

**SALES TAX RULES COMMITTEE MEETING  
PRELIMINARY AGENDA  
THURSDAY, AUGUST 16, 2012  
1:30 PM  
IDAHO STATE TAX COMMISSION  
ROOM 1CR4**

**GENERAL BUSINESS:**

Welcome & Introduction

**SALES TAX RULES DISCUSSION:**

Rule 037 (Draft 4). Aircraft & Flying Services – Clarify exemption for aircraft used to transport freight and passengers for hire; Address recently enacted legislation exempting sales of repair parts installed into aircraft owned by nonresidents

Rule 072 (Draft 5). Application and Payment of Use Tax – Tangible personal property removed from resale inventory

Rule 044 (Draft 4). Trade-Ins, Trade-Downs and Barter – Define trade-down

**ADJOURN**

*Please note the day, time (1:30 PM), and location of meeting  
Questions? Contact Shelley Sheridan at (208) 334-7544  
If possible, please contact Ms. Sheridan in advance if you are interested in attending*

**RULE 037**  
**AIRCRAFT AND FLYING SERVICES**

**NOTICE OF INTENT**

Sales Tax Rule 037 is being amended to clarify the exemption for the purchase and use of aircraft primarily utilized in transporting freight or passengers, to define several terms in relation to that exemption, and to reflect statutory changes enacted in the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident.

**RELEVANT LEGISLATIVE CHANGES**

**House Bill 417**  
**Statement of Purpose**

The purpose of this amendment to existing law is to create new, good paying jobs at the 26 FAA-approved Idaho businesses specializing in repair and maintenance of fixed and rotary wing aircraft by eliminating the disadvantage Idaho businesses have competing with similar businesses located in states that do not impose taxes on parts installed on privately owned aircraft.

This change in Idaho law will make the taxation of parts installed on private aircraft owned by non-residents consistent with the taxation of parts installed as components of aircraft manufactured in Idaho and sold to non-residents, as well as parts installed on aircraft in commercial use. This Act does not change the taxation of parts purchased by or installed on aircraft owned by Idaho residents.

**Law as Amended**

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

- (1) The sale, lease, purchase, or use of aircraft primarily used to provide passenger or freight services for hire as a common carrier only if:
  - (a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and
  - (b) The aircraft is used to provide services indiscriminately to the public; and
  - (c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.
- (2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.
- (3) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:
  - (a) The aircraft will be taken from the point of delivery to a point outside this state;
  - (b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

## Shelley Sheridan

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**From:** McLean Russell  
**Sent:** Thursday, August 16, 2012 7:05 AM  
**To:** Michael J. Chakarun; Shelley Sheridan; Saul Cohen  
**Subject:** FW: Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

Here's Mr. Batt's e-mail. His proposed language is NOT yet incorporated into the latest draft.

**McLean Russell • Tax Policy Specialist**

Idaho State Tax Commission

phone: (208) 334-7531 • fax: (208) 334-7844

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**From:** Roger Batt [<mailto:Roger@amgidaho.com>]  
**Sent:** Wednesday, August 15, 2012 4:10 PM  
**To:** McLean Russell; [bringert@yahoo.com](mailto:bringert@yahoo.com)  
**Subject:** Re: Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

McLean,

Following that sentence you reworded please also add, " including but not limited to 63-3621 (a-n) Idaho Code."

Thank you,

Roger

Sent from my HTC on the Now Network from Sprint!

----- Reply message -----

**From:** "McLean Russell" <[McLean.Russell@tax.idaho.gov](mailto:McLean.Russell@tax.idaho.gov)>  
**Date:** Tue, Aug 14, 2012 1:54 pm  
**Subject:** Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting  
**To:** "Roger Batt" <[Roger@amgidaho.com](mailto:Roger@amgidaho.com)>

See attached. The line in which you have an interest is the last sentence of the main body of subsection 10. I did play with your language, but I think I'm conveying the same idea. Of course, I'm not really sure if I improved anything with my changes. If you don't like what I've done, let's keep talking.

**McLean Russell • Tax Policy Specialist**

Idaho State Tax Commission

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**From:** Roger Batt [<mailto:Roger@amgidaho.com>]  
**Sent:** Tuesday, August 14, 2012 12:48 PM  
**To:** McLean Russell  
**Subject:** RE: Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

## Shelley Sheridan

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**From:** McLean Russell  
**Sent:** Thursday, August 16, 2012 7:10 AM  
**To:** Michael J. Chakarun; Shelley Sheridan; Saul Cohen  
**Cc:** Kathryn Christie  
**Subject:** FW: Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

Here's an e-mail from Mr. Smith as well.

**McLean Russell • Tax Policy Specialist**  
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**From:** Rick Smith [<mailto:rsmith@hawleytroxell.com>]  
**Sent:** Wednesday, August 15, 2012 11:51 PM  
**To:** McLean Russell  
**Subject:** Re: Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

McLean, I am on vacation and will not be attend. I think I expressed my views sufficiently last week that the provisions for the 12-month measuring period and the Part 91 reference should be deferred. Thanks, Rick

Sent via Blackberry

Richard G. Smith  
Partner  
direct 208.388.4932

HAWLEY TROXELL

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**From:** McLean Russell [<mailto:McLean.Russell@tax.idaho.gov>]  
**Sent:** Tuesday, August 14, 2012 12:24 PM  
**To:** McLean Russell <[McLean.Russell@tax.idaho.gov](mailto:McLean.Russell@tax.idaho.gov)>  
**Subject:** Sales Tax Rules Committee - Preliminary agenda for Thursday's meeting

Hello everyone,

I have attached the agenda for Thursday. I label it "preliminary," but I don't anticipate any need for change. We have some quick cleanup work and likely some more discussion on Rule 037, but the meeting shouldn't take two hours.

Please note that we are flipping rooms again—we'll be next door in 1CR4 again.

Let me know if you have any questions or comments before Thursday.

(4) Repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of aircraft described under subsections (1) and (2) of this section **and industry standard, federal aviation administration (FAA) approved materials, parts and components installed on non-resident privately owned aircraft by qualified employees of an FAA approved Idaho repair station** are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. The provisions of this act shall be null, void and of no force and effect on and after June 30, 2016.

# DRAFT 3

## 037. AIRCRAFT AND FLYING SERVICES (RULE 037).

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

**a. Recreational Flight.** The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

**b. Freight.** Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

**c. Transportation of Passengers.** The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

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

**e. Nonresident Businesses and Other Organizations.** A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not 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. 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 ~~airplanes aircraft or other aircraft~~ is not a nonresident. The use of an ~~airplane aircraft~~ owned by such an entity will be subject to use tax upon its first use in Idaho. (4-7-11)

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

**g. Transportation of freight or passengers for hire.** "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. ~~Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire.~~ (3-4-10)(    )

~~**h. Common Carrier.** The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate intended to generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. (    )~~

~~**i. Public.** The public generally excludes the following individuals or entities: (    )~~

~~**i. Owners of the aircraft;** (    )~~

~~**ii. Owners of any entity that owns the aircraft;** (    )~~

- iii. Employees of the aircraft owner; ( )
- iv. Guests of the aircraft owner; and ( )
- v. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner. ( )

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

- a. Primarily used to ~~transport passengers or freight for hire~~ provide passenger or freight services for hire as a common carrier; (2-18-02)( )
- b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)
- c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)
  - i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)
  - ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

d. If the owner of an aircraft purchased exempt under this Subsection primarily uses the aircraft for any purpose besides the exempt uses outlined by this Subsection during any twelve (12) month period, the owner owes use tax on the value of the aircraft. If an owner holds title to an aircraft for a period less than twelve (12) months, the entire term of ownership shall be considered. ( )

**03. Sales of Aircraft Repair Parts to Nonresidents.** Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 01 of this rule. ( )

**03.04. Federal Law Prohibits States From Taxing Sales of Air Transportation.** See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)( )

**04.05. Rentals and Leases of Aircraft.** The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)( )

**05.06. Aerial Contracting Services.** Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)( )

**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to ~~sales~~ tax. It makes no difference whether or not the service is provided to a government agency or a private individual

or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. ~~(7-1-94)~~( )

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

**~~06.07.~~ Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. ~~(7-1-94)~~( )

**~~07.08.~~ Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. ~~(7-1-94)~~( )

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

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

**~~08.09.~~ Recreational Flights.** Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. ~~(4-11-06)~~( )

**~~09.10.~~ Aircraft Held for Resale.** Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. ~~(7-1-94)~~( )

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

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

**c.** Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

**~~10.11.~~ Fuel.** The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. ~~(7-1-94)~~( )

# **RULE 072**

## **APPLICATION AND PAYMENT OF USE TAX**

### **NOTICE OF INTENT**

Sales Tax Rule 072 is being amended to define the term “recent sales price” and to clarify tangible personal property removed from a resale inventory.

### **RELEVANT STATUTES**

**63-3621. Imposition And Rate Of The Use Tax -- Exemptions.** An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

...(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

**63-3615. Storage -- Use.** (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business.

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state.

## DRAFT 5

### 072. APPLICATION AND PAYMENT OF USE TAX (RULE 072).

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

**02. Use.** Use is the exercise of right or power over tangible personal property incident to either ownership of the property or the performance of a contract. The term “use” does not include use of tangible personal property incident to the performance of a contract if the owner of the tangible personal property is a business primarily engaged in producing tangible personal property for resale and the property is exempt under Section 63-3622D, Idaho Code. See Rules 012, 077, and 079 of these rules. (3-15-02)

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

**04. Specifically Excluded From the Definition of Both Use and Storage Are:** (7-1-93)

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

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

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

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

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

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

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

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

**08. Use Undeterminable at Time of Purchase.** In some cases a purchaser may be unable to determine at the time of purchase whether or not property purchased by him will be used for a taxable or nontaxable purpose. For example, a purchaser engaged in both a retailing and contracting business may not know whether an item will be sold at retail or withdrawn from inventory and used in the course of performing a contract to improve real property. In these circumstances the purchaser may purchase the goods without paying tax if he presents the documentation required by Rule 128 of these rules. The purchaser must maintain adequate accounting control to insure that use tax is properly accrued on all property subject to tax. (3-15-02)

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

**10. Tangible Personal Property Removed From Inventory.** A retailer or wholesaler may purchase tangible personal property for resale without paying sales tax. The tangible personal property then becomes part of inventory. The retailer or wholesaler may use inventory in displaying or demonstrating the inventory for purposes of selling the inventory in the normal course of business. If the retailer or wholesaler uses inventory for any purpose besides display or demonstration in the normal course of selling that inventory, the retailer or wholesaler owes use tax. If inventory is consumed during such display or demonstration, the retailer or wholesaler owes use tax. The retailer or wholesaler must calculate the use tax on the value of the tangible personal property. Use tax does not apply to any use or consumption of tangible personal property where such use is specifically exempted from use tax by Idaho Code. ( )

a. Inventory held for resale becomes subject to use tax at the time the retailer or wholesaler removes the tangible personal property from inventory. If a retailer or wholesaler removes tangible personal property from inventory and then performs additional manufacturing or processing labor, the retailer or wholesaler should calculate use tax on the acquisition cost before the additional labor. However, If a retailer or wholesaler removes tangible personal property after performing additional manufacturing or processing labor, the retailer or wholesaler must calculate use tax on the total inventoried cost including the additional labor. ( )

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

(7-1-93)( )

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

(7-1-93)( )

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

(7-1-93)( )

**RULE 044**  
**TRADE-INS, TRADE-DOWNS AND BARTER**

**NOTICE OF INTENT**

Sales Tax Rule 044 is being amended to address the trade in of merchandise in which cash is received for all or part of the value of that merchandise and to define the term “trade down.”

**RELEVANT STATUTES**

**63-3613. Sales Price.** (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise...

...(b) The term "sales price" does not include any of the following:

...2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.

## DRAFT 3

### 044. TRADE-INS, TRADE-DOWNS AND BARTER (RULE 044).

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

**02. Trade-In Allowance.** When a retailer sells merchandise from his resale inventory and lets the customer trade in other goods which the retailer places in his resale inventory, the taxable sales price of the merchandise may be reduced by the amount allowed as trade-in. ~~Example: A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).~~ To qualify for the trade-in allowance, the property traded in must be consideration delivered by the buyer to the seller. The sales documents, executed not later than the time of sale, must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. The delivery of the trade-in and the purchase must be components of a single transaction. ~~(5-8-09)( )~~

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

~~**03. Trade-Downs.** A trade-down is a transaction in which a vendor accepts a trade-in from the customer that equals or exceeds the value of the merchandise sold to the customer. The taxable sales price is reduced to zero and no sales tax is due on the transaction. ( )~~

~~**03.04. Disallowed Trade-In Deductions.** Trade-in deductions are not allowed on transactions between individuals because the trade-in property does not become a part of an inventory held for resale. (3-30-01)( )~~

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

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

~~**04.05. Insurance Settlements.** An insurance settlement does not qualify as a trade-in. Example: Tom is involved in a car accident. His insurance company determines the damage exceeds the value of the car and settles with Tom on that basis. If Tom buys another car, he must pay sales tax on the entire sales price of the replacement car. (3-30-01)( )~~

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

(7-1-93)

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

(7-1-93)

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

(7-1-93)

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

(7-1-93)

**c.** A combination of the two (2) methods, above.

(7-1-93)

**d.** Example, a lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000).

(3-30-01)

**i.** Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment.

(3-30-01)

**ii.** Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments.

(3-30-01)

**iii.** Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly.

(3-30-01)

**07.08. Rental/Lease Property Traded-In.** When a person disposes of tangible personal property that is leased and assigns his right to purchase the leased property to the retailer, no trade-in allowance is given for the amount of the residual buyout paid by the retailer. However, if the residual buyout amount which the lessee would pay to purchase the property is less than the

amount that would be allowed by the retailer as a trade-in if the lessee had actually owned the vehicle, then the sales price subject to tax may be reduced by the difference between the total trade-in amount and residual buyout. (3-30-01)

**a.** Example: A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee actually owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the sales price subject to sales tax. (3-30-01)

**b.** Example: A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000). (3-30-01)