

Welcome & Introductions.....committee chair

Recap of July Meeting.....committee chair

Rules Status Report..... committee chair

Review rule drafts

Sales and Use Tax (35.01.02)			
RULE NUMBER	TITLE	STATUS	TODAY'S ACTION
Rule 003	ADMINISTRATIVE APPEALS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 011	RETAIL SALES: SALE AT RETAIL	The commission will not move forward with any changes to this rule at this time.	None
Rule 018	RETAILER DEFINED	Negotiated 08-22-2018	Review
Rule 029	PRODUCING, FABRICATING, AND PROCESSING	The commission will not move forward with any changes to this rule at this time.	None
Rule 037	AIRCRAFT AND FLYING SERVICES	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 041	FOOD, MEALS, OR DRINKS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 043	SALES PRICE OR PURCHASE PRICE DEFINED	The commission will not move forward with any changes to this rule at this time.	None
Rule 049	WARRANTIES AND SERVICE AGREEMENTS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None

Rule 068	COLLECTION OF TAX	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 077	EXEMPTION FOR RESEARCH AND DEVELOPMENT AT INL	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 106	MOTOR VEHICLES SALES, RENTALS, AND LEASES	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
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	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 110	RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None
Rule 117	REFUND CLAIMS	Negotiated 08-22-2018	Review
Rule 128	CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS	Negotiated 08-22-2018	Review

Hotel/Motel and Campground Sales Tax (35.01.06)			
RULE NUMBER	TITLE	STATUS	TODAY'S ACTION
003	ADMINISTRATIVE APPEALS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None

Prepaid Wireless E911 Fee (35.01.14A)			
RULE NUMBER	TITLE	STATUS	TODAY'S ACTION
003	ADMINISTRATIVE APPEALS	Negotiated draft approved - you can still submit written comments about the draft changes to the Rules Coordinator.	None

018. RETAILER DEFINED (RULE 018).Sections 63-3610 and 63-3611, Idaho Code

01. Retailer. The term retailer includes a person doing a regularly organized retail business in tangible personal property and defined services and selling to the user or consumer, not for resale. Retailer includes commission salesmen, sales at auctions, out-of-state sellers that must overcome the presumption defined in Section, 63-3611, Idaho Code. assignees for the benefit of creditors, receivers and any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers. ~~(7-1-93)~~()

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

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

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

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

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

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.

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~~. 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 a 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; ()

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

 ii. having the ~~purchaser~~buyers ~~may~~ stamp or imprint on the face of their purchase orders, a ~~certificate statement that~~ contains the following language: () (3-4-10)

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

(3-4-10)()

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. ()

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 ~~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)~~

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)