

**SALES TAX RULES COMMITTEE MEETING
AGENDA**

The Committee convenes on Thursday, May 21, 2015, at 1:45 p.m. in Room 1CR5

1. Welcome & Introductions
2. Overview of Rulemaking Process
3. Negotiated Rulemaking Discussion
 - a. **SUT Rule 027.** Computer Equipment, Software, and Data Services – Changes to the law enacted by House Bill 209 necessitate some changes to the rule related to digital videos, digital books, digital music, and digital games. In addition, the rule will be reviewed for changes to address ongoing issues with legislation from prior years.
 - b. **SUT Rule 056.** Photographers and Photofinishers – Update the rule to address print photos vs. digital photos delivered on disc vs. digital photos delivered electronically and clarify that some photographers may no longer qualify for production exemption.
 - c. **SUT Rule 100.** Prescriptions – Updated to address changes in House Bill 75 exempting prescription eyeglasses in 2015 and prescription contacts in 2016.
 - d. **SUT Rules 107.** Motor Vehicles – Changes to align with House Bill 12 and address situations where title contains both an Idaho resident and a nonresident.
4. Dates to Keep in Mind
 - a. **June 24** – Next rules committee meeting
 - b. **August 31** –Final drafts of proposed rules must be ready and submitted to Rules Coordinator.

Rule 027
Computer Equipment, Software, and Data Services
Discussion Draft 1

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).
Section 63-3616, Idaho Code

01. Definitions. For purposes of this rule, the following terms will have the following meanings: (4-11-15)

a. Canned Software. Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. (4-11-15)

b. Computer. A computer is a programmable machine or device having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (4-11-15)

c. Computer Hardware. Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (4-11-15)

d. Computer Program. A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. (4-11-15)

e. Computer Software. Computer software, or simply software, is defined as any of the following: (4-11-15)

i. A computer program; (4-11-15)

ii. Any part of a computer program; (4-11-15)

iii. Any sequence of instructions that operates automatic data processing equipment; (4-11-15)
or

iv. Information stored in an electronic medium. (4-11-15)

f. Custom Software. Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. (4-11-15)

g. Digital Product. See definition for "Information Stored in an Electronic Medium" in Subsection 027.01.h. (4-11-15)

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h. Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with “digital product.” (4-11-15)

i. Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user’s storage media at the user’s location but does not transfer storage media containing the software to the user. (4-11-15)

j. Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. (4-11-15)

k. Storage Media. Storage media include, but are not limited to, hard disks, optical media discs, diskettes, magnetic tape data storage, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. (4-11-15)

02. Computer Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (4-11-15)

03. Canned Software. When canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. If canned software is sold using a physical package but the package does not contain the canned software on storage media, it is not tangible personal property and the sale is not taxable. For example, if a printed key code is sold in a box that allows the user to download canned software and activate the canned software using the key code, the sale is not taxable. (4-11-15)

a. If canned software is loaded on a user’s computer but has minimal or no functionality without connecting to the provider’s servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in subsection 03 of this rule. (4-11-15)

b. Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 through 027.08 of this rule. (4-11-15)

c. When a sale of canned software is taxable, tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for

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extended periods, all fees are includable in the purchase price subject to tax. (4-11-15)

04. Remotely Accessed Computer Software. Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. (4-11-15)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (4-11-15)

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; (4-11-15)

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (4-11-15)

iii. If the maintenance contract only provides upgrades delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; (4-11-15)

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

c. If an optional software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software updates on storage media, no portion of the contract is taxable unless the customer actually receives software updates on storage media. (4-11-15)

06. Digital Products. Digital music, digital books, and digital videos are tangible personal property regardless of the delivery or access method but only if the purchaser has a permanent right to use the digital music, digital books, or digital videos. Where the purchaser has

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a permanent right to use these digital products, the ~~§ sales, leases, and rentals of these digital products are~~ is taxable. ~~Whether the user has the right to stream or download these digital products, the sale, lease, or rental of these digital products is taxable.~~ Leases or rentals of these digital products are not taxable. (4-11-15)()

a. Other than digital music, digital books, or digital videos, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. (4-11-15)

b. Special rules apply to digital games. See Subsection 027.08 of this rule. (4-11-15)

07. Digital Subscriptions. Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions ~~granting access to a database of digital music, digital books, or digital videos~~ are not taxable ~~regardless of the method of access or delivery.~~ (4-11-15)()

~~a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable.~~ (4-11-15)

~~b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may download content from the database onto the user's storage media.~~ (4-11-15)

08. Digital Games. Digital games are tangible personal property regardless of access or delivery method ~~and, therefore,~~ but only if the purchaser has a permanent right to use the digital game. ~~Where the purchaser has a permanent right to use a digital game,~~ the sale of ~~a~~ the digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still ~~not~~ not taxable if the purchaser has a permanent right to use the digital game. If a user pays a periodic subscription charge to play a digital game ~~that requires a constant connection over the internet to a remote server,~~ the periodic subscription charge is not taxable. If a user pays a periodic subscription charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is not taxable. ~~If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable.~~ (4-11-15)()

09. Reports Compiled by a Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable ~~regardless of the means of transfer~~ if the final product is printed or delivered in an electronic format on storage media. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented or delivers the report to the purchaser electronically. (3-6-00)()

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a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single database. Since the same database is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (4-11-15)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

10. Online or Remote Data Storage. Charges to store data on storage media owned and controlled by another party is a nontaxable service. (4-11-15)

11. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

12. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created

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by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

13. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

Software Taxation Matrix

Section 1 – Software				
Line	Description	Examples	Taxability	Relevant Rule 027 Sections
1A	Software permanently loaded from a disc onto the user's hardware. The user retains the disc in their possession. The software is fully functional without an internet connection, though the software may require a one-time or ongoing validation that temporarily requires the internet. Software updates and additional optional features may be available over the internet.	Microsoft Windows & Office applications (Word, Excel, PowerPoint), TurboTax, QuickBooks, Adobe Photoshop	Taxable	01.a & 03
1B	Same facts as 1A except the software does not come on a disc but instead comes preloaded on hardware purchased at the same time as the software.	Same examples as 1A purchased w/ new HP computer	Taxable	01.a & 03
1C	Same facts as 1A, but the software has minimal functionality, if any at all, without access over the internet to the provider's servers.		Taxable	01.a & 03.a
1D	Same facts as 1A except the user downloads the software. The user never receives a disc with the software.	Same examples as 1A	Not Taxable	01.a & 03
1E	Same facts as 1A except the seller loads the software directly onto the user's hardware, but does not leave any discs with the user (i.e. the "load and leave" method of delivery).	Enterprise software such as PeopleSoft	Not Taxable	01.a & 03
1F	In addition to any of the examples from 1A through 1E, a user pays separately for optional updates or additional features downloaded or accessed over the internet.	Intuit Payroll updates	Not Taxable	01.a & 03
1G	Software product key is sold in a physical package, but the software is downloaded off the internet. The user never receives a disc with the software on it.	Same examples as 1A	Not Taxable	01.a & 03
1H	Purchase of an app for a tablet or smartphone (excluding games - see Section 7). The app may or may not have functionality that requires an internet connection.	Apple or Android apps	Not Taxable	01.a & 03
1I	Periodic charges for renewal of a software license (required or optional) where ongoing software updates are actually delivered to the user on disc. Allowance for discs to be provided under the license is not sufficient on its own. See Section 2 if support services are an included component of the charge.		Taxable	01.a & 03

Section 1 – Software (continued)				
1J	Periodic charges for renewal of a software license (required or optional) where ongoing software updates are delivered electronically. See Section 2 if support services are an included component of the charge.		Not Taxable	01.a & 03
1K	Software accessed over the internet often through a web browser (i.e. Internet Explorer). The software is not permanently loaded onto the user's hardware. In many cases, the user may generate reports from the software which can usually be permanently downloaded onto the user's hardware.		Not Taxable	01.j & 04
1L	Periodic charges for online data storage. May include software loaded on the user's hardware that monitors certain files on the user's system for automatic online backup.	Carbonite	Not Taxable	10

Section 2 – Software Maintenance Contracts				
Line	Description	Examples	Taxability	Relevant Rule 027 Sections
2A	Periodic charges for a required software maintenance contract (i.e. the software won't work at all without paying the maintenance) where the ongoing software updates are actually delivered on disc. Allowance for discs to be provided under the contract is not sufficient on its own.		Taxable	05.a
2B	Periodic charges for a required software maintenance contract (i.e. the software won't work at all without paying the maintenance) where the ongoing software updates are delivered electronically.		Not Taxable	05.a
2C	Periodic charges for an optional software maintenance contract where ongoing software updates are actually delivered to the user on disc. Allowance for discs to be provided under the contract is not sufficient on its own.		Taxable (50%)	05.b.ii
2D	Periodic charges for an optional software maintenance contract where ongoing software updates are not delivered on disc.		Not Taxable	05.b.iii

Section 3 – Digital Products

Line	Description	Examples	Taxability	Relevant Rule 027 Sections
3A	Purchase of a digital video, music, or book. The user downloads the digital product onto the user's hardware and has a permanent right to the product.	iTunes, Amazon Kindle books, Barnes & Noble Nook books	Taxable	06
3B	Same facts as 3A except the digital product may be streamed (i.e. downloaded temporarily), though the user retains the permanent right to download and use the digital product if desired.	Amazon Cloud Player	Taxable	06
3C	Charge to rent a digital video, music, or book. Depending on the seller, the digital product may be streamed or downloaded for a longer, though usually limited, period of time.	Amazon & iTunes movie rentals, Amazon Kindle textbook rentals, DigiBoo	Not Taxable	06
3D	Purchase of a ringtone for a cellphone	Verizon Wireless Media Store	Taxable	06
3E	Purchase or rental of any other digital products (e.g. a digital picture or digital article). The user downloads the digital product onto the user's hardware. [Digital games are addressed in Section 7.]		Not Taxable	06

Section 4 – Digital Subscriptions

Line	Description	Examples	Taxability	Relevant Rule 027 Sections
4A	Charge to access online library of digital videos, books, or music which the user streams over the internet. The software necessary to play them is provided free of charge.	Netflix Streaming, Hulu Plus, Amazon Prime Streaming Video	Not Taxable	07
4B	Charge to access digital periodicals such as a magazine or newspaper.	Digital subscriptions to Idaho Statesman, Wall Street Journal, New York Times, or Time Magazine	Not Taxable	06.a
4C	Charge to access online library of digital research content. The charge may be based on access for a period of time or quantity of content accessed. The database is continually updated. In some instances, content can be downloaded over the internet and loaded permanently onto user's hardware.	Westlaw, CCH, Lexis Nexis	Not Taxable	06.a
4D	Charge to access an online contact list, contracts list, mailing list, sales lead list, credit report, etc.	Dunn & Bradstreet, Salesforce.com, InfoUSA.com	Not Taxable	06.a

Section 5 – Remotely Accessed Data Processing & Resale

Line	Description	Examples	Taxability	Relevant Rule 027 Sections
5A	Seller purchases raw data (e.g. sales information). Seller expends significant time and resources to "clean up" the raw data and get it into a usable format. Then, Seller works with User to determine what portion of the data is of interest to User (e.g. sales of certain products in a particular region). Seller charges User for the right to use the data for a specified period of time and User only has access to the data over the internet. Reports can be generated from the data that the user may load onto the user's hardware.		Not Taxable	06.a
5B	Associated with the transaction described in 6A, Seller also works with User to design custom projections and reports to extrapolate data in a format of interest to User. Seller charges separately for these services.		Not Taxable	

Section 6 – Cable & Satellite TV

Line	Description	Examples	Taxability	Relevant Rule 027 Sections
6A	Charge to view a specific event or show that is broadcast live	Pay Per View Live Events	Not Taxable	06
6B	Charge to view a specific event or show that is not live but broadcast at a set time	Pay Per View Movie	Not Taxable	06
6C	Same facts as 6B except the event or show may be viewed at any time during a defined period of time.	Video on Demand	Not Taxable	06

Section 7 – Video Games

Line	Description	Examples	Taxability	Relevant Rule 027 Sections
7A	Sale of a digital game whether delivered on disc or by download.		Taxable	
7B	Recurring subscription charges to play a digital game or use a gaming service.		Not Taxable	

Rule 056
Photographers & Photofinishers
Discussion Draft 1

056. PHOTOGRAPHERS AND PHOTOFINISHERS (RULE 056).

Sections 63-3616 & 63-3622D, Idaho Code.

01. Sales ~~by Photographers and Photofinishers~~ of Photographs. Photographers and photofinishers are engaged in the business of producing and selling tangible personal property. ~~(6-23-94)~~()

a. Printed photographs are tangible personal property. Sales of printed photographs are taxable. ()

b. Digital photographs are tangible personal property when sold and delivered to the purchaser on storage media. Sales of digital photographs are taxable when sold and delivered to the purchaser on storage media. ()

c. Digital photographs are not tangible personal property when delivered electronically. Sales of digital photographs are not taxable when sold and delivered to the purchaser electronically. ()

02. Sales by Photographers and Photofinishers. ()

a. When ~~such persons develop and/or print pictures, and~~ photographers or photofinishers sell films, frames, cameras, ~~completed printed~~ printed photographs, digital photographs delivered on storage media, photostats, blueprints, etc., they are making a sale of a completed article of tangible personal property ~~in every case~~ and they must collect the tax on the total selling price unless an exemption applies. ~~(6-23-94)~~()

b. When such persons render service, such as retouching and tinting or coloring of print photographs belonging to others, they are performing taxable processing services and must collect the tax from their customers unless an exemption applies. ~~(6-23-94)~~()

c. Photographers may charge a sitting fee to cover the cost of taking the picture, which may be separately stated from any charges for ~~developing and printing the~~ photographs. When charged along with a sale of printed photographs or digital photographs delivered on storage media, Such sitting fees are charges for producing or fabricating tangible personal property and are ~~therefore subject to sales tax~~ taxable. See Idaho Sales Tax Administrative Rule 029. ~~(6-23-94)~~()

023. Sales to Photographers and Photofinishers. ~~(6-23-94)~~()

a. Photographers ~~who are in the business of selling photographs~~ and photofinishers may qualify for the production exemption if they are primarily in the business of selling print photographs or digital photographs delivered on storage media. Photographers and photofinishers primarily in the business of selling digital photographs that are delivered electronically cannot qualify for the production exemption. ()

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b. The production process begins when the film is exposed. Therefore, photographers must pay sales or use tax on purchases of props, backdrops and other items used prior to the start of production of the photograph. Equipment and supplies including cameras, lights, lenses, film, paper, fix, developer, and enlargers used to produce photographs are used during the production process and are exempt if the photographer otherwise qualifies for the production exemption in Section 63-3622D, Idaho Code. ~~(6-23-94)~~()

bc. Photofinishers may purchase equipment and supplies exempt from sales or use tax as long as the equipment and supplies are directly used to produce photographs which they will sell and they otherwise qualify for the production exemption provided by Section 63-3622D, Idaho Code. (6-23-94)

04. Definitions. For purposes of this rule, the following terms have the following definitions: ()

a. Storage media. Storage media include, but are not limited to, optical media discs such as CDs or DVDs, hard drives, diskettes, magnetic tape data storage, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. ()

Rule 100
Prescriptions
Discussion Draft 1

100. PRESCRIPTIONS (RULE 100).

[Section 63-3622N, Idaho Code.](#)

01. In General. Sales tax does not apply to sales of drugs, oxygen, orthopedic appliances, orthodontic appliances, dental prostheses including crowns, bridges, inlays, overlays, prosthetic devices, durable medical equipment, and certain other medical equipment and supplies specifically named in Section 63-3622N, Idaho Code, when: (7-1-99)

a. Purchased by a practitioner to be administered or distributed to his patients if such practitioner is licensed by the state under Title 54, Idaho Code, to administer or distribute such items, or when; (7-1-93)

b. Purchased by or on behalf of an individual under a prescription or work order issued by a practitioner who is licensed by the state to practice one of the following professions: physician, physician assistant, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter. Items purchased under the prescription or work order of a person who is not a health care practitioner specifically named in Section 63-3622N(b), Idaho Code, will not qualify for the exemption. (5-8-09)

c. Example: A physician issues a prescription for a wheelchair to a nursing home patient. The nursing home delivers the prescription to a wheelchair retailer and purchases the wheelchair on behalf of the patient. No tax applies. (7-1-93)

d. Example: A nursing home purchases wheelchairs for general use in its facility. Since the wheelchairs are not purchased under prescription for a specific patient, sales tax applies. (7-1-93)

02. Seller Must Document Exempt Sale. The seller must keep the written prescription or work order on file to document the exemption. Sales made without a prescription or work order are subject to tax. The seller must be able to identify sales which are exempt under prescription from sales which are taxable. (7-1-93)

a. Refills of prescriptions on file with a seller are exempt from tax. (7-1-93)

b. Some drugs may be lawfully sold without a prescription. When sold over the counter without a prescription, the drugs are subject to sales tax. When sold under a prescription, the drugs are exempt from tax. (7-1-93)

03. Purchases by Practitioners. A practitioner, who is licensed under Title 54, Idaho Code, to administer or distribute a medical product listed in Section 63-3622N, Idaho Code, may purchase the item exempt from tax by issuing his supplier an exemption certificate required by Rule 128 of these rules. Only the medical items named in Section 63-3622N, Idaho Code, which the practitioner is licensed to administer or distribute qualify for this exemption. (3-15-02)

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04. Purchases by Nursing Homes and For Profit Hospitals. The Sales Tax Act does not provide a general exemption from tax for purchases made by nursing homes and similar facilities or by hospitals operated for profit. Tax must be paid on all purchases, with two (2) exceptions. The institution may purchase medical items exempted by Section 63-3622N, Idaho Code, if: (7-1-93)

a. The purchase is made on behalf of a patient under a prescription or work order from a practitioner licensed to prescribe such items; or (7-1-93)

b. The purchased items can only be administered by a practitioner licensed to administer such items. (7-1-93)

c. An exemption certificate must be completed and provided to the vendor of the exempted items. See Rule 128 of these rules. (3-15-02)

05. Sale of Eyeglasses, ~~Removable~~ Contact Lenses, and ~~Other~~ Related Products ~~by Optometrists, Oculists, and Ophthalmologists~~. The sale of non-prescription eyeglasses, non-prescription ~~removable~~ contact lenses and other related products, such as carrying cases, non-prescription sunglasses, and cleaning solutions ~~by optometrists, oculists, or ophthalmologists~~, is subject to the sales tax, ~~regardless of whether any of these items are prescribed or fitted to the eyes of the purchaser~~. (6-23-94)()

a. The sale of prescription eyeglasses after July 1, 2015, is exempt. If eyeglass frames are sold separately from prescription lenses, the sale is taxable unless the seller can document that the purchaser will use the frames with prescription lenses. ()

b. The sale of prescription contact lenses after July 1, 2016, is exempt. The sale of prescription contact lenses before July 1, 2016, is taxable. ()

c. Amounts charged for professional services in examining the patient and prescribing and dispensing ~~the ophthalmic appliance~~ prescription contact lenses are not subject to tax providing these services are not agreed to be performed as a part of the sale and are separately stated on the billing to the patient. (7-1-93)()

~~bd.~~ Separately stated charges for professional services may not be used to reduce the stated sales price of the property below its actual cost. (7-1-93)

06. Dental and Orthodontic Appliances. The sale or purchase of dentures, partial plates, dental bridgework, orthodontic appliances, and related parts for such items by a dentist, denturist, orthodontist or other practitioner is not a taxable sale. (7-1-99)

Rule 107
Vehicles and Vessels...
Discussion Draft 1

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 63-3621\(k\) and \(l\) and 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. [To qualify for the exemption, all owners of the motor vehicle must be](#)

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[nonresidents.](#) ()

c. 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)

ed. 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. To qualify for the exemption, all owners of a personally owned vehicle, vessel, or aircraft must meet the new resident criteria. ()

b. 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)

bc. 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

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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)

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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)

a. To qualify for the exemption, all purchasers of the motor vehicle must be enrolled members of an American Indian tribe. ()

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

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Idaho. (5-3-03)

a. Sales ~~to nonresidents~~ of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles (SOHVs), off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: ~~(5-3-03)~~()

i. The motor vehicles, vessels, ATVs, UTVs, SOHVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and ~~(5-3-03)~~()

ii. The motor vehicles, vessels, ATVs, UTVs, SOHVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. ~~(5-3-03)~~()

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, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, ~~an~~ ATV, UTV, and SOHV have the same meaning ~~any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator given to them in Section 67-7101, Idaho Code.~~ given to them in Section 67-7101, Idaho Code. ~~(3-4-10)~~()

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, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

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

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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)