected by the superintendent of the State Liquor Dispensary and by contract private liquor stores, when the product is supplied by the State Liquor Dispensary, shall be credited directly to the liquor account, and shall not become a part of the sales tax account. (7-1-93)

127. FREE DISTRIBUTION NEWSPAPERS.

01. Newspaper Format. The term "newspaper format" shall mean a publication bearing a title, issued regularly at stated intervals of at least twelve (12) times a year, and formed of printed paper sheets without binding. Catalogs, advertising fliers, travel brochures, employee newsletters, theater programs, telephone directories, restaurant guides, posters, and similar publications are not publications in newspaper format. (7-1-96)

02. Purchase Or Use Of Tangible Personal Property. The purchase or use of tangible personal property used to produce newspapers distributed to the public free of charge is exempt from sales or use taxes if the requirements of Section 63-3622T, Idaho Code are met. (7-1-96)

03. Qualifying For Exemption. To qualify for the exemption at least ten percent (10%) of the total newspaper, computed on an average annual column inch basis, must be devoted to the publication of nonincome producing informative material. Advertisements promoting the free distribution newspaper itself do not qualify as

nonincome producing informative material. Neither do logos, column headings, mastheads, borders, etc. (7-1-96)

128. -- 129. (RESERVED).

130. PROMOTER SPONSORED EVENTS (Rule 130).
Promoters at promoter sponsored events, as defined in Section 63-3620C, Idaho Code, shall within ten (10) days following the beginning of the event, forward to the State Tax Commission a completed Form ST-124 for each exhibitor participating in the event. This form shall include: (7-1-99)T

01. Promoter Information. The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. (7-1-99)T

02. Exhibitors Participating In Event. The names, addresses, and phone numbers of the exhibitors participating in the event. (7-1-99)T

03. Identification Number. Either the exhibitor's federal employer identification number or social security number. (7-1-99)T

04. Seller's Permit Number. The exhibitor's seller's permit number or a statement that the exhibitor is not making taxable sales. (7-1-99)T

05. Copy Of Temporary Seller's Permit. Copies of temporary seller's permits assigned by the promoter, if any. (7-1-99)T

06. Other Information. Other information may be required if deemed necessary by the State Tax Commission. (7-1-99)T

131. -- 999. (RESERVED).

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