

Welcome & Introductions.....committee chair

Recap of June Meeting.....committee chair

Rules Status Report..... committee chair

Review rule drafts

Sales and Use Tax (35.01.02)		
RULE NUMBER	TITLE	TODAY'S ACTION
Rule 011	RETAIL SALES: SALE AT RETAIL	Review Draft
Rule 029	PRODUCING, FABRICATING, AND PROCESSING	Review Draft
Rule 041	FOOD, MEALS, OR DRINKS	Review Draft
Rule 043	SALES PRICE OR PURCHASE PRICE DEFINED	Review Draft
Rule 077	EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL	Review Draft
Rule 106	MOTOR VEHICLES SALES, RENTALS, AND LEASES	Review Draft
Rule 107	VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS	Review Draft
Rule 110	RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS	Review Draft
Rule 117	REFUND CLAIMS	Review Draft
Rule 128	CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS	Review Draft

Open Sales Tax Rules Meeting AGENDA

Date: July 18, 2018
Time: 1:30 PM
Location: 1CR5

Prepaid Wireless E911 Fee (35.01.14)		
RULE NUMBER	TITLE	TODAY'S ACTION
Rule 003	ADMINISTRATIVE APPEALS	Review Draft

Next open sales tax meeting will be in **1CR5** on **August 22, 2018 @ 10:00 AM**

011. RETAIL SALES: SALE AT RETAIL (RULE 011).Sections 63-3612 and 63-3613, Idaho Code

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 Rule 012 of these rules. (3-30-07)

b. Charges for assembling, producing or fabricating property to the special order of the customer. See Rule 029 and 043 of these rules.- ~~(3-30-07)~~ ()

c. Furnishing, preparing or serving food, meals or drinks for compensation. See Rule 041 of these rules. (3-30-07)

d. Admission charges. See Rule 030 of these rules. (3-30-07)

e. Charges for the use or privilege of using tangible personal property or facilities for recreation. See Rules 030 and 047 of these rules. (3-30-07)

f. Providing hotel, motel, tourist home and trailer court accommodations. See Rule 028 of these rules. (3-30-07)

g. Leasing or renting tangible personal property. See Rule 024 of these rules. (3-30-07)

h. For sales of air transportation services see Rule 037 of these rules. (3-30-07)

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 (2) 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 Rule 061 of these rules; and (3-30-07)

b. Installation charges. See Section 63-3613, Idaho Code, and Rule 012 of these rules. (3-30-07)

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 Rule 072 of these rules. (3-30-07)

029. PRODUCING, FABRICATING, AND PROCESSING (RULE 029).Sections 63-3612 and 63-3613, Idaho Code

01. In General. Tax applies to charges for assembling, 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)

g. Example 7: A retailer sells ready-to-assemble furniture and offers assembly for an additional fee that the retailer separately states on their customer's invoice. The amount charged for assembly must be included in the amount subject to tax as the furniture was not in a finished state until assembly was complete. ()

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 Rules 011 and 062 of these rules. (7-1-93)

b. Fabrications by Contractors. See Rule 012 of these rules. (7-1-93)

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

Sections 63-3612(2)(b), 63-3621(p), ~~&~~and 63-3622J, Idaho Code

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

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

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

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

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

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

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

a. If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed

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

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

05. Fraternities, Sororities, and Cooperative Living Group. Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

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

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

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

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

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

a. Sales tax applies to the total sales. The posted price must include a statement that

sales tax is included. (4-2-08)

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

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

09. Senior Citizens. Meals sold under programs that provide nutritional meals for the aging under Title III-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. Food or Beverage Tastings. If a participant must pay to participate in a food or beverage tasting, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product. (3-20-14)

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

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

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

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

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

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper

products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

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

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

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

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

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

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

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

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

043. SALES PRICE OR PURCHASE PRICE DEFINED (RULE 043).Section 63-3613, Idaho Code

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 Rule 061 of these rules. (3-20-04)
- b.** Manufacturer's or importer's excise tax. See Rule 060 of these rules. (3-20-04)
- c.** Services agreed to be rendered as part of the sale. (7-1-97)
- d.** Separately stated labor charges to assemble, produce, or fabricate made to order goods. See Rule 029 of these rules. (3-20-04)

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services agreed to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items:
(4-4-13)

- a.** Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation. (3-20-04)
- b.** Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. (3-20-04)
- c.** Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. (3-20-04)
- d.** Any charges for warranties, service agreements, insurance coverage, or other services required by the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these charges, the charges are not part of the sales price if separately stated. Also, see Rule 049 of these rules. (3-20-04)
- e.** Any fuel surcharges except those charges which the vendor can document are related only to delivery of the property to the end customer. (4-4-13)

f. Any environmental or disposal fee except those fees directly imposed by a governmental agency. (4-4-13)

03. Charges Not Included. Sales price does not include charges for interest, carrying charges, amounts charged for optional 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. (3-20-04)

04. Gratuities. When a gratuity is paid in addition to the price of a meal, no sales tax applies to the gratuity. A gratuity can be paid voluntarily by the customer or be required by the seller. A gratuity is also commonly known as a tip. (3-29-12)

a. If a gratuity does not meet all of the following requirements, the gratuity will be subject to sales tax: (3-29-12)

i. A gratuity must be paid to the service provider of the meal as additional income to the base wages of the service provider; (3-29-12)

ii. A gratuity must be separately stated on the receipt or be voluntarily paid by the customer; and (3-29-12)

iii. A gratuity must not be used to avoid sales tax on the actual price of the meal. (3-29-12)

b. For the purposes of Subsection 043.04 of this rule, the following definitions apply: (3-29-12)

i. Meal. Food or drink prepared for or provided to a customer. (3-29-12)

ii. Service provider. An individual directly involved in preparing or providing a meal to a customer. This includes, but is not limited to, the server, the busser, the cook and the bartender. This does not include individuals who manage or own the company if they are not directly involved in preparing and providing a meal. (3-29-12)

05. 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)

077. EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL (RULE 077).Section 63-3622BB, Idaho Code

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

02a. 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)

03b. 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)

04c. 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)

ai. 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)

bii. 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)

05d. 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)

06e. 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)~~

07f. 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)~~

08g. 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)~~

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

~~() (7-1-99)~~

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

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106. MOTOR VEHICLES SALES, RENTALS, AND LEASES (RULE 106).Sections 63-3612, 63-3613, 63-3619, 63-3621, 63-3622K, and 63-3622R, Idaho Code

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

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

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

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

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

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

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e. ~~Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle, used by persons claiming exemption under Section 63-3622, Idaho Code.~~ (7-1-93)

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

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

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

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

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

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

c. **No Bill of Sale.** In the absence of a bill of sale or documentation supporting the value of the vehicle, sales-tax is collected on the value established as the "~~clean retail~~average trade-in price" in the most recent ~~National Automobile Dealers Association (NADA)~~ Official Used Car Guide, ~~for the same make, model, options, year, mileage, and condition published by the National Automobile Dealers Used Car Guide Company.~~ ()

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

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

06. Vehicles Purchased from Retailers. ()

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

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

06.07 Vehicles Rented or Leased.~~(7-1-93)~~()

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

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

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

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

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

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

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

07.08. Cross-References.~~(7-1-93)~~()

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

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

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

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

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

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

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

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

Sections 49-117, 49-121, 49-122, 63-3606B, 63-3621, 63-3622K, 63-3622R, ~~&and~~ 67-7101, Idaho Code

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

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

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

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

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

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

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

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

03. Purchases brought into Idaho by Nonresidents. ~~(3-30-07)()~~

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

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

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

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and

used primarily outside Idaho. If ~~an 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~~ it was purchased primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the ~~Idaho Transportation Department or~~ county assessor when applying for a title transfer or registration certificate. (4-11-15)()

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

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

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

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

b. Military personnel receive no special exemption from the Idaho sales and use tax regarding ~~motor~~ vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)()

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

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

b. Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to ~~the an Idaho~~ county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the six hundred dollars (\$600) tax due Idaho. The county assessor will collect three hundred dollars (\$300) tax. (4-11-15)

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

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

e. A registration certificate or title issued by another taxing state is proof that tax was paid to the other

taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the ~~motor~~ vehicle from tax. (7-1-93)()

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

g. Taxes paid to another ~~nation-country~~ cannot be used to 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. Form ST-133, The Sales Tax Exemption Certificate -- Transfer Affidavit Family or American Indian Sales. ~~A Form ST-133~~ is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the county assessor along with the title to the motor vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor ~~or his representative~~ and attached to the affidavit. (2-18-02)()

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

c. Example: An Oregon resident buys a motor vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the motor 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 motor vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the motor vehicle. (4-11-06)()

08. Sales to American Indians. An enrolled American Indian tribal member may buy a ~~motor~~ vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian ~~Reservation~~reservation.

a. Form ST-133, The Sales Tax Exemption Certificate -- Family or American Indian Sales. ~~A Form ST-133 Transfer Affidavit, Form ST-133~~ is used to document this exemption. The seller and the buyer must complete and sign ~~Sales Tax Exemption Certificate -- Transfer Affidavit~~ Form ST-133 ~~including and provide~~ the name of the tribe, ~~the~~ Tribal Identification Number, and the name of the ~~Reservation~~reservation upon which the ~~sale and~~ delivery occurred. The affidavit is then given to the ~~Idaho Transportation Department or~~ county assessor along with the title to the vehicle being transferred. See Rule 091 of these rules. (2-18-02)()

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

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

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

i. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off highway vehicles~~SOHVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (3-25-16)

ii. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off highway vehicles~~SOHVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than ninety (90) days in any twelve-month period. (3-28-18)

b. To claim the exemption, ~~the each~~ buyer must provide the seller with a completed and signed Form ST-104NR, Sales Tax Exemption Certificate ~~---~~ Nonresident Vehicle/Vessel. Form ST-104MV. The seller must keep a copy for their records and send a copy of the completed form to the Tax Commission. ()

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. (3-29-17)

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

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

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

ii. Eleven (11) feet in length or more, not including canoes, kayaks, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. (3-29-17)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of a park model recreational vehicle, a trailer or utility trailer found in Sections 49-117, 49-121, and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers or park model recreational vehicles defined in Sections 49-117, and 49-121(6), Idaho Code. (3-28-18)

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

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

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

| applying for title transfer.

~~(2-18-02)~~(_____)

110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).

Sections 63-3623 ~~&~~and 63-3638(9), Idaho Code

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, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors. 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 day of the month following the month in which the tax was collected. (4-6-05)

02. Reimbursement. The assessor and the Idaho Transportation Department 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; each Form ST-108, Transport Trailer, Office Trailer, and Untitled Boat Certificate; and each Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, 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. (3-25-16)

03. Financial Institutions. Financial institutions collecting tax on sales of tangible personal property that they are financing, whether sold by the financial institution or another person, must possess an Idaho seller's permit and file returns to remit the tax as prescribed in Rule 105, of these rules. ~~to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. If the tax collected is not from a sale made by the financial institution, it can be reported as an adjustment on the return.~~ 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. (4-6-05) ()

04. Cross Reference

a. Permits. See Rule 070 of these rules ()

b. Time and Imposition of Tax, Returns, Payments and Partial Payments. See Rule 105 of these rules. ()

117. REFUND CLAIMS (RULE 117).

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

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

(7-1-93)

02. Payment of Sales Tax by a Purchaser 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 this Rule 117 and Rule 063 of these rules.

(5-3-03)

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

(7-1-93)

06. Refund Claims Form. Form TCR ~~(, Sales Tax Refund Claim)~~, may be used to file for a refund from the Commission. Although ~~this a~~ form is available for this purpose, it is not required. A refund claim, however, must be in writing and include the following information:

- a. Full name, address, and phone number of the claimant;
- b. Claimant's seller's permit number or use tax account number if claimant has such a number;
- c. The amount of the refund claimed;
- d. A detailed statement of the reason the claimant believes refund is due;
- e. An itemized description of the specific goods or services to which the tax relates;
- f. The date on which the claimed excess taxes were paid;
- g. If the claim is for bad debt, detailed individual account information for each customer and each item purchased for which a refund is claimed; and
- h. If the claimant is the retailer, a statement under oath that the amount of tax plus interest has been or will be refunded to the purchaser.

A refund claim must be filed within three years from the time the payment was made to the State Tax Commission. If a refund claim does not include the required information listed in subsections

a through h., then the claim does not satisfy the requirement to file a written claim to stop the period of limitations provided in Idaho Code 63-3626(b)(1) from running. A refund claim that does not include the required information will be denied and processed as set out in subsection 11 of this rule.

()

~~. The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must: state the amount of the refund; include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates; and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to the retailer have been or will be refunded by the retailer to the purchaser.~~

~~(4-2-08)~~

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

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

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

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

11. Denial of a Refund Claim. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant by first class mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. ~~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 Rule 121 of these rules. A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. ()

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

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

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

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

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

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

a04. Form ST-101, Sales Tax Resale or Exemption Certificate -- Buying for Resale. To claim a resale exemption, ~~Form ST-101, or Sales Tax Resale and Exemption Certificatea Uniform Sales and Use Tax Certificate - Multi-jurisdiction,~~ must be completed, ~~except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction.~~ The resale certificates approved by this rule may only be taken from a ~~purchaser-buyer~~ described in Subsection 128.04. The reason for, ~~and the nature of,~~ the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the ~~purchaser-buyer~~. An Idaho registered retailer must include its seller's permit number. A ~~purchaser-buyer~~ need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. _____
() (4-4-13)

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

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

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

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

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

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

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

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

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

ag. Example: A restaurant operator completes an Form ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator ~~purchases~~ buys

sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. () (3-6-00)

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

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

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

- a. **Form ST-101 Exemption Categories** ()
- i. Production Exemptions; ()
- ii. Exempt Buyers; ()
- iii. Contractor Exemptions; ()
- iv. Other Exempt Goods and Buyers ()

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

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

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

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

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

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

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

()
(3-4-10)

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

(3-4-10)

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

(3-25-16)

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

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

()

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

e08. Form ST-104G, Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies. ~~The~~ Form ST-104G may be completed only by federal ~~or~~ Idaho ~~s~~State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/~~purchaser~~buyer. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. () (3-6-00)

d09. Form ST-104HM, Sales Tax Exemption Certificate -- ~~on~~ Lodging Accommodations. ~~Claimed by Employees Using A Qualifying Credit Card Payment, The~~ Form ST-104-HM is used to claim exemption for lodging accommodations paid for using a, ~~applies when a~~ credit card company who will directly bill to and be paid by a federal, Idaho ~~s~~State, ~~or Idaho and~~ local government ~~agency~~ agencies or other qualifying organizations granted ~~an~~ exemption under Section 63-3622O, Idaho Code. This form should not be used for ~~It does not apply to~~ credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/~~purchaser~~buyer. () (3-25-16)

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

f11. Form ST-104MV, Sales Tax Exemption Certificate -- Vehicle/Vessel. ~~The~~ Form ST-104-MV, must be completed by a ~~purchaser~~buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, vessel, or trailer. This has been replaced with Forms, ST-104IC and ST-104NR. (3-25-16)()

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

h13. Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer. ~~The~~ Form ST-108TR, is required by any person claiming the occasional sale exemption on the purchase of a transport trailer or an office trailer. The seller must complete the seller's statement section in order for the buyer to claim the occasional sale exemption. (3-25-16)()

b14. Form ST-111, Sales Tax Exemption Claim Form-Grocer. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept ~~Sales Tax Exemption Claim Form-Grocer,~~ the Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)()

15g. Form ST-133, Sales Tax Exemption Certificate -- ~~Transfer Affidavit~~Family or

American Indian Sales.

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

~~, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation.~~ ()

b. American Indian Sales. ~~The Form ST-133 must be completed when claiming an exemption from tax when selling a vehicle, vessel, or RV to a member of an American Indian tribe within the boundaries of an American Indian reservation. , or when making a gift of a motor vehicle, boat or RV.~~
() ~~(3-25-16)~~

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

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

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

0919. Timely Acceptance of Certificates. A seller may accept a certificate from a ~~purchaser~~buyer prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the ~~purchaser~~buyer in the manner provided or permitted by this rule, the sale is presumed to be taxable. () ~~(3-6-00)~~

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

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an

attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. _____(3-4-10)

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

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

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

~~i. Maintenance and janitorial equipment and supplies; _____(3-6-00)~~

~~ii. Office equipment and supplies; _____(3-6-00)~~

~~iii. Selling and distribution equipment and supplies; _____(3-6-00)~~

~~iv. Property used in transportation activities; _____(3-6-00)~~

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

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

~~vii. Licensed motor vehicles; _____(3-6-00)~~

~~viii. Aircraft; and _____(3-6-00)~~

~~ix. Recreational related vehicles as described in Section 63-3622HH, Idaho Code. _____(3-28-18)~~

003. ADMINISTRATIVE APPEALS.

01. This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ~~(3-20-14)~~()

02. Cross Reference.

a. See IDAPA 35.01.02.121 “Idaho Sales and Use Tax Administrative Rules.” ()

b. See IDAPA 35.02.01. “Tax Commission Administration and Enforcement Rules.”
()

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

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

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

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

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

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

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

b. Qualified Buyers. The resale exemption may be claimed by the following buyers when buying goods for resale: ()

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

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

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

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

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

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

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

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

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

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

store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. ()

05. Form ST-101, Sales Tax Resale and Exemption Certificate -- Claiming Exemptions.

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

a. Form ST-101 Exemption Categories ()

i. Production Exemptions; ()

ii. Exempt Buyers; ()

iii. Contractor Exemptions; ()

iv. Other Exempt Goods and Buyers ()

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

c. Seller's Responsibility. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Form ST-101 has been received if the nature of the exemption claimed is available to the buyer as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. ()

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

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

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

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

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

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

f. Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty against the restaurant. ()

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

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

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

a. Production or Logging Exemption. A tax exemption statement can be used when selling property that the buyer claims is entitled to the production exemption or the logging exemption. The statement can be made by either; ()

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

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

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

NATURE OF BUSINESS

BUYER'S SIGNATURE

()

b. Matter Used to Produce Heat by Burning. A tax exemption statement can be used when selling materials that the buyer claims will be used to produce heat by burning as defined in Subsection 088.02 of these rules and for which no bulk delivery will be made. The statement can be made by either;

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

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

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

BUYER'S SIGNATURE

()

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

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

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

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

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

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

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

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

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

a. Family Sale. The Form ST-133 must be completed when claiming an exemption from tax

when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code. ()

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

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

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

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

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

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

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

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

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