

**SALES TAX RULES COMMITTEE  
FINAL AGENDA**

The Committee convenes on Thursday, June 19, 2014, at 1:30 p.m. at:

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

1. Welcome & Introductions
2. Negotiated Rulemaking Discussion
  - a. **Rule 022. Drop Shipments** – A drop shipment is a transaction in which a purchaser buys a product from a retailer but the product is shipped directly to the purchaser from the manufacturer or wholesaler. There has been feedback from the public over time that the rule as written can be confusing. The purpose of amending the rule is to clarify the responsibilities of both in-state and out-of-state retailers, wholesalers, and manufacturers in a drop shipment situation.
  - b. **Rule 049. Warranties and Service Agreements** – There has been confusion expressed by taxpayers on how to tax certain aspects of extended service agreements. Of particular concern are agreements in which consumables are provided on a routine basis (i.e. toner cartridge for a leased copier) and overage charges when the customer exceeds a certain amount of usage of the property in question.
  - c. **Rule 063. Bad Debts & Repossessions** – When a retailer makes a sale, the sales tax is computed at that time, collected from the customer, and paid to the Tax Commission. If the sale is made on account, the retailer must still remit the entire amount of tax at the time of the sale. If the purchaser later defaults on some or all of the account, the retailer may claim a refund of the portion of sales tax that has not yet been paid by the purchaser. In claiming a refund, the calculation of the amount of remaining tax can be rather complicated factoring in the down payment, payments made, interest, additional finance charges, sales price of the property if repossessed and sold again, etc. The complicated calculations can be quite difficult for taxpayers to navigate and for the Tax Commission to review. Consequently, there will be a review of this rule with the goal of simplifying the calculation where possible. Of particular note, an alternative method of calculating the refund claim has been proposed and submitted by the owner of Fairly Reliable Bob's, a local motor vehicle dealership. In response, the sales tax audit staff of the Tax Commission has prepared and submitted their own proposal as well. These proposals will be one of the focal points of the discussion.

- d. **Rule 100.** Prescriptions – Address in rule three areas of confusion raised by representatives from the optometry industry and eyeglass/contact sellers: 1) taxability of certain services including dispensing, fitting, eye exam, and lab fees, 2) the calculation of sales tax owed including issues with uncertain insurance reimbursements and co-pays and, once calculated, who pays it, and 3) issues related to businesses on the borders with states that do not tax the sale of prescription eyeglasses and contacts.
3. Any Additional Items for Discussion?
4. Next Meetings
  - a. June 26 – Rule 027 Only
  - b. July 17
5. Adjourned

*For more information, please contact the Committee Chair, or the Rules Coordinator at [sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov) or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.*

## **Participating in the Rules Process**

All notifications of the Tax Commission's rulemaking actions, including Notices of Intent required for negotiated rulemaking, are published in the Idaho Administrative Bulletin on a monthly basis. These bulletins can be found at the following website:

<http://adminrules.idaho.gov/bulletin/index.html>

The Tax Commission's website also includes additional information on rulemaking activities such as announcements of upcoming rules committee meetings, agendas for those meetings, and minutes from prior meetings:

<http://tax.idaho.gov/i-1090.cfm>

Finally, if you wish to be on the e-mail distribution list for the sales tax rules committee, please contact the Tax Commission's Rules Coordinator, Sherry Briscoe, at [sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov).

### **A Brief Explanation of the Purpose of the Rule Drafts**

The purpose of the rule drafts, particularly the initial ones, is to incite discussion. The draft is not final and is in no way intended to set forth a conclusive position. If there is a point with which you disagree, please speak up! That is why we meet. If you are unable to attend the committee meeting, consider submitting a written comment to the Rules Coordinator, Sherry Briscoe ([sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov)). In some instances, the draft as written reflects positions taken in the past by the Commission. However, nothing should be considered final at this stage and any concerns or disagreements should be voiced so all sides of the issue can be discussed.

## Rule 022

### Drop Shipments

#### 022. DROP SHIPMENTS (RULE 022).

Sections 63-3615A, 63-3619, 63-3620, 63-3621, & 63-3622, Idaho Code

( )

**01. In General.** Drop shipments refer to shipments made by a seller to someone other than its purchaser. For example, a Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate purchaser and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer may or may not be required to hold have an Idaho seller's permit. If the Manufacturer sells directly to the Customer without the presence of a Retailer, the Manufacturer is acting as a retailer and the transaction is not a drop shipment. (7-1-99)( )

**02. Privity of Parties to the Contract.** The Idaho sales tax is imposed upon sales transactions. Since ~~there is not privity of contract~~ there is no sales transaction between the Manufacturer and the Customer, the Manufacturer will not be required to collect and remit sales tax ~~on the purchase by~~ from the Customer. (7-1-99)( )

**03. Sales Tax Responsibilities of the Permitted Manufacturer.** If the Manufacturer can have is required to have a valid Idaho seller's permit, it has sales tax responsibilities as to the sales transaction between itself and the Retailer. (7-1-99)( )

**a.** If the Retailer ~~holds~~ has an Idaho seller's permit, it will be necessary for the Retailer to provide the Manufacturer with a resale certificate evidencing its intentions to resell Product X. If the Retailer does not provide the resale certificate, then the Manufacturer must charge Idaho sales tax on the sale of tangible personal property sold to the Retailer and delivered in Idaho. If the Retailer provides a resale certificate, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the Idaho State Tax Commission together with a proper return. (7-1-99)( )

**b.** If the Retailer ~~does not hold~~ is not required to have an Idaho seller's permit, a resale certificate from the Retailer to the Manufacturer is unnecessary. If the Retailer has no nexus with the state of Idaho, it can accrue no sales tax liability and the sale between the Manufacturer and the Retailer is not subject to the jurisdiction of the Idaho State Tax Commission. The Manufacturer must obtain evidence of this fact in the form of a letter from the Retailer stating that they have no nexus in Idaho or by any other clear and convincing evidence. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and report and remit the use tax on the purchase of Product X. (7-1-99)( )

**04. Sales Tax Responsibilities of the Unpermitted Manufacturer.** If the

## Rule 022 Drop Shipments

Manufacturer does not have or is not required to have a valid Idaho seller's permit, it has no sales tax responsibilities as to the sales transaction between itself and the Retailer.

(3-15-02)( )

a. If the Retailer has an Idaho seller's permit, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the state tax commission together with a proper return. ( )

b. If the Retailer is not required to have an Idaho seller's permit, the Retailer is under no responsibility to collect Idaho sales tax from the Customer. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and report and remit the use tax on the purchase of Product X. ( )

c. The matrix below outlines the sales tax responsibilities of the manufacturer:

	<u>Retailer (Permitted)</u>	<u>Retailer (Unpermitted)</u>	<u>Customer</u>
<u>Manufacturer (Permitted)</u>	<u>Obtain ST-101 or Collect Tax</u>	<u>Obtain Letter of No Nexus or Collect Tax</u>	<u>N/A</u>
<u>Manufacturer (Unpermitted)</u>	<u>Do Not Collect Tax</u>	<u>Do Not Collect Tax</u>	<u>N/A</u>

05. Sales Tax Responsibilities of the Retailer. If the Retailer is required to have a seller's permit, he is responsible for collecting sales tax from the Customer. If the Retailer is not required to have a seller's permit, he is not responsible for collecting sales tax from the Customer. The Customer is responsible to pay use tax to the State of Idaho if purchased from an unpermitted retailer. ( )

a. The matrix below outlines the sales tax responsibilities of the retailer:

	<u>Manufacturer (Permitted)</u>	<u>Manufacturer (Unpermitted)</u>	<u>Customer</u>
<u>Retailer (Permitted)</u>	<u>N/A</u>	<u>N/A</u>	<u>Collect Tax from Customer</u>
<u>Retailer (Unpermitted)</u>	<u>N/A</u>	<u>N/A</u>	<u>Do Not Collect Tax From Customer / Use Tax Owed by Customer</u>

06. Resale Certificate. If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission

## **Rule 022**

### **Drop Shipments**

if the rules set forth in Rule 128 of these rules are met.

(3-15-02)

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## **Rule 049**

### **Warranties and Service Agreements**

#### **049. WARRANTIES AND SERVICE AGREEMENTS (RULE 049).**

**01. Warranties and Service Agreements.** Warranties or service agreements may be furnished by the manufacturer or seller upon the sale, lease, or rental of tangible personal property by any of the following means: (7-1-93)

**a.** Including the price of the warranty or service agreement as part of the sales, lease, or rental price of the tangible personal property. (7-1-93)

**b.** Separately stating the price of the warranty or service agreement, but requiring the purchase of the warranty or service agreement as a condition of the sale, lease, or rental of tangible personal property. (7-1-93)

**c.** Allowing the purchaser the option of purchasing a separately stated warranty or service agreement. (7-1-93)

**02. Separate Optional Contract.** Service agreements may also be offered as a separate optional contract on tangible personal property not owned or sold by the seller of the service agreement. (7-1-93)

**03. Services Agreed to be Rendered.** Services agreed to be rendered as a condition of a warranty or service agreement may be performed by the seller of the warranty or service agreement or by any dealer or repair facility that the seller may appoint to perform the repair or service. (7-1-93)

**04. Non-Optional Warranty or Service Agreement.** If the warranty or service agreement is required as a condition of the sale, lease, or rental of tangible personal property, the gross sales price is subject to the sales tax whether or not the charge for the warranty or service agreement is separately stated from the sales price of the tangible personal property. (7-1-93)

**a.** When parts are replaced by the seller of the warranty or service agreement, no tax is imposed on the purchase of the parts by the seller. The parts replaced are considered to have been taxed at the time the warranty or service agreement was sold. (7-1-93)

**b.** When a third-party dealer or repair facility performs the repair, the seller of the warranty or service agreement may provide the repairer with a resale certificate. See Rule 128 of these rules. (3-15-02)

**05. Optional Warranty or Service Agreement.** If the warranty or service agreement is optional to the purchaser, no sales tax shall be charged on the sale of the warranty or service agreement. A taxable transaction does occur with regard to the seller of the warranty or service agreement upon performance of the repair. (7-1-93)

**a.** If the seller of the warranty or service agreement performs the repair and

## Rule 049

### Warranties and Service Agreements

purchases parts for the repair or uses parts from his inventory, he will pay sales or use tax upon the parts when they are applied by him. (7-1-93)

**b.** When a third-party dealer or repair facility performs the repair and bills the seller of the warranty or service agreement, the third-party dealer or repair facility will separately state and charge sales tax on the parts to the seller of the warranty or service agreement. (7-1-93)

**c.** The seller of the warranty or service agreement will pay sales or use tax on parts for the repairs, whether or not the purchaser qualifies for any exemption under the Idaho Sales and Use Tax Act or rules. (7-1-93)

**06. Parts in Addition to Warranty Fee.** Regardless of any of the above, if the seller of the warranty or service agreement bills the purchaser for parts over and above the agreed upon warranty or service agreement fee, sales tax shall be charged to the purchaser on the sales price of the parts. (7-1-93)

**07. Replacement Parts and Maintenance Supplies.** As used in this rule, a warranty or service agreement applies to replacement parts and maintenance supplies that become a part of the tangible personal property that is being serviced. The sale of ~~other tangible personal property consumable supplies that do not become a part of the tangible personal property being serviced, such as paper for a copy machine,~~ must be separately stated from any warranty or service agreement fee and sales tax charged to the purchaser. In the event that these charges are not separately stated, the entire fee is taxable. (7-1-93)( )

**a.** Example: Copier Maintenance Agreement – Paper, toner, developer, and staples for a copy machine are consumable supplies and must be separately stated from the agreement. ( )

**b.** Example: HVAC Maintenance Agreement – Furnace filters are consumable supplies and must be separately stated from the agreement. ( )

**c.** Example: Janitorial Maintenance Agreement – Paper towels and toilet paper are consumable supplies and must be separately stated from the agreement. ( )

**08. Overage Charges.** If the warranty or service agreement is required as a condition of the sale, lease, or rental of tangible personal property, the gross sales price of the agreement including overage charges is subject to the sales tax whether or not the charge for the warranty or service agreement is separately stated from the sales price of the tangible personal property. If the warranty or service agreement is optional to the purchaser, no sales tax shall be charged on the sale of the warranty or service agreement or any overage charges. ( )

## Summary of Proposal from Fairly Reliable Bob's

### *Formula:*

1.  $\frac{\text{Total Sales Tax Paid}}{\text{Term of the Loan}} = \text{Monthly Tax}$
2.  $(\text{Monthly Tax}) \times (\text{Number of Months of Customer Possession}) = \text{Tax Used}$
3.  $(\text{Total Sales Tax Paid}) - (\text{Tax Used}) = \text{Refund Amount}$

### *Example:*

A customer buys a car for \$10,000, makes a down payment of \$500, and finances the remaining \$9,500 for 60 months. The total sales tax remitted by the lender to the Tax Commission is \$600. After the customer has possession (and use) of the car for 24 months, the car is repossessed. The repossessed car is resold for \$2,000.

1.  $\frac{\$600}{60} = \$10$  Total tax paid (\$600) is divided by the term of the loan (60 Months) which equals a monthly tax of: (\$10).
2.  $(\$10) \times (24) = \$240$  Monthly tax (\$10) multiplied by the number of months the customer had possession (use of) the car (24) equals (\$240) the tax used.
3.  $\$600 - \$240 = \$360$  Total sales tax paid (\$600) – Tax used (\$240) = Refund amount of (\$360).

## Summary of Proposal from Sales Tax Audit Staff

### *Formula:*

1. Total Sale – Down Payment = Loan Amount
2. Loan Amount X Tax Rate = Sales Tax Financed
3.  $\frac{\text{Sales Tax Financed}}{36 \text{ Months}} = \text{Monthly Tax}$
4. (Monthly Tax) X (Number of Months of Customer Possession) = Tax Used
5. (Sale Price of Repossessed Vehicle) X (Tax Rate) = Additional Tax Regained
6. (Sales Tax Financed) – (Tax Used) – (Additional Tax Regained) = Refund Amount

### *Example*

A customer buys a car for \$10,000, makes a down payment of \$500, and finances the remaining \$9,500 for 60 months. The total sales tax remitted by the lender to the Tax Commission is \$600. After the customer has possession (and use) of the car for 24 months, the car is repossessed. The repossessed car is resold for \$2,000.

1.  $\$10,000 - \$500 = \$9,500$       Total Sale of \$10,000 – Down Payment of \$500 = Loan Amount of \$9,500
2.  $\$9,500 \times 6\% = \$570$       Loan Amount of \$9,500 multiplied by the Tax Rate of 6% equals Sales Tax Financed
3.  $\frac{\$570}{36} = \$15.83$       Total tax paid (\$570) is divided by the statute of limitations (36 Months) which equals a monthly tax of: (\$15.83).
4.  $(\$15.83) \times (24) = \$379.92$       Monthly tax (\$15.83) multiplied by the number of months the customer had possession (use of) the car (24) equals (\$379.92) the tax used.
5.  $\$2,000 \times 6\% = \$120$       Sale Price of Repossessed Vehicle (\$2,000) multiplied by the Tax Rate of 6% equals Additional Tax Regained of \$120.
6.  $\$570 - \$380 - \$120 = \$70$       Total sales tax paid (\$570) – Tax used (\$380) – Tax Regained (\$120) = Refund amount of (\$70).

## **Sales Tax Refund Formula Change Proposal: Repossession**

### **Background:**

Idaho State Law provides a way for dealer / lenders to recoup sales tax they have paid on behalf of their customers when the vehicle has been repossessed. If a customer signs a contract and the car is repossessed, the lender was not able to collect all the sales tax that was paid to the State when the loan was initiated. Therefore the lender / dealer is entitled to apply a formula to determine the amount of sales tax they can recoup from the State. This amount is then deducted from their next Sales Tax Remittal.

### **The Problem:**

The current refund formula is so complicated and cumbersome that many dealer / lenders don't apply the formula correctly (or at all). They either make mistakes and get the amounts wrong or don't get sales tax refunds they are entitled to receive.

On the Tax Commission side, the complicated formula makes auditing and enforcement so difficult and time consuming it is not fiscally reasonable to continue trying to audit and enforce the current program.

The current formula is based on trying to determine how much of the original sales tax amount was financed and then, trying to determine how much of the money paid on the loan was or should be applied to the sales tax. Then it tries to take into account what the actual loss to the dealer / lender was, and how much of that loss was sales tax. Then it tries to determine if there is any bad debt recovery and again charge the lender / dealer that money back.

Here are two of the difficulties with this process.

First: the process in determining all of these numbers is **very** complicated. There is so much information to take into account it is very easy to get confused. There are as many as 16 different pieces of information to be used in the calculation to get the correct answer. In fact, very few lender / dealers are able to get the same answer as the Tax Commission Auditors.

Second: the process can take place over months or even years. For example the dealer / lender must first sell the repossessed vehicle to determine the loss before making the calculations. It could take months to sell the car and determine the actual loss. Then if at any time the dealer / lender were able to collect on that bad debt, they must keep track and pay sales tax on that amount collected. This stretches the process out indefinitely, possibly covering many years.

The lender / dealer, and the Tax Commission auditors must both concern themselves with each of these factors over an indeterminate period of time.

Here is one example of the current formula:

(6-23-94)

Example: A car dealer makes a taxable sale of an automobile for fifteen thousand dollars (\$15,000) along with an extended warranty for five hundred dollars (\$500) and credit insurance for one hundred dollars (\$100). The customer pays one thousand dollars (\$1,000) cash and trades in a car worth ten thousand dollars (\$10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars (\$6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand eight hundred fifty dollar (\$10,850) loan after paying five hundred dollars (\$500) towards the principal. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars (\$5,000) of the total fifteen thousand eight hundred fifty dollar (\$15,850) cost was taxable. (7-1-93)

Sales price of vehicle	\$15,000	
Extended warranty	500	
Credit insurance	100	
Trade-in	(10,000)	
Sales tax	250	
Subtotal	5,850	
Down payment	(1,000)	
Invoice total	4,850	
Amount financed		10,850
Payment to principal after sale		(500)
Amount of bad debt		<u>10,350</u>

Amount of down payment used to pay sales tax

$$(250 / 5850) = 4.27\%$$

$$.0427 \times \$1,000 = \$42.70$$

Amount of sales tax financed

$$\$250 - \$42.70 = \$207.30$$

Percentage of loan representing sales tax

$$\$207.30 / \$10,850 = 1.91\%$$

Sales tax paid by payments to principal

$$\$500 \times .0191 = \$9.55$$

Amount of bad debt write-off

$$\$207.30 - \$9.55 = \$197.75$$

Bad Debt Collected at a Later Date. If a bad debt account is collected later, the retailer must pay tax on the amount collected. (7-1-93)

To Claim Credit for a Bad Debt. Credit for bad debts for sales tax purposes may be claimed ONLY by the retailer that made the original sale and paid the sales tax to the state. Financial institutions may not claim a bad debt for sales tax on property for which they provided financing but did not sell.

This formula is so complicated and difficult to audit and enforce that a few years ago the Tax Commission was prepared to propose a Bill to end the refund process. This was done not to increase revenue, but to do away with the cost and the tedious task of auditing such a complicated formula.

At that time, we successfully convinced the Tax Commission to pull their proposed Bill and promised to try to come up with a simpler solution. The solution would still need to allow dealer / lenders to recoup some of the sales tax they had paid on repossessions and yet make the process much simpler for the Tax Commission to audit and enforce.

The proposed new formula removes all of the complicated components of the old formula. It is **not** based on determining how much tax was collected or should have been paid over time in a complicated financial transaction.

Instead, the new formula is based on how much tax is owed based on the **use the customer got from the vehicle**. The formula has 3 easy steps. There are only 3 pieces of information used to perform the calculation. They are: the total sales tax paid, the term of the loan, and the date the vehicle was repossessed. The sales tax and the loan term are easily taken from the loan contract. The date of repossession is the date the customer lost possession (use) of the vehicle. From the date of repossession it is easy to determine the number of months the customer had possession (use) of the vehicle.

#### The Proposed New Formula:

1.  $\frac{\text{Total Sales Tax Paid}}{\text{Term of the Loan}} = \text{Monthly Tax}$
2.  $(\text{Monthly Tax}) \times (\text{Number of Months of Customer Possession}) = \text{Tax Used}$
3.  $(\text{Total Sales Tax Paid}) - (\text{Tax Used}) = \text{Refund Amount}$

#### Example:

A customer buys a car and finances it for 36 months. The total sales tax remitted by the lender to the Tax Commission is \$600. After the customer has possession (and use) of the car for 24 months, the car is repossessed.

1.  $\frac{\$600}{36} = \$16.67$  Total tax paid (\$600) is divided by the term of the loan (36 Months) which equals a monthly tax of: (\$16.67).
2.  $(\$16.67) \times (24) = \$400.08$  Monthly tax (\$16.67) multiplied by the number of months the customer had possession (use of) the car (24) equals (\$400.08) the tax used.
3.  $\$600 - \$400.08 = \$199.92$  Total sales tax paid (\$600) – Tax used (\$400.08) = Refund amount of (\$199.92).

Notice that there is no concern or calculation for payments collected. While the old formula tried to calculate the exact amount of tax paid back to the lender through the payments received and then calculate the refund, **the new formula is based strictly on use.**

Like Use Tax, the new formula only takes into account the number of months the customer had possession (use of) the car. The taxes are still collected and paid at the beginning of the transaction, but the refund is calculated like a use tax. The State gets the sales tax it is entitled to, based on the use the customer had from the car. The State currently allows Use Tax based transactions on automobiles (as in the case of a leased vehicle).

Since the new calculation is different than the old formula the refunds will not be exactly the same. Some will be more and some will be less. But the over all average appears to be fairly close. The longer the customer has the use of the car, the smaller the refund. If the customer doesn't use the car for very long the refund would be greater.

Since the old formula concentrates on the amount of money actually collected, it would seem to favor the dealer / lender. Under the new proposed formula, it doesn't matter how many payments are actually collected. In some cases the dealer/ lender may collect few (or even no) payments from the customer while the customer has possession (use) of the car. The new formula will generally make the refund less in this case. However, the general simplification of the formula makes the whole process so much easier it will be worth it.

After years of difficulty in applying the formula for lender / dealers, and the Tax Commission auditors, it was important that we find a simple solution for both sides of this issue. The new formula provides a fair, simple solution to what is right now, a complicated distraction.

Using the new formula the lender / dealers can still apply for sales tax refunds on repossessions in an easy to understand, quick, and simple process. They can concentrate more on their business without wasting time or worrying about audits.

The Tax Commission can quickly and simply audit the process and enforce the tax code in very little time. This will allow them to spend more time and resources in other areas that are probably more productive.

A new law is only a good law if all the parties win. In this case everyone wins.

## **Sales Tax Audit Staff's Concerns with Fairly Reliable Bob's Bad Debt Calculation Proposal**

1. The formula does not take into account the down payment the customer made to purchase the vehicle. The down payment reduces the amount financed (including the sales tax financed) and, therefore, should reduce the bad debt refund claim.
  
2. Most new cars are financed for periods in excess of five years and can be as long as eight years. If a new formula is adopted, the largest denominator allowable should be 36 months, since claims for refund must be made within 36 months of the tax being paid to the Tax Commission.
  
3. The formula does not account for the sale of the repossessed vehicle. When a vehicle is repossessed, it serves a similar function to a cash payment. Something of value has been received and the bad debt is subsequently reduced by the value of the resold vehicle.

# Rule 100

## Prescriptions

### 100. PRESCRIPTIONS (RULE 100).

Section 63-3613 & 63-3622N, Idaho Code

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**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)

## Rule 100 Prescriptions

**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 Products by Optometrists, Oculists, and Ophthalmologists.** The sale of eyeglasses, removable contact lenses, and other related products, such as carrying cases, 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.** Amounts charged for professional services in examining the patient and prescribing ~~and dispensing~~ the ophthalmic appliance 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~~)( )

**b.** Amounts charged for professional services to produce the ophthalmic appliance and fit it for the customer are taxable if the charges are services agreed to be rendered as part of a taxable sale of the ophthalmic appliance itself such as dispensing fees, fitting fees, and lab fees. ( )

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

**d.** Sales of the ophthalmic appliance and services agreed to be rendered as part of that sale are only taxable when charged to the end consumer. All purchases by the seller or insurance company prior to the sale to the end consumer are purchases for resale and the resale exemption should be claimed at the time of purchase. No tax should be paid prior to the final sale. ( )

**e.** Tax should be calculated by the seller on all amounts subject to tax including the services listed in subsection 05.b. If the customer has insurance that will reimburse the seller for some portion of the price of the ophthalmic appliance, tax should be calculated on the entire

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amount charged for the ophthalmic appliance whether it will be paid by the customer or the insurance company. If the eventual insurance reimbursement amount is higher or lower than expected, no adjustment is necessary. ( )

**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)