

**35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAXES ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (RULE 000).**

~~In accordance with Sections 63-105, 63-2501, 63-2553, Idaho Code; the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Cigarette and Tobacco Products Taxes Acts. (3-31-22)~~

~~**001. TITLE AND SCOPE (RULE 001).**~~

~~These rules are titled IDAPA 35.01.10, “Idaho Cigarette and Tobacco Products Taxes Administrative Rules.” These rules are construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on all cigarette and tobacco products sold, used, consumed, handled or distributed within this state. (3-31-22)~~

~~**002. ADMINISTRATIVE APPEALS (RULE 002).**~~

~~Sections 63-2516, 63-2563, Idaho Code  
This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. (3-31-22)~~

**003001. INCORPORATION BY REFERENCE (RULE 003001).**

Sections 63-2516, 63-2563, and Title 39, Chapters 57, 78, 84, Idaho Code  
These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” (3-31-22)

**004002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Sections 63-2502, 63-2528, 63-2551, 63-3611, Idaho Code  
Definitions provided by statute, including the definitions in Sections 63-2502, 63-2528, and 63-2551, Idaho Code, apply to these rules. Additionally, the following definitions apply for the purposes of these rules. (3-31-22)

~~**01. Distributor.** The term distributor, as defined by Section 63-2551, Idaho Code, includes persons who receive tobacco within this state for purposes of blending and/or repackaging. (3-31-22)~~

~~**02. Manufacturer.** The term manufacturer means a person who manufactures and sells cigarettes. The term manufacturer, as defined by Section 63-2551, Idaho Code, does not include persons who receive tobacco within this state for purposes of blending and/or repackaging. (3-31-22)~~

~~**03. Person.** The term “person” includes any individual, firm, partnership, LLC, venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit. (3-31-22)~~

**01. Interstate Commerce Sale.** A sale or other transfer of ownership between a person located in Idaho and a person located outside Idaho or on an Idaho reservation. (--)

**02. Reservation.** Reservation means: (--)

a. Federally recognized land reserved for American Indian tribes by treaty with the United States, a state, or a territorial government and established by acts of Congress or the Executive branch of the United States; (--)

b. Land held in trust by the United States for the use and benefit of an Idaho tribe; or (--)

c. Land reserved for the United States military. (--)

**03. First Receiver.** First receiver means the first tobacco products distributor owning tobacco products shipped to Idaho. (--)

**04. Unmarketable Cigarettes.** Any package of cigarettes with an Idaho stamp becomes unmarketable when: (--)

a. It is returned to the manufacturer as stale or otherwise unsellable, or (--)

b. The manufacturer or brand family of such cigarettes is removed from the Idaho Attorney General's directory. (--)

**05. Unmarketable Tobacco Products.** Any product returned to the manufacturer as stale or otherwise unsellable. (--)

**011. ~~DISTRIBUTION OF FREE OR BELOW COST~~ CIGARETTE AND TOBACCO PRODUCTS SUBJECT TO TAX (RULE 011).**

Sections ~~63-2506, 63-2510, 63-2510A, 63-2552, 63-2552A, 63-2552B,~~ Idaho Code

**01. ~~Distribution of Free or Below Cost Tobacco Products.~~** The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. **Cigarette Tax.** Cigarette tax is due when a cigarette stamp is affixed to a package of cigarettes. (--)

a. It is mandatory for any package of cigarettes given away or sold at a discount, such as buy two (2) get one (1) free promotions, to have a cigarette stamp affixed. (--)

b. Non-tribal retailers located within a tribal reservation are forbidden from selling cigarettes without an Idaho cigarette stamp affixed. (--)

c. Only an Idaho tribe, an enrolled Idaho tribal member, or a business wholly owned and operated by the tribe or tribal member, can purchase unstamped packages of cigarettes for delivery to the reservation. (--)

**012. TAX PERMITS (RULE 012).**

Sections ~~63-2503, 63-2504, 63-2526, 63-2554,~~ Idaho Code

~~Every wholesaler of cigarettes is required to obtain a cigarette wholesaler's permit from the Tax Commission and post a bond as required by Rule 017 of these rules before engaging in business. The wholesaler must apply for the permit on the form prescribed by the Tax Commission, accompanied by a fee of fifty dollars (\$50). Application forms may be obtained by contacting the Tax Commission. The permit holder will at all times conspicuously display the permit at their place of business. (3-31-22)~~

**01. Cigarette Tax Permit Is Nonassignable.** A cigarette wholesaler's permit is nonassignable. Upon any change of ownership, it is the responsibility of the permit holder to immediately give written notification to the Tax Commission. A wholesaler does not need a cigarette tax permit when buying only stamped cigarettes. It is mandatory to have a cigarette tax permit when: (--)

a. ~~The notice will set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. The permit holder must return the permit or send a written statement that the permit has been destroyed.~~ The wholesaler affixes Idaho stamps to packages of cigarettes. (--)

b. ~~If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's cigarette wholesaler's permit without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit.~~ The wholesaler is located in Idaho and makes interstate commerce sales of cigarettes. (--)

~~c. The wholesaler makes sales delivered to a reservation and the purchaser is the U.S. military, an Idaho tribe, an enrolled Idaho tribal member, or a business wholly owned and operated by the tribe or tribal member. (—)~~

~~02. **Seller's Tobacco Products Tax Permit.** Every retailer of cigarettes must obtain an Idaho seller's permit from the Tax Commission before engaging in business as required by Section 63-3620, Idaho Code. When a wholesaler sells stamped cigarettes to a retailer of cigarettes, they must obtain from the retailer a Sales Tax Resale or Exemption Certificate, Form ST-101. It is mandatory for a tobacco products distributor to have a tobacco products tax permit if located in Idaho or if they are an out-of-state distributor with nexus in Idaho shipping directly to Idaho customers. (—)~~

~~03. **Permits Non-transferable.** When a business is sold or transferred the permits are not transferable.~~

~~a. It is mandatory for the new owner or lessee to obtain their own permits. (—)~~

~~b. If the previous owner does not cancel their permits, they may be responsible for all tax, penalties, and interest resulting from the use of their permit by the new owner or lessee.~~

~~c. Cancellation of a permit is accomplished by written notice to the Tax Commission. (—)~~

~~013-- 014. **SHIPMENTS IN INTERSTATE COMMERCE (RULE 013). RESERVED**~~

~~Section 63-2505, Idaho Code~~

~~Sales of cigarettes in the course of interstate commerce for purposes of Section 63-2505, Idaho Code, include only those sales where title is transferred outside the state of Idaho, or on U.S. military reservations, or on Indian reservations. (3-31-22)~~

~~01. **Types of Conveyances.** Shipments of cigarettes to U.S. military reservations or Indian reservations must be made by conveyance used in the normal operation of the wholesaler's business, or by common carrier hired by the wholesaler. (3-31-22)~~

~~a. In the case of shipment by common carrier, a copy of the bill of lading must be kept on file at the wholesaler's place of business for three (3) years. (3-31-22)~~

~~b. In the case of shipments by the wholesaler's conveyance, an itemized receipt must be obtained by the wholesaler bearing the signature of the receiver's representative and the wholesaler's employee making such delivery. Receipts must be serially numbered. (3-31-22)~~

~~02. **Records of Unstamped Deliveries.** In addition, all deliveries made outside the state and all deliveries made to U.S. military reservations or Indian reservations, and which are delivered without state tax stamps of another state must be listed in a chronological log by delivery date and customer. The log must contain the following information: delivery date, number of cigarettes delivered, and an itemized receipt number, as described in Subsection 013.01.b. of this rule. (3-31-22)~~

~~014. **SHIPMENTS DELIVERED ON INDIAN RESERVATIONS (RULE 014).**~~

~~01. **Shipments Without Idaho Stamps.** Cigarette wholesalers may deliver cigarettes which do not have Idaho stamps affixed to Idaho Indian reservations when: (3-31-22)~~

~~a. The purchaser is an enrolled member of an Idaho Indian tribe. (3-31-22)~~

~~b. The purchaser is a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe. (3-31-22)~~

~~c. The purchaser is a business enterprise wholly owned and operated by an Idaho Indian tribe. (3-31-22)~~

~~02. Reservation Means Lands Which Are: (3-31-22)~~

~~a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; or established by formal decision of the Executive Branch of the United States or; (3-31-22)~~

~~b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 014.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (3-31-22)~~

~~03. Sales of Cigarettes to Non-Indians Within Reservation Boundaries. Sales of cigarettes by wholesalers to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation must have Idaho cigarette stamps affixed. (3-31-22)~~

~~04. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell cigarettes upon which Idaho cigarette stamps have not been affixed. (3-31-22)~~

**015. STAMPS SOURCE, AMOUNT, AND LIMITATIONS STAMP INVENTORY (RULE 015).**

Sections 63-2510, 63-2510A, Idaho Code

**01. Obtaining Stamps.** Cigarette stamps may only be obtained from the Boise office of the Tax Commission. Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Tax Commission to a wholesaler until clear and convincing evidence is received by the Tax Commission that the return has been filed and the tax has been paid. (—)

**02. Unused Stamp Inventory.** A Wholesaler may not hold an inventory of unused Idaho cigarette stamps, the face value of which exceeds the amount exceeding the face value of their bond. Where~~If~~ no bond is required, wholesalers may not hold a wholesaler's inventory of unused Idaho cigarette stamps, the face value of which cannot exceeds two (2) times the wholesaler's average monthly tax liability. (3-31-22)

**03. Filing and Paying Timely Repayment of Allowance.** Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Tax Commission to a wholesaler until clear and convincing evidence is received by the Tax Commission that the return has been filed or the tax has been paid. The Tax Commission will reduce all credit or refund claims for stamps affixed to packages of cigarettes by the discount for affixing stamps. (3-31-22)

**04. Physical Security.** Wholesalers are~~A wholesaler is~~ responsible for the face value of all stamps received from the Tax Commission. Wholesalers must and for providing physical security for the stamps in their possession. (3-31-22)

**05. Unusable Stamps.** Stamps that are unused, unfit, or damaged may be returned to the Tax Commission. If stamps cannot be returned to the Tax Commission, the wholesaler will submit a request for stamp destruction on a Tax Commission prescribed form. Destruction of stamps cannot take place without approval from the Tax Commission. The wholesaler may make the adjustment on the next monthly tax return, provided the approval documentation is attached to the return. (—)

**016. WHOLESALER'S CREDIT OR REFUND CLAIMS FOR UNMARKETABLE STAMPS (RULE 016).**

Sections, 63-2510, 63-2559, Idaho Code

**01. Destroyed Stamps Stamped Cigarette Tax Credits or Refunds.** On and after July 1, 1989, stamps~~Stamps~~ destroyed by the manufacturer or wholesaler as a result of the return of stale, or otherwise unmarketable, cigarettes may be redeemed by the wholesaler for credit against future tax due if: (3-31-22)

~~a. The manufacturer provides an affidavit to the Tax Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received. The wholesaler provides an affidavit or returned goods receipt from the manufacturer detailing the number of packages, package type, and date the stamped cigarettes were returned. The returned goods receipt will include a bill of lading.~~  
(3-31-22)

~~b. The wholesaler provides to the Tax Commission a returned goods receipt obtained from the manufacturer's representative verifying the number of packages, the package type, and the date the cigarettes were returned and a bill of lading traceable to the returned goods receipt. The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached. The wholesaler submits a request for stamped cigarette destruction to the Tax Commission in writing at least ten (10) working days prior to the scheduled destruction. The notice has to include a complete description of the number of packages, package type, date and time, and manner the stamped cigarettes will be destroyed. All requests have to be approved by the Tax Commission prior to destruction.~~  
(3-31-22)

~~c. The necessary documentation is attached to the return. (--)~~

~~d. The Tax Commission is allowed to observe the destruction of all stamped cigarettes. The Tax Commission reserves the right to delay the destruction until a mutual appointment can be arranged for witnessing such destruction. (--)~~

~~02. **Stale and Unmarketable Cigarettes** **Tobacco Products Tax Credits or Refunds.** When stamps are to be destroyed by a wholesaler as a result of stale or otherwise unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if Credit or refund claims can be made for unusable tobacco products using the following methods: (3-31-22)~~

~~a. The wholesaler notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed. Records are provided documenting the return of tobacco products to the manufacturer. (3-31-22)~~

~~b. The Tax Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. The distributor destroys tobacco products after submitting a destruction request form to the Tax Commission. Tobacco products can be destroyed in a manner authorized by the Tax Commission after receiving approval. (3-31-22)~~

~~03. **Unused, Unfit or Damaged Stamps.** Stamps that are unused, unfit, or damaged may be returned to the Tax Commission by the wholesaler for credit. (3-31-22)~~

~~04. **Manufacturers Removed From Directory.** It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. (3-31-22)~~

~~05. **Credits and Refund.** All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. (3-31-22)~~

~~017-- 020. **SECURITY FOR TAX REQUIRED (RULE 017).** **(RESERVED)**  
Sections 63-2510A, Idaho Code~~

~~01. **Security for Payment of Taxes.** Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, will always have in effect and on file with the Tax Commission security for~~

payment of the excise tax. The security will be in the form and amount acceptable to the Tax Commission, will be payable to the Tax Commission, and will be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler will be liable, including any penalty and interest. (3-31-22)

**a.** The amount of the security will be the greater of two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received. (3-31-22)

**b.** If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the Tax Commission accordingly, or pay a deposit to the Tax Commission for future taxes due which exceed the limitations. (3-31-22)

**c.** Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the Tax Commission. (3-31-22)

**02. Reviewing Security on File.** The Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability. (3-31-22)

**03. New Wholesaler Application.** When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows: (3-31-22)

**a.** If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler will furnish security based on the most recent twelve (12) month history of the prior ownership. (3-31-22)

**b.** If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler will furnish security in the amount of an estimated two (2) month tax liability of the new business, or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received, whichever is greater. The estimate will be prepared by the new wholesaler and will be subject to review and approval by the Tax Commission. (3-31-22)

**04. Types of Security.** A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. (3-31-22)

**05. Taxpayer Petition for Release from Security Requirements.** A security will be required in all instances unless the Tax Commission, upon petition by the taxpayer, determines that a security is not required. (3-31-22)

**a.** The following conditions must be met before the Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months. (3-31-22)

**b.** Upon written petition from the taxpayer, the Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine their books and records within sixty (60) days. The Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. (3-31-22)

**c.** If a petition for release of security is denied, notice will be mailed to the taxpayer by certified mail. The notice will include the reasons for the Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, they must file a petition for redetermination in the manner set forth in Section 63-

3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (3-31-22)

~~06. Failure to File Timely After Release from Security.~~ If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (3-31-22)

~~a.~~ The demand will be in writing and will be personally served on the taxpayer or mailed to him by certified mail. (3-31-22)

~~b.~~ If the taxpayer wishes to petition for redetermination of the demand, they must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (3-31-22)

~~c.~~ Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions will be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (3-31-22)

#### **018. CIGARETTE TAX RETURN (RULE 018).**

Section 63-2510, Idaho Code

~~01. Cigarette Tax Return.~~ All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (3-31-22)

~~02. Filing Returns.~~ The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. (3-31-22)

~~03. Due Date.~~ The return will be filed by the wholesaler on or before the twentieth day of the month immediately following the month to which the return applies. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (3-31-22)

~~04. Requirements of a Valid Return.~~ A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (3-31-22)

~~a.~~ All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (3-31-22)

~~b.~~ All cigarette tax returns or other documents filed by the taxpayer must include their cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (3-31-22)

~~c.~~ A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (3-31-22)

~~d.~~ Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Tax Commission; it must contain a computation of the

~~tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-31-22)~~

~~**05. — Failure to File a Return.** Any wholesaler required to file a return who fails to file such return will be in violation of this regulation and will be required to appear before the Tax Commission to show cause as to why their permit should not be revoked. See Section 63-2503, Idaho Code. (3-31-22)~~

~~**06. — Implementation of Tobacco Master Settlement Agreement.** Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. (3-31-22)~~

~~**07. — Wholesale Sales of Stamped Cigarettes.** Every wholesaler who imports unstamped cigarettes into this state must file a return, however; a cigarette wholesaler who buys only stamped cigarettes for resale is not required to file a return. (3-31-22)~~

#### ~~**019. — TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).**~~

~~**01. — Shipments to Retailers/Distributors.** In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. (3-31-22)~~

~~**02. — Nontaxed Tobacco Purchases from Outside the State.** Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (3-31-22)~~

~~**03. — Determining Wholesale Sales Price.** Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (3-31-22)~~

~~**a. — Separately Stated Nontaxable Charges.** Separately stated nontaxable charges for shipping, handling, transportation, and delivery may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Tax Commission may adjust it. (3-31-22)~~

~~**b. —** An out of state distributor with nexus in the state of Idaho must use the same method in determining “wholesale sales price” as other distributors that distribute tobacco products in Idaho. If an out of state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining “wholesale sales price” as other distributors that distribute tobacco products in Idaho. (3-31-22)~~

~~**i. — Example 1.** An out of state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesale sales price will be the price at which it sells to the Idaho distributor, retailer or end user. (3-31-22)~~



~~ii. Example 2: An out of state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under this subsection, where the wholesale sales price is unknown, the wholesale sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The “purchase price of the product” is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor. (3-31-22)~~

~~iii. Example 3: An out of state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC Section 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesale sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then this subsection requires the wholesale sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. (3-31-22)~~

## **020. TOBACCO TAX RETURN (RULE 020).**

~~01. Tobacco Tax Return. All tobacco distributors who make wholesale purchases are required to file a tobacco products tax return. (3-31-22)~~

~~02. Timing of Filing Return. The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. (3-31-22)~~

~~03. Due Date of Return. The return will be filed by the distributor on or before the twentieth (20th) day of the month immediately following the month to which the return applies. If the twentieth (20th) day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or a legal holiday. (3-31-22)~~

~~04. Requirements of a Valid Return. A tax return or other document required to be filed in accordance with Section 63-2552, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3046 and 63-3075, Idaho Code, and related rules. (3-31-22)~~

~~a. The tobacco products tax return form must be completed and copies of all pertinent supporting documentation must be attached. The results of supporting documentation must be carried forward to applicable lines on the tobacco products return form. (3-31-22)~~

~~b. All tobacco products tax returns or other documents filed by the taxpayer must include their tobacco products tax permit number and Federal Taxpayer Identification Number in the space provided. (3-31-22)~~

~~c. A tobacco products tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (3-31-22)~~

~~d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required, it must be on the proper form, as prescribed by the Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-31-22)~~

## **021. SALES TO OTHER IDAHO DISTRIBUTORS MANDATORY RECORDS (RULE 021).**

Sections 63-2511, 63-2555, Idaho Code

**01. ~~Sales for Eventual Resale~~**In General.** ~~When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the duty to pay the tax is on the distributor who first causes the tobacco products to be shipped to Idaho.~~Every person liable for payment of taxes on cigarettes or tobacco products needs to keep and preserve the following records: (3-31-22)**

a. A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. ( )

b. A record of the amount of all merchandise purchased, including all bills of lading, invoices, sales receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. ( )

c. Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ( )

d. True and complete physical counts of the cigarette and tobacco products inventory taken at the end of each reporting period. ( )

e. True and complete records of breakage and spoilage claimed as a deduction from inventory. ( )

f. Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order. ( )

**02. ~~First Receiver~~**Records Retention.** ~~The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on their tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax.~~If a taxpayer appeals an assessment, all records need to be kept until final disposition of the appeal. (3-31-22)**

**03. ~~Subsequent Receiver.~~** Any subsequent receiver will not be required to pay the tax as long as they maintains records showing that the first receiver has paid the tax. (3-31-22)

## **022. ~~EXEMPTIONS (RULE 022).~~**

~~**01. ~~Credit for Taxes Paid.~~** Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are:~~ (3-31-22)

~~a. Sold and delivered to retailers or distributors at locations outside the state of Idaho;~~ (3-31-22)

~~b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho;~~ (3-31-22)

~~c. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe.~~ (3-31-22)

~~**02. ~~Documentation.~~** Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe they should keep a copy of the purchaser's tribal identification card in their files. If they are selling to a tribally owned entity, they should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe.~~ (3-31-22)

~~03. **Indian Reservations.** Indian reservation means lands which are: (3-31-22)~~

~~a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (3-31-22)~~

~~b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.03.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (3-31-22)~~

~~04. **Non-Indian Enterprises.** Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation. (3-31-22)~~

~~05. **Non-Indian Retailers.** Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell tobacco products upon which tobacco products tax has not been paid. (3-31-22)~~

### ~~023. **CREDIT FOR RETURNED TOBACCO PRODUCTS (RULE 023).**~~

~~01. **Credit Allowed.** When tobacco products have been returned to the manufacturer, credit will be allowed against future tax only if: (3-31-22)~~

~~a. The distributor has an itemized credit memorandum or credit invoice from the manufacturer; and (3-31-22)~~

~~b. The distributor has a bill of lading or manufacturer's credit receipt which can be traced to the credit memorandum and which verifies the amount shipped to the manufacturer. (3-31-22)~~

~~02. **Notice of Returned Tobacco Products.** The Tax Commission reserves the right to require the distributor to notify the Tax Commission in writing at least five (5) working days prior to shipment of any tobacco products returned to the manufacturer. If required, the notice must include a complete description of the item returned, the quantity to be returned, and the wholesale sales price of the item, and the date items will be shipped. (3-31-22)~~

~~03. **Verifying Shipments.** The Tax Commission reserves the right to verify the shipment of all tobacco products returned to the manufacturer and further reserves the right to delay the shipment until such time as a mutual appointment can be arranged for verifying such shipment. (3-31-22)~~

### ~~024. **CREDIT FOR DESTRUCTION OF TOBACCO PRODUCTS (RULE 024).**~~

~~01. **Destroyed Tobacco.** When tobacco products are to be destroyed by a distributor, credit will be allowed against future tax only if: (3-31-22)~~

~~a. The distributor notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the items to be destroyed, the quantity of each item, the wholesale sales price of each item and the time and manner the items will be destroyed; and (3-31-22)~~

~~b. The distributor has a verifiable credit memorandum from the manufacturer. (3-31-22)~~

~~02. **Observing Destruction.** The Tax Commission reserves the right to observe the destruction of all tobacco products and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (3-31-22)~~

~~025~~**022. -- 999. (RESERVED)**