

**SALES TAX RULES COMMITTEE  
AGENDA**

The Committee convenes on Monday, April 17, 2017 at: 1:30 p.m.

Idaho State Tax Commission  
Room 1CR5 / Plaza IV / 800 Park Ave / Boise, Idaho

Welcome & Introductions

*Committee Chair Tom Shaner*

2017 rule changes required/potentially required due to new laws in 2017 legislature.

**HB 32** Signed – Nonresident Vehicle use. This will require rule change 63-3022R

**HB 216** Signed –Short-term or Vacation Rentals.

**HB156** Signed - Adds a new section 63-3606C, Park Model Recreational Vehicles.

**HB067** Vetoed- Grocery credit and tax repeal. No rules necessary.

Rules Status Report - Newly adopted rules. ....*Chair*  
Current proposals.

Rule 067 REAL PROPERTY—Submitted by Katrina Basye, Idaho Power.

Rule 107 Nonresident Vehicle Purchase.

1. Any Additional Items for Discussion
2. Review Action Items for next meeting
3. Next meeting date: May 16, 2017 1:30pm
4. Meeting adjourned

*For more information, please contact the Committee Chair, or the Rules Coordinator at [sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov) or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee. If you are unable to attend, but would like to participate via calling in, please contact Sherry Briscoe to receive a conference call dial-in number.*

## **Rules adopted during the 2017 Legislative session:**

**RULE 079** - (NR) Refers agricultural users to agricultural rule (083) for agricultural-specific storage exemption, consistent with 2016 HB 386, leaving existing language for other producers unchanged, and clarifies that equipment and supplies used in quality control are exempt.

**RULE 080 *Lumber Manufacturing*** – (NR); see Rule 082 below.

**RULE 081 *Underground Mining*** - (NR); see Rule 082 below.

**RULE 082 *Aboveground, Open Pit, Mining*** - (NR) These three rules clarify longstanding policy that equipment and supplies used in quality control are exempt.

**RULE 083** – (NR) Is being amended consistent with 2016 HB 386 to eliminate confusion caused by statutory language regarding exemption for equipment and supplies used in storage of agricultural crops and produce, and clarifies longstanding policy that equipment and supplies used in quality control are exempt.

**RULE 096** – (NR) Is being amended consistent with 2016 HB 347 to remove the exclusion of hand tools in irrigation equipment and supplies with a unit cost of less than \$100 from the exemptions.

**RULE 102** – (NR) Is being amended consistent with 2016 HB 347 to remove the exclusion of hand tools in logging with a unit cost of less than \$100 from the exemptions.

**RULE 100** – (NR) Is being amended consistent with 2015 HB 75 to exempt prescription eyeglasses, their component parts, and prescription contact lenses.

**RULE 107** – (NR) Is being amended consistent with 2016 HB 348 to add paddleboards and similar watercraft to the list of vessels not eligible for exemption when sold to nonresidents.

**RULE 037** - (NR) Is being amended consistent with 2016 HB 540 to exempt fixed-wing aircraft primarily used as an air tactical group supervisor platform under contract with a governmental entity for wildfire activity.

**RULE 041** - Corrects the rule's reference to the Older Americans Act.

# Sales Tax Rules Status Report

## 2017-2018 Rules Date of meeting, April 17, 2017

Rule #	Neg .	TITLE/ Subject Matter	Date ARRF Approved & Sent to DFM	DFM Tracking Number	Date Approved By DFM	Rule Status	Most Recent Draft	ISSUES/Comments	Date Sent For Publication
67	Yes	Real Property	12-21-16	A352-2017-12	1-5-17			The NEC requires that certain cabling be removed when abandoned making it personal property.	
107	No	Grace period for nonresident vehicle use.	3-27-17	A352-2017-15	3-28-17			Nonresident vehicle purchases.	

Open Discussion Issues	
Issue	Comments
New business	
Old business	

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

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

**03. Exception.** The Sales Tax Act provides only one (1) exception. If title to the tangible personal property is vested in a person entitled to the production exemption, see ISTC Rule 079, the contractor's use of the property will also be exempt. (7-1-93)

**067. REAL PROPERTY (RULE 067).**

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

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

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

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

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

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

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

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

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

**04. Example 2:** The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (5-8-09)

**05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(b), Idaho Code. (7-1-93)

**06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the

particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: (5-8-09)

a. It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or (5-8-09)

b. It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. (5-8-09)

**07. Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. (5-8-09)

**068. COLLECTION OF TAX (RULE 068).**

**01. In General.** Idaho Sales Tax is an excise tax which is imposed upon each sale at retail. The tax is computed at the time of each sale and the tax on the total sales for the reporting period, usually monthly, will be reported and paid on or before the due date as established by Rule 105 of these rules. (4-11-06)

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

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

**04. Bracket System for Five Percent Tax Rate.** The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale if the sales tax rate is 5%. The 5% tax rate was in effect from July 1, 2005, through September 30, 2006. (4-2-08)

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

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

Dollar Amount of Sale	Tax
0.00 - 0.05	- .00
0.06 - 0.25	- .01
0.26 - 0.45	- .02
0.46 - 0.65	- .03
0.66 - 0.85	- .04
0.86 - 0.99	- .05

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

**05. Bracket System for Six Percent Tax Rate.** Beginning October 1, 2006, the sales tax rate is six percent (6%). The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale. (4-2-08)

a. Multiply six cents (\$0.06) for every whole dollar included in the sale, and (3-20-04)

or Idaho Transportation Department cannot verify that the lessor is properly registered to collect the tax, title and registration will be denied. (7-1-93)

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

**07. Cross-References.** (7-1-93)

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

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

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

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

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

**f.** See Rule 107 of these rules. Motor vehicles gifts, military personnel, and exemptions. (4-2-08)

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

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

Sections 63-3606B & 63-3622R, Idaho Code

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

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

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

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

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

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

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

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

**03. Nonresidents.** (3-30-07)

**a.** A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be

registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

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

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

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. (4-11-15)

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

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

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

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

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

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

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

**b.** Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since



he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the six hundred dollars (\$600) tax due Idaho. The assessor will collect three hundred dollars (\$300) tax. (4-11-15)

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

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

**e.** A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

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

**g.** Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

**a.** The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

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

**c.** Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

**08. Sales to American Indians.** An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

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



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

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

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

ii. The motor vehicles, vessels, ATVs, UTVs, specialty off-highway vehicles, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (3-25-16)

**b.** To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

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

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

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

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

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

**f.** For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

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

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

**12. Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)