GUIDELINES FOR THE IDAHO DEPARTMENT OF TRANSPORTATION PROVIDING SIGNS FOR INSTALLATION BY CONTRACTORS

This document, written by the Policy Section of the Idaho State Tax Commission (Commission), is intended as guidance for the Idaho Transportation Department (Department) when the Department provides signs and contracts for labor to install them.

This is not intended as comprehensive coverage of Idaho sales and use tax law. For contracts that involve facts not specifically covered in this document, seek assistance from the Idaho State Tax Commission's Sales and Use Tax Audit Bureau or the Tax Policy Section. Call toll free at (800) 972-7660 or 334-7660 in the Boise area. Hearing impaired callers can use the Idaho Relay Service at (800) 377-3529.

Conclusion based on relevant sales and use tax law: In general, contractors who improve real property owe a tax on the materials they use. The Commission concludes that signs provided by the Department, with some exceptions discussed below, are improvements to real property.

When the Department gives contractors materials necessary to complete a real property improvement, tax is owed on those materials by the contractor unless the project owner paid a tax. Since the Department is an Idaho governmental entity exempt from paying sales or use tax, purchases will not have been taxed.

Therefore, contractors will owe a use tax on the fully fabricated value of signs given to them by the Department for installation. The Department is responsible for placing a value on the signs that includes materials and labor costs to bring the signs to their fully assembled state. The contractor, who is legally obligated to pay the tax, can rightly pass this cost along in its bid as overhead, cost of materials, or a use tax obligation, for example.

Analysis for the Conclusion: The term "sign" is not defined in the Idaho Sales and Use Tax Act, but there is an interpretation of how sales and use tax law is applied to signs in the administrative rules. The rule, IDAPA 35.01.02.036, refers to signs in the context of advertising and information. These are signs that are tied exclusively to business names and advertising information about those businesses. Since these signs (aside from billboards, which are defined as real property) have utility only to the business, rather than to the structure to which they are attached, they are tangible personal property and not improvements to real property.

By contrast, signs placed at the direction of the Department provide roadway information to motorists and are intended to remain in place much like the road, overpass, or shoulder to which they are attached. Traffic signs, including but not limited to stop signs, speed limit signs, reduced speed ahead signs, yield signs, signs stating distances to destinations, dead end signs, lane signs, right or left turn only signs, exit signs, etc. are incorporated into the realty, and are taxable to the contractors installing them. This opinion is consistent with how traffic signals are treated for sales and use tax purposes.

The Department is often responsible for signs that provide location of and directions to private businesses, public services, hospitals and public attractions. While some of the businesses can

cease to exist or are subject to name changes, the signs themselves are intended to remain, as they fulfill a public service function of the Department. For this reason and for the sake of efficiency in tax administration and compliance, the Commission treats these signs as real property as well.

Exceptions: Another category of sign is temporary, including those that denote construction sites, speed reductions due to road conditions, etc. These, and signs like them, are not intended to remain in place longer than the conditions that make them necessary, even if they are imbedded into the ground or are attached to other objects for stability and durability. These signs continue to be tangible personal property.

If a contractor buys or makes these signs from purchased materials, the contractor must pay tax if the sign and/or materials remain the contractor's property. If the signs are to be sold to the Department, therefore becoming property of the Department, the materials or signs can be purchased without paying sales/use tax since the contractor is making a retail sale. If the Department provides temporary signs for a contractor's temporary use, the contractor will not owe a tax on their value.

References (excerpted in relevant part):

Idaho Code § 63-3609(a): All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

Idaho Code § 63-3615(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person…

Idaho Code § 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property,…

Idaho Sales and Use Tax Administrative Rule, IDAPA 35.01.02.036. SIGNS AND BILLBOARDS (RULE 036).

Sales & Use Tax
Rule 036

Draft 1

036. SIGNS AND BILLBOARDS (RULE 036).

01. Signs and Billboards as Custom Made Articles. The fabrication, manufacturing, lettering, etc., of advertising or informational signs of whatever description, including, but not limited to, neon signs, display lettering on trucks, display cards, show cards, etc., are considered made-to-order goods or custom made articles and as such are subject to Idaho sales tax based upon the total sales price of the completed sign to the user. The sales price shall include material and labor. (7-1-93)

02. Rental of Signs. The rental of signs is subject to sales tax and a sales tax will be collected and remitted to the state upon the date on which rental payments are due and owing the lessor. The tax will be measured by the gross rental receipts. A lease-purchase agreement which in fact a sale, will be treated as a sale and tax collected on the entire sales price at the date upon which the contract is executed. (7-1-93)

03. Material That Becomes Part of a Sign. Persons who sell signs may buy materials which become a part of the product without paying tax if they give the seller the documentation required by Rule 128 of these rules. (3-15-02)

04. Traffic Signs. Traffic signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of traffic signs include speed limit signs, stop signs, and street markers. (____)

a. In general, traffic signs become real property upon installation. Consequently, an installer of traffic signs acts as a contractor improving real property when performing the installation work. Therefore, a traffic sign installer is the consumer of all materials used in the installation of the traffic sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials itself or had the sign materials provided by the sign owner. However, if the sign owner has already paid sales or use tax on its purchase of the sign materials, the installer will not owe any additional use tax. (____)

b. Alternatively, if a traffic sign is intended to serve a temporary purpose, the traffic sign does not become real property regardless of the nature of its purpose or how the traffic sign is affixed to real property. (____)

i. Example 1: A contractor installs a stop sign on behalf of Idaho Transportation Department (ITD) to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to ITD. The stop sign remains tangible personal property while installed. Therefore, the contractor does not owe a use tax (____)

Sales & Use Tax
Rule 036

Draft 1

~~04~~05. Custom Painting Directly on Real Property. A sale of custom painting of displays, graphics or signs directly on walls or windows of a building is not considered to be a retail sale of tangible personal property and is not taxable. The sign painter must pay sales or use tax on purchases of materials used to paint these custom displays, graphics or signs. (7-1-99)

~~05~~06. Billboards. (7-1-99)

a. Billboards which are also referred to as twenty-four (24) sheet posters and painted billboards, are not in the same category as signs covered in this rule. The rental of a billboard is not a rental of tangible personal property under the Idaho Sales Tax Act. (7-1-99)

b. Billboard Material. Material used in the construction, erection, painting, and maintenance of a billboard is subject to sales or use tax. (7-1-99)

Sales & Use Tax
Rule 037
Relevant Statutes

63-3607A. PRIMARY OR PRIMARILY. (1) With respect to the use of tangible personal property, "primary" or "primarily" means the predominant or greatest use of the property.

(2) In determining the primary use of tangible personal property, all uses of the property shall be aggregated into total taxable uses and total nontaxable uses pursuant to the provisions of this chapter. The primary use shall be the greater of the total taxable use or total nontaxable use.

(3) The use of tangible personal property shall be measured in terms of hours, miles, gallons or other measure commonly or customarily used to measure or determine use of the property.

63-3622GG.AIRCRAFT.[EFFECTIVE UNTIL JUNE 30, 2016]There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to provide passenger or freight services for hire as a common carrier only if:

(a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and

(b) The aircraft is used to provide services indiscriminately to the public; and

(c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.

(2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.

(3) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

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

Sales & Use Tax
Rule 037

Draft 1

037. AIRCRAFT AND FLYING SERVICES (RULE 037).
Section 63-3622GG, Idaho Code. (4-4-13)

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

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

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

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

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

e. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more aircraft is not a nonresident. The use of an aircraft owned by such an entity will be subject to use tax upon its first use in Idaho. (4-4-13)

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

g. Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. (4-4-13)

h. Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. (4-4-13)

i. Public. The public does not include: (4-4-13)

i. Owners or operators of the aircraft; (4-4-13)

ii. Employees of the aircraft owner or operator; (4-4-13)

iii. Guests of the aircraft owner or operator; (4-4-13)

iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; (4-4-13)

v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; or (4-4-13)

vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two (2) aircraft. (4-4-13)

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

a. Primarily used to provide passenger or freight services for hire as a common carrier; (4-4-13)

i. Example 1: An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are 45, 65 and 75 hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be subject to tax. ( )

ii. Example 2: A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are 100, 60 and 50 respectively in a consecutive twelve (12) month period. The combined flight hours for the exempt uses of the aircraft, as an air ambulance and as a common carrier (60 + 45 = 110 hours), are more than the hours offering flight instruction.

Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt. ( )

b. Primarily used for emergency transportation of sick or injured persons; or(2-18-02)

c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any consecutive twelve (12) month period. (4-4-13)

03. Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 037.01 of this rule. (4-4-13)

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

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

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

a. Aircraft purchased, rented, or leased for aerial contracting are subject to tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (4-4-13)

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

Sales & Use Tax
Rule 037

Draft 1

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

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

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

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

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

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

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

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

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

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

Sales & Use Tax
Rule 046
Relevant Statutes

63-3613. Sales Price. (a) The term "sales price" means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold…
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

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

…4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property…

…7. Delivery and handling charges for transportation of tangible personal property to the consumer…

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029. PRODUCING, FABRICATING, AND PROCESSING (RULE 029).

01. In General. Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether or not consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving. (7-1-93)

a. Example 1: An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price. (7-1-93)

b. Example 2: An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker. (7-1-93)

c. Example 3: An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving shall be subject to tax. (7-1-93)

d. Example 4: A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge. (7-1-93)

e. Example 5: An individual takes a beef to a packing plant and requests that the meat be processed by cutting, wrapping, and freezing the meat to the purchaser's specification. The total price paid for this processing shall be subject to sales tax. (7-1-93)

f. Example 6: A hunter takes a deer to a business which processes smoked meats. Although the material actually consumed in the smoking process may be minimal, the entire price paid for this processing is subject to sales tax. (7-1-93)

02. Repairing and Reconditioning Distinguished. Producing, fabricating, and processing includes any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced. (7-1-93)

03. Cross-References. (7-1-93)

a. Repairs and Renovation of Tangible Personal Property. See ISTC Rules 011 and 062. (7-1-93)

b. Fabrications by Contractors. See ISTC Rule 012. (7-1-93)

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062. REPAIRS SALE OF PARTS AND MATERIAL (RULE 062).

01. In General. Repairs normally require both material and labor. Persons engaged in the business of repairing, renovating or altering tangible personal property owned by others are required to collect sales tax upon the parts or material required in the repair or renovation of the property. (7-1-93)

02. Separate Statement of Parts or Materials. The sales price of parts or materials must be separately stated and sales tax must be charged on these parts or materials. Separately stated repair labor is not taxable. If parts and materials are not separately stated from the repair labor, the total amount for parts and repair labor is subject to sales tax. (5-3-03)

03. Repairs Covered by Insurance Benefits. Repairs, the costs of which are covered by insurance benefits, are treated the same as otherwise described in this rule. Sales tax is to be collected on the parts and materials. Separately stated repair labor is not taxable. (5-3-03)

04. Incidental Material. In some instances because of the small amount of materials used in a repair job, the value of the material may be insignificant to the entire repair cost. For example, incidental amounts of material are sometimes used in repairs made to tires, clothing, watches, and shoes. If materials such as buttons, thread, watch parts, tire valve cores and stems are incidental to the repair they will be taxed when purchased by the repairman. Other examples of materials which are incidental to repairs are touch-up paint and soldering materials used in car repairs. Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined. (7-1-93)

05. Shop Supplies. Dealer/repair shops should not charge sales tax on shop supplies that are consumed during the repair, such as spray bottles, buffer pads, towels, masking tape, solvents, sandpaper, and other items that have no specific identifiable value billed to the customer and which do not become a part of the item being repaired. These supplies are subject to tax when purchased by the dealer/repair shop and should not be included as part of the taxable amount billed to the customer. (7-1-93)

06. Repairs Versus Fabrications. Repairs and renovations to tangible personal property must not be confused with fabrications of tangible personal property. Fabricated tangible personal property is subject to sales tax on the entire price whether the parts and materials are separately stated or not. See Rules 011 and 029 of these rules. (3-15-02)

07. Parts for Resale. When a repair shop buys parts that will be resold to its customers or an auto dealer buys parts to install in a car which is being reconditioned for sale, they should not pay tax to the supplier if they provide the documents required by Rule 128 of these rules. (3-15-02)

IDAHO STATE TAX COMMISSION

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M E M O R A N D U M

October 18, 1990

TO: Auto Body Craft Industry

FROM: Robert A. Fry, Commissioner
Idaho State Tax Commission

RE: Sales Tax Policy -- Auto Body Shops
Paint, filler and shop supplies

The Commission and members of the Auto Body Craft Association have reached an agreement regarding the proper imposition of Idaho sales tax on shop supplies, paint and filler used in the repair of an auto body.

The sales tax regulations provide that when a repair shop purchases "shop supplies" which are consumed during the repair of a customer's property, the repair shop should pay sales tax to the jobber from whom the items are purchased. Items which have no specific identifiable value to be billed to a customer are not items purchased for resale. The repair shop is considered the consumer of the items and must pay tax to the jobber upon acquisition. Examples of such items include buffer pads, towels, spray bottles, masking tape, solvents, and sandpaper.

It is now apparent that, in addition to these items, the paint and filler used in the course of repairing an automobile are also items which have no specific identifiable value to bill to the customer. The amount of paint and filler used on a specific job is most often impossible to accurately measure.

The Commission and the Auto Body Crafts Industry have therefore agreed that when a body shop purchases paint, filler, and the other numerous shop supplies previously mentioned, sales tax should be paid at the time of purchase to the jobber. When the body shop bills its customer for "paint and supplies" (most typically on a flat rate per hour basis), no sales tax would be charged to the customer on this portion of the billing. Of course, the body shop would need to increase its "per hour" billing amount slightly to cover the cost of the sales tax it has paid to the jobber.

It is not the Commission's intent to dictate a specific billing method to an auto body craft industry member. If a body shop can clearly establish that it is purchasing paint or filler for resale and can identify on its customer's invoice a specific identifiable value for those products, the auto body shop may and should purchase those items for resale and collect sales tax from its customer. However, sale tax law and regulations have long established that shop supplies which do not become a component part of a customer's product may not be purchased for resale. The body craft shop must pay sales tax to the jobber on these items.

Robert A. Fry
Commissioner

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cc: Idaho State Department of Insurance
Sales Tax Staff Members

Sales & Use Tax
Rule 046

Current Version

046. PLATING AND REPLATING (RULE 046).

01. Plating and Replating. Plating and replating operations are considered to be providing repair services. If the materials such as chrome, gold, or silver can be separately stated on the billing to the customer, a tax will apply on the sale of the material. If, as in the case of chrome plating of automobile bumpers and accessories, the vat of material is used and reused, the material would be incidental to the overall charges. The replating company will pay tax on the materials at time of purchase. See ISTC Rule 062. (7-1-93)

02. Exchange Basis. This, however, would not apply where a company operates on an exchange basis, giving credit for the bumpers or accessories against the price of the reconditioned piece of equipment. This type of transaction must be handled in the same manner as a trade-in with sales tax charged on the difference. See ISTC Rule 044. (7-1-93)

03. Reconditioned Material. Sales of reconditioned or replaced material or parts will be taxable on the full sales price. (7-1-93)

Sales & Use Tax
Rule 079
Relevant Statutes

63-3622D. Production exemption. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.

(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in the business of processing materials, substances or commodities for use as fuel for the production of energy, whether as a subcontractor, contractor, contractee or subcontractee, without regard to the ownership of the materials, substances or commodities being processed and irrespective of whether the materials, substances or commodities being processed are intended for ultimate sale at retail within or without this state.

(e) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total

farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(f) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(g) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars ($100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in transportation activities.

(4) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(6) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(7) Motor vehicles and aircraft.

(8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho Code.

(9) Tangible personal property described in section 63-3622HH, Idaho Code.

(h) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

Excerpt from Potlatch Corp. v. Idaho State Tax Commission
Supreme Court of Idaho (Emphasis Added)

120 Idaho 1, 813 P.2d 340 (1991)

**343 *4 In *Bunker Hill*, the Court considered the argument that the materials used to construct two steel-reinforced concrete smoke stacks were exempt under the production exemption. In rejecting this argument, the Court relied on I.C. § 63-3609(a):

> "(a) All persons engaged in constructing, altering, repairing or improving real estate, ... are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property."

In *Bunker Hill*, the Court ruled that on the date the materials that were incorporated into the stacks were purchased, "the materials were not being used to produce anything under the exemption statute-they were purchased for incorporation into real estate." In support of this ruling the Court said:

The rationale for imposing the sales tax on tangible personal property used to construct or improve real estate is well stated in the report of the House Revenue and Taxation Committee on House Bill 222 which implemented the tax. In **344 *5 referring to I.C. § 63-3609, the report stated:

> "Section 9(a) is intended to ensure that there will be a tax imposed on the sale of building materials and other items that will be used to erect buildings or otherwise improve real property. The process of construction is regarded as a service, and sale of materials to the contractor is taxed without regard to resale intentions. This insures that a tax will be collected. Since the sale of the building or other real property will not be taxed, sale of the materials which are used to erect or improve it must be taxed if a tax is to be imposed on consumption of this property."

Potlatch invites us to overrule this portion of *Bunker Hill* on the ground that the production exemption is applicable to all tangible personal property used in production, whether or not it is used to improve real property. We reject this invitation because it is clear that the legislature intended that tangible personal property used to construct, alter, repair or improve real estate not be entitled to the benefit of the production exemption. The House Revenue and Taxation Committee Report in Support of House Bill 222 (May 4, 1965) (the Committee Report), cited in both *Bunker Hill* and *Haener*, contains unmistakable evidence of this intent.

In commenting on the production exemption, the Committee Report states:

> Section 22(d). The function of this section is to establish a conceptual exemption for *materials, machinery and equipment used* or consumed *in the production process.* The design of this section is to *equate the purchase for manufacturing or production purposes with the resale exemption* applied to the purchase of finished goods. *If the goods* which are produced by mining, farming or manufacturing *are to be resold,* then *the material, machinery and equipment entering their make-up should be exempt.*

> There are many problems of delineation created by a conceptual, definitory process; other provisions of this section are designed to aid in that process and, in certain areas, to eliminate difficulties of interpretation. Initially, all tangible personal property which will itself become an ingredient part of the product manufactured, processed, mined or farmed is exempt, as is *tangible personal property primarily and directly used* or consumed in or during such process.... This *exemption* also *applies to machinery and equipment* which is essential to the manufacturing process, that would be the case, *for instance,* with the *printing press, lathe or combine* used in the process of producing newspapers, furniture, or wheat respectively.
>
> ....
>
> Committee Report, pp. 32-33 (emphasis added).

These comments make it clear to us that in enacting the production exemption, the legislature did not intend to modify the effect of I.C. § 63-3609(a), which provides that all use of tangible personal property by those who construct, alter, repair or improve real estate is taxable. The portion of the Committee Report quoted above focuses on materials, machinery and equipment used in the production process, not on materials, machinery and equipment which are used to construct, alter, repair or improve real estate, which is then used in the production process. This interpretation is also borne out by the examples of taxable and nontaxable items listed in the portion of the Committee Report commenting on the production exemption.

In listing items that would be taxable under what became I.C. § 63-3622(d), the Committee Report began: "Material which becomes a part of a building housing a manufacturing plant." Committee Report, p. 34. Later in the same section, the Committee Report lists as a taxable item: "Material which becomes a structural part of a building, shed or structure affixed to real estate." Committee Report, p. 36. This is clear evidence that the drafters of the production exemption did not intend that it should erode the taxation of tangible personal property used to construct, alter, repair or improve real estate.

In this case, the district court concluded that tangible personal property which was used by Potlatch in creating the propane fuel tank storage and structural steel equipment support had become affixed or incorporated in the real estate and affirmed the decision of the Commission to tax the use of this tangible personal **345 *6 property. Based on our analysis above, we agree with this conclusion.

In affirming the Commission's decision to tax the use of the tangible personal property which Potlatch used in conjunction with the logging road equipment, material and repair parts and the trailer mounted water pumps, the district court reasoned that these items were not used in the actual manufacturing process. While we agree with the conclusion the district court reached, we believe the analysis that focuses on tangible personal property which is used to construct, alter, repair or improve real estate is the correct one to apply to these items also. In *Bunker Hill,* the

Court employed this analysis in holding that the track, spikes, and ties purchased to construct a surface railroad were not exempt under the production exemption.

It is clear from the stipulated description of the logging road equipment, material and repair parts and the trailer mounted water pumps that these items were used to construct, alter, repair or improve real estate-the logging roads. These items are, therefore, subject to use tax pursuant to I.C. § 63-3609(a). The production exemption was not intended to affect this result.

Sales & Use Tax
Rule 079
Draft 1

079. PRODUCTION EXEMPTION (RULE 079).

01. In General. Idaho Code Section 63-3622D, known as the production exemption, provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include: (5-8-09)

a. A manufacturing, processing, or fabrication operation primarily devoted to producing tangible personal property that it will sell and is intended to be ultimately sold at retail. (5-8-09)

b. The following types of businesses may also qualify for the exemption, even though they perform services and do not actually sell tangible personal property: (5-8-09)

i. The business of custom farming or operating a farm or ranch for profit. (7-1-93)

ii. The business of contract mining or operating a mine for profit. (6-23-94)

iii. Businesses devoted to processing tangible personal property for use as fuel for the production of energy. (5-8-09)

02. Qualifying Businesses. The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail. (7-1-93)

a. For the purposes of this rule, a separately operated segment of a business is a segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

b. The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

c. To qualify for the production exemption, a business must sell the products it produces or processes. The only exceptions are businesses primarily devoted to processing fuel to be used for the production of energy; custom farming; and contract mining. (5-8-09)

03. Exempt Purchases. As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following tangible personal property are exempt, except as limited by other subsections of this rule: (4-11-06)

a. Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

b. Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

c. Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

d. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

e. Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

f. Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

g. Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

i. Equipment used primarily to fabricate production equipment. (7-1-93)

04. Production Process Beginning and End. The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)

05. Taxable Purchases. The production exemption does not include any of the following: (4-11-06)

a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

c. A hand tool with a unit price of one hundred dollars ($100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)

d. Office equipment and supplies. (7-1-93)

e. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)

f. Equipment and supplies used in selling and distribution activities. (7-1-93)

g. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

h. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

i. Transportation equipment and supplies. (7-1-93)

j. Aircraft of any type and supplies. (7-1-93)

k. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

l. Other incidental items not directly used in production. (7-1-93)

m. Fuel used in equipment while performing activities that do not qualify for the production exemption. (7-1-93)

n. Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

o. Parts to repair recreation-related vehicles. (7-1-93)

p. Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

06. Real Property. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. In addition, the production exemption does not apply to equipment and materials used to improve real property. ~~(7-1-93)~~(____)

07. Change in Primary Use of Property. If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

08. Transportation Activities. Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

a. Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

b. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. Exemption Certificate. To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. Special Rules. Special rules apply to irrigation equipment, contractors, loggers, and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

Sales & Use Tax
Rule 083
Relevant Statutes

25-3701. Domestic cervidae farming deemed agricultural pursuit. It shall be lawful for any person, association or corporation to breed, own or control domestic cervidae, which are defined as fallow deer (dama dama), elk (cervus elaphus) or reindeer (rangifer tarandus), but shall not include red deer (urasian cervidae) or any subspecies or hybrids thereof, and hold such animal in captivity for breeding or other useful purposes on domestic cervidae farms or ranches, provided the premises have been registered with the division of animal industries. Reindeer (rangifer tarandus) shall not be held for domestic purposes north of the Salmon River. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing, harvesting or marketing of such animals or their products by the producer or his agent shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches.

63-3622D. Production exemption. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.

(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section

Sales & Use Tax
Rule 083
Relevant Statutes

63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in the business of processing materials, substances or commodities for use as fuel for the production of energy, whether as a subcontractor, contractor, contractee or subcontractee, without regard to the ownership of the materials, substances or commodities being processed and irrespective of whether the materials, substances or commodities being processed are intended for ultimate sale at retail within or without this state.

(e) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(f) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(g) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars ($100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in transportation activities.

(4) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(6) Any improvement to real property or fixture thereto or any tangible personal property

which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(7) Motor vehicles and aircraft.

(8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho Code.

(9) Tangible personal property described in section 63-3622HH, Idaho Code.

(h) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

Sales & Use Tax
Rule 083
Current Version

083. FARMING AND RANCHING (RULE 083).
This rule is intended to illustrate the application of the production exemption to the farming and ranching industry. The provisions of this rule are based on the usual methods of doing business in the industry. Specific factual differences in the manner in which a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Cases not covered by this rule are controlled by the general principles stated in Rule 079 of these rules. Some equipment may be used for more than one purpose. Determinations of taxability will be based upon the equipment's primary use. (3-15-02)

01. In General. Farming includes custom farming and the operation of a farm or ranch, and includes stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges, and orchards operated with the intention of making a gain or profit. Farming does not include operation of ranches or stables where the sole purpose is showing or racing horses, or the breeding of show or race horses. (7-1-93)

02. Property Primarily and Directly Used. As applied to the business of farming, the exemption applies to all tangible personal property which is primarily and directly used to conduct the farming business, and which is necessary or essential to the operation, except those categories of property listed in other sections of this rule. (7-1-93)

03. Directly Used. The term directly used means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting, and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. (7-1-93)

04. Transportation Activities. Equipment used to move farm produce to initial storage is exempt, even though it may be mounted on a vehicle which is required to be licensed and is taxable. Equipment qualifies for this exemption if: (7-1-93)

a. It is readily removable from the vehicle on which it is mounted; (7-1-93)

b. It is separately stated on the vendor's invoice; and (7-1-93)

c. It is sold to a qualified farming operation and is supported by a valid exemption claim form. (7-1-93)

05. Disinfectants Used in the Dairy Industry. Effective January 1, 1990, disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats, or other milking equipment are exempt. (7-1-93)

06. Safety Supplies. Safety supplies required by a state or federal agency and directly used in a farming operation are exempt from sales or use tax. (7-1-93)

07. Plants. Plants, such as orchard trees and grape vines, are exempt. (7-1-93)

08. The Farming Exemption Does Not Include: (9-1-93)

a. Property purchased to meet the personal needs of a farmer, his family, or employees. Examples of items that are excluded from the exemption include, but are not limited to, hand soap, toothpaste, shampoo, blankets, sheets, pillowcases, towels, washcloths, irrigation boots, coveralls, gloves, other clothing, and grocery items.

b. Food and supplies purchased for barnyard and household pets, such as cat and dog food, are subject to the tax. Even though a dog may occasionally be used for herding livestock or a cat may control mice in the barn, the supplies purchased for their care and maintenance do not qualify for the production exemption. Only when a dog's SOLE purpose is the herding or protection of a rancher's livestock may the food and supplies for the dog be purchased tax exempt under the production exemption. (7-1-93)

c. Livestock trailers which may be attached to motor vehicles used to transport horses, cattle, sheep, or other farm animals on public roads are transportation equipment and are subject to sales or use tax. (7-1-93)

d. Motor vehicles required to be licensed are subject to sales or use tax even when used exclusively in a farming operation. Motor vehicles purchased, but not licensed, by a farmer for use exclusively in an off-road production activity, such as a feed truck, are not subject to sales or use tax. (7-1-93)

e. A hand tool, regardless of how necessary its use may be to production or how directly it may be used, is specifically excluded from the production exemption if the unit price of the tool is one hundred dollars ($100) or less. A hand tool is an instrument used or worked by hand. Examples of hand tools in the farming and ranching industry include emasculators, branding irons, tattoo kits such as crimpers and rollers, eartag applicators, calf pullers, syringes and needles, buckets, sponges, balling guns, shovels, wheelbarrows, ropes, cattle prods, whips, wrenches, drills, and power tools. Hand tools do not include such things as feed bags, tack, halters and lead ropes, cow magnets, and weaning rings. These items, depending on use, may qualify for the exemption. If a halter and lead rope are purchased by a horse trainer, no exemption applies. If a halter and lead rope are purchased by a rancher to be used on his stock horse, no tax applies. (7-1-93)

f. Other items specifically identified as taxable in Rule 079 of these rules. (3-15-02)

09. Exemption Certificate. Farmers or ranchers who wish to purchase goods that qualify for this exemption without paying sales tax must complete an exemption certificate. See Rule 128 of these rules. (3-15-02)