

**SALES TAX RULES COMMITTEE
FINAL AGENDA**

The Committee convenes on Wednesday, July 31, 2013, at 1:00 p.m. at:

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

1. Welcome & Introductions
2. Sales & Use Tax Rules Discussion
 - a. **Rule 036** Signs and Billboards (*Draft 2*) – Clarify that certain signs, such as traffic, highway, and street signs, become real property after installation while others, such as business signs, do not. For those signs that become real property, the rule will make it clear that the installer of the sign operates as a contractor improving real property and, therefore, owes sale or use tax on its purchase or use of the sign materials.
 - b. **Rule 037** Aircraft and Flying Services (*Draft 2*) – House Bill 15 (2013) created a definition for primary and primarily in regards to the use of tangible personal property. Some simple examples will be added to this rule to address the application of the new definition.
 - c. **Rule 041** Food, Meals, and Drinks (*Draft 1*) – House Bill 187 (2013) exempted the use of beverages when given away as part of a tasting. To prevent confusion, the rule will be amended to clarify that charges to participate in a tasting are still taxable.
 - d. **Rule 046** Coatings (*Draft 1*) – Clarify that sales of coatings of all kinds (paint, powder coating, spray on bedliner, chrome plating, etc.) will be treated consistently. In addition, the rule will address when a materials charge must be broken out and when it is subject to tax.
 - e. **Rule 079** Production Exemption (*Draft 2*) – Clarify that sales and use of equipment used to improve and install real property are taxable even if the real property is used in production.
 - f. **Rule 100** Prescriptions (*Draft 2*) – Remove language referring to eyeglass and contact dispensing charges and clarify that separately stated professional service charges for examining and prescribing eyeglasses are not taxable.
 - g. **Rule 114** Records Required, Food Stamps, Electronic Benefits Transfers, and WIC Checks (*Draft 3*) – House Bill 12 (2013) updated the obsolete language of the food stamp exemption to bring it in line with the current federal program, SNAP.

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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. The sale of advertising signs may consist of a mixed transaction including both a sale of tangible personal property a sale of real property.~~ (3-15-02)()

a. 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. Both the materials and labor required to fabricate the sign are taxable. Therefore, the entire price of the tangible personal property sold will be taxable to the customer. ()

b. Signs may be attached to poles or mountings that are affixed to real property in such a way that they are intended to remain in place and become a real property improvement. The person installing materials into real property is acting as a contractor and is the consumer of the materials installed, such as the concrete or sign poles. The contractor owes a sales or use tax on the purchase of these materials. ()

04. Road Signs. Road signs are signs installed alongside or above roads that provide roadway information to users of the road. Examples of road signs include traffic signs such as speed limit signs and stop signs; street signs; recreational area signs; highway signs such as mileage signs and exit signs; and highway exit service information signs. ()

a. In general, road signs become real property upon installation. Consequently, an installer of road signs acts as a contractor improving real property when performing the installation work. Therefore, a road sign installer is the consumer of all materials used in the installation of the road sign. The installer owes sales or use tax on its use of all sign materials regardless of whether the installer purchased the materials or had the sign materials provided by

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

i. Example 1: A contractor installs a stop sign on behalf of a public transportation department 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 use tax. ()

ii. Example 2: A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as “Be Prepared to Stop.” The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs are taxable to the contractor. ()

045. 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)

056. 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)

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Relevant Statutes (Unofficial Copy)

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.

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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)

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- 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 taxable at fair market value as of that point in time. ()

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

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a common carrier (65 + 45 = 110 hours), are more than the hours used for 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

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for the time the aircraft is used to provide the service. (4-11-06)

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)

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Relevant Statute (Unofficial Copy)

63-3621.IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS.

...(n) The use tax herein imposed shall not apply to ~~free~~ tastings of food and beverages including, but not limited to, wine and beer. For the purposes of this subsection, a ~~free~~ tasting of wine and beer shall be defined as ~~a beverage~~ the maximum serving allowed by state or federal laws for such occasions provided to a potential customer, at no charge, ~~and to occur individually at that specific~~ at a location ~~and time~~ where like or similar beverages are sold. For nonalcoholic beverages and food, a tasting shall be defined as a sample from a unit available for sale at the tasting location.

[Statute amended by House Bill 187 (2013 session) and made effective March 21, 2013.]

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041. FOOD, MEALS, OR DRINKS (RULE 041).

01. In General. This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

02. Commercial Establishments. Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

03. Clubs and Organizations. Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

a. When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example, an organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). The amount of the tax must also be stated separately. Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (4-2-08)

b. The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

c. When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

04. Colleges, Universities, and Schools. A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

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a. If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

b. Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

05. Fraternities, Sororities, and Cooperative Living Group. Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

a. If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

b. If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

c. Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (4-11-06)

06. Boarding Houses. Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

07. Honor System Snack Sales. Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle. Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display.

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Purchases from these snack displays are subject to sales tax. (7-1-93)

a. Sales tax applies to the total sales. The posted price must include a statement that sales tax is included. (4-2-08)

b. The formula for computing the taxable amount is: $TS / (100\% + TR)$ where TS is total sales and TR is the tax rate. (4-2-08)

08. Church Organizations. Special rules apply to religious organizations. See Rule 086 of these rules. (4-11-06)

09. Senior Citizens. Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

10. Food or Beverage Tastings. If a participant in a food or beverage tasting must pay to consume the food or beverage samples offered, the charge to participate in the tasting is subject to sales tax. The provider of the samples does not owe a sales or use tax on its purchase or use of the product given away because the provider is considered to have resold the product.

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101. Nontaxable Purchases by Establishments Selling Meals or Beverages. Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

112. Taxable Purchases by Establishments Selling Meals or Beverages. Tangible personal property which is not included in the fee charged to the customer and not directly

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consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

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Relevant Statutes (Unofficial Copy)

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...

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)

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Relevant Statutes (Unofficial Copy)

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)

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)

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Relevant Statutes (Unofficial Copy)

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)

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046. ~~PLATING AND REPLATING~~ COATINGS (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)~~

01. **Coatings Generally.** A coating is a substance covering the surface of property usually intended to improve the durability or aesthetic appeal of the property to which it is applied. There are a variety of coatings including paint, powder coating, chrome plating, spray on bedliners, and anodized coatings. This rule applies to all types of coatings and it is intended that such coatings receive similar tax treatment. This rule does not apply to coatings on real property. ()

02. **Coatings are Tangible Personal Property.** The materials applied to tangible personal property to produce a coating are tangible personal property both before and after the application process. Therefore, unless an exemption applies, the sale of a coating is a taxable sale. ()

03. **Material Charges.** Unless an exemption applies, the materials portion of a sale of a coating will always be taxable. If the seller is unable to measure the exact amount of material used, a reasonable method of estimation is acceptable. ()

04. **Labor Charges.** The labor charge to apply a coating may be taxable or exempt depending on the facts of the transaction. In general, if the application of a coating restores the tangible personal property to its original condition, the labor is exempt repair labor. However, if the coating improves the condition of the tangible personal property beyond its original condition, the labor is taxable fabrication labor.

05. **Repair Labor.** In any of the following circumstances, the labor to apply a coating will be exempt repair labor: ()

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a. A previous coating is removed and replaced with a new coating, regardless of any differences in quality between the two coatings. ()

b. A coating is applied to used tangible personal property on top of an already existing coating. ()

c. Example 1: A vendor applies a spray on bedliner to an individual's truck bed. The truck bed surface is already coated with automotive paint. The materials charge is taxable, but the repair labor is not taxable. ()

06. Fabrication Labor. In any of the following circumstances, the labor to apply a coating will be taxable fabrication labor: ()

a. A coating is applied to new tangible personal property, regardless of whether the tangible personal property already has a coating. ()

b. A coating is applied to new or used tangible personal property that has never been previously coated. ()

07. Separate Statement. Since there are circumstances under which the labor portion of the transaction may be exempt, both materials and labor must be separately stated on the customer's billing statement. If there is no separate statement of materials and labor, the entire transaction is subject to sales tax. ()

08. Used Tangible Personal Property. Tangible personal property will be considered used if the tangible personal property has been previously put to the use for which it was intended. If tangible personal property is brought to the vendor by a contractor who intends to incorporate the tangible personal property into real property, it will be considered new tangible personal property. ()

a. Example 1: A contractor brings in metal ducting to be coated by the seller. The contractor intends to incorporate the metal ducts into a ventilation system in a building. All labor and material charges will be taxable. ()

09. Resale Exemption. Like any sale of tangible personal property, if the customer provides a valid exemption certificate to the seller claiming that the tangible personal property will be resold, the seller has no obligation to collect sales tax on the transaction. The seller must maintain a copy of the exemption certificate on file. ()

10. Effective Date. This rule will be applied to transactions beginning July 1, 2014. ()

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.*

Excerpt from Potlatch Corp. v. Idaho State Tax Commission
Supreme Court of Idaho (Emphasis Added)
120 Idaho 1, 813 P.2d 340 (1991)

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

Excerpt from Potlatch Corp. v. Idaho State Tax Commission
Supreme Court of Idaho (Emphasis Added)
120 Idaho 1, 813 P.2d 340 (1991)

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.

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Sales & Use Tax

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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

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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

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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

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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. 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

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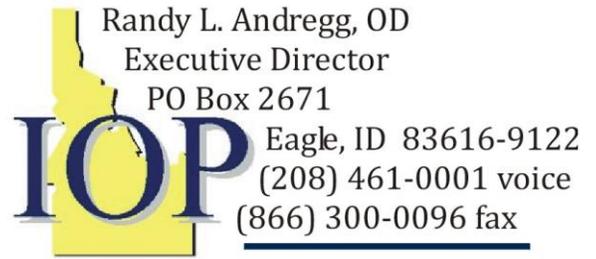
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complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

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)

DRAFT



July 23, 2013

McLean Russell
Sales Tax Rules Committee Chairperson
Idaho State Tax Commission
PO Box 36
Boise, ID 837222-0410

Dear Mr. Russell,

I write to you on behalf of the Idaho Optometric Physicians, an affiliate of the American Optometric Association (the "Association") regarding the Idaho Tax Commission's ("Tax Commission") request for public comments on its proposed revision to IDAPA 35.01.02.100.05 ("Rule 100.05"). At present, the Association has 170 members, which represents approximately 65% of Idaho's licensed and actively practicing eye doctors. Accordingly, any proposed revision to Rule 100.05 will have significant implications on our Association-member practices.

Rule 100.05 reflects the long-standing practice that optometric professional services, including examining, prescribing, fitting, measuring and dispensing therapeutic ophthalmic appliances, are all integral parts of the medical diagnostic process and exempt from sales tax. The initial eye exam, prescription of a unique therapeutic course of treatment, measurement of anatomical facial characteristics and final adjustment of an ophthalmic appliance to a patient's unique visual axes and anatomical topography are all separate professional services, performed at various stages in the medical diagnostic process and independent of the material sale of any tangible property.

Rule 100.05(a) currently recognizes that these separate professional services are tax exempt, providing that:

Amounts charged for professional services related to examining the patient and prescribing and dispensing ophthalmic appliances are not currently subject to sales 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.

Under the draft to Rule 100.05 ("Draft Rule"), the Tax Commission has proposed to strike out subsection (a) in its entirety. The Association supports striking subsection (a) in its entirety if the Tax Commission's intent is to preserve and simply clarify the long-standing practice that separately stated professional services, which includes examination, prescription, fitting, measuring and dispensing therapeutic ophthalmic appliances, are exempt from sales tax.

To the extent the Tax Commission intends to strike subsection (a) in an effort to "categorize" certain professional services as taxable, such as the prescribing or dispensing therapeutic ophthalmic appliances, the Association opposes the Draft Rule. Ultimately, any rule that tries to carve out certain types of professional services from tax exemption will lead to confusion and inconsistency within the optometric industry. For example, under Idaho's Medicaid Provider

Handbook, a provider may separately bill and receive reimbursement from the government for the professional service of “[f]itting or dispensing of glasses.” This professional service is separate from the supply of materials, but because the service involves “fitting or dispensing” would the Tax Commission view it as taxable under the Draft Rule? What about when a patient has a unique prescription that requires specialized diagnostic measurement and fitting by an eye doctor, would that separate service be taxable under the Draft Rule? What standards or guidelines would eye doctors’ look to, to determine which professional services are “taxable” and which fit within the long-standing professional services exemption?

If the Draft Rule is adopted with the intent of making certain professional services taxable, eye doctors will be forced to scrutinize each individual transaction or worse yet, charge patients higher prices (in the form of sales tax) on exempt professional services out of an abundance of caution. Consequently, the Tax Commission’s revision would effectively operate to write the professional services exemption completely out of the statute and rule.

For these reasons, the Association would ask that the Tax Commission refrain from modifying Rule 100.05 and preserve the long-standing practice that separate optometric professional services are not taxable. Alternatively, the Association proposes that Rule 100.05(a) and (b) could be combined and revised to better clarify the professional services exemption. For example,

b. a. Separately stated charges for professional services, **including examining the patient and prescribing, and dispensing therapeutic ophthalmic appliances, are not subject to sales tax** and may not be used to reduce the stated sales price of the property below its actual cost.

Based on the forgoing, the Association believes that Rule 100.05 embodies the long-standing practice that separate optometric professional services, including examining, prescribing, fitting, measuring and dispensing therapeutic ophthalmic appliances, are exempt from sales tax and opposes the Draft Rule to the extent it operates to make separate professional service fees taxable.

Respectfully,



Randy L. Andregg, OD
Executive Director

Sales & Use Tax

Rule 100

Draft 2

100. PRESCRIPTIONS (RULE 100).

Section 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(3b), 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

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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)

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

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

Sales & Use Tax Rule 114

Relevant Statutes (Unofficial Copy)

63-3622FF. Purchases Made ~~With Federal Food Stamps~~ ~~Federal Food, Conservation And Energy Act Coupons~~ SNAP Benefit Cards. Purchases of food made with coupons issued under the federal food stamp act of 1977 and the food security act of 1985, and purchases of food made with coupons issued under the federal food, conservation, and energy act of 2008 (P.L. 110-246, 122 Stat. 1651 (2008), also known as the Farm Bill of 2008), benefits provided under the federal supplemental nutrition assistance program (SNAP) are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code.

[As amended by House Bill 12 passed during the 2013 legislative session]

63-3622EE. Purchases for the federal special supplemental food program for women, infants and children (WIC). Commencing October 1, 1987, purchases of food pursuant to section 17 of the federal child nutrition act of 1966 and the school lunch and child nutrition amendment of 1986 are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code.

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Rule 114

Draft 3

114. SALES UNDER THE SNAP AND WIC PROGRAMS, RECORDS REQUIRED FOR PAYMENTS WITH ~~FOOD STAMPS~~, ELECTRONIC BENEFITS TRANSFERS CARDS, AND WIC CHECKS TENDER (RULE 114).
Sections 63-3622EE & 63-3622FF, Idaho Code. ()

01. In General. Sales of food purchased under the ~~Federal Food Stamp Program, the Federal Food, Conservation and Energy Act of 2008~~ Federal Supplemental Nutrition Assistance Program (SNAP); or the Federal Special Supplemental Food Program for Women, Infants, and Children; ~~(WIC);~~ are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the purchaser uses ~~food stamps, vouchers,~~ electronic benefits transfer ~~(EBT)~~ cards, WIC tender, or any other exchange medium authorized for these programs by federal law. (4-7-11)()

02. Records Required. Retailers who accept ~~food stamps, electronic benefits transfer EBT~~ cards, ~~and or~~ WIC checks tender as payment must maintain accurate records of ~~exempt those~~ sales. Adequate records include sales reports or tender-type reports with collections from each type. (7-1-99)()

a. WIC Checks. ~~WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record.~~ (7-1-99)

b. Food Stamps. ~~Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts.~~ (7-1-99)

c. Electronic Benefits Transfer (EBT) Payments. ~~Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state.~~ (7-1-99)

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Relevant Statutes (Unofficial Copy)

63-3620. Permits -- Issuance -- Revocation -- Penalties. (a) Every retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person or by an individual authorized by the seller to sign the application. Except as provided in subsection (f) of this section, permits shall be issued without charge.

(b) The state tax commission, for the efficient administration of this chapter, may issue:

(1) Temporary seller's permits. No retailer shall be issued more than three (3) temporary permits in one (1) calendar year. A temporary permit shall be valid only for the period of time shown on the face thereof...

63-3620C. Promoter sponsored events (1) The operator or promoter contracting with persons for participation in a promoter sponsored event, as a prerequisite to renting or leasing space to any person for conducting business as a retailer on any premises owned or controlled by that operator or promoter, shall obtain:

(a) Written evidence that the retailer holds a valid seller's permit issued pursuant to this chapter or will apply to the state tax commission for a regular or temporary seller's permit; or

(b) A written statement from the retailer that the retailer is not offering for sale any item that is taxable under this chapter or is otherwise not required to hold a valid seller's permit.

(2) Such written evidence or statements shall be in such form and contain such information as the state tax commission shall require. The operator or promoter shall submit the documents to the state tax commission within ten (10) days following the beginning of the event.

(3) (a) The state tax commission may appoint a sponsor or promoter as its agent for issuing temporary seller's permits to participants in the event and for accounting for such permits.

(b) A sponsor or promoter appointed to issue temporary permits under this subsection shall be entitled to a credit or refund of income or franchise taxes imposed under chapter 30, title 63, Idaho Code, in the amount of one dollar (\$1.00) for each such temporary permit issued by the sponsor or promoter during the taxable year.

(4) Any operator or promoter of a promoter sponsored event who fails to comply with this section may be subject to a minimum penalty of fifty dollars (\$50.00) per event and twenty-five dollars (\$25.00) for each seller over two (2) sellers for whom such records required by subsection (1) of this section are not obtained, but not to exceed one thousand dollars (\$1,000) for each such event. Under no circumstances, shall an operator or a promoter be responsible for sales or use tax not remitted by a retailer at a promoter sponsored event.

(5) The penalties provided in subsection (4) of this section shall not apply:

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Relevant Statutes (Unofficial Copy)

- (a) Unless the state tax commission shall have previously given notice to the operator or promoter or its officer, agent or employee, by certified mail, of the requirements of this section and of a violation of this section by the operator or promoter or its officer, agent or employee; or
- (b) If the operator or promoter shows that such failure was due to reasonable cause and not to willful neglect.
- (6) The state tax commission shall give notice of any penalty provided in this section and it shall assess such penalties in the manner provided for deficiencies of tax.
- (7) "Promoter sponsored event," as used in this section, means a swap meet, flea market, gun show, fair or similar activity involving a series of sales sufficient in number, scope and character to constitute a regular course of business; or any event at which two (2) or more persons offer tangible personal property or services for sale or exchange and at which a fee is charged for the privilege of offering the services or displaying the property for sale or exchange; or at which a fee is charged to prospective buyers for admission to the area where the property or services are offered or displayed for sale or exchange.

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130. PROMOTER SPONSORED EVENTS (RULE 130).

Sections 63-3620 & 63-3620C, Idaho Code

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01. Promoter's Responsibility. Promoters at of promoter sponsored events, as defined in Section 63-3620C, Idaho Code, shall must obtain a completed copy of a the sales tax declaration section of Form ST-124, Idaho Sales Tax Declaration, from each participant at the an event. The promoter must obtain pre-numbered Form ST-124s from the State Tax Commission. The promoter shall must forward a copy of the completed Form ST-124 to the State Tax Commission within ten (10) days following the beginning of the event. The promoter shall may also maintain a copy in its file. The State Tax Commission may request from the promoter a master list of participants to be submitted in addition to the completed Form ST-124s.

(3-30-01)()

~~**02. Period of Time for Which a Form ST-124 Is Valid.** If the Form ST-124 is not used to issue a temporary seller's permit, a Form ST-124 completed by a participant shall be valid until the following June 30, unless the participant information changes. The promoter need only obtain a Form ST-124 from each participant at the first show in which the participant participates after July 1 of any given year. The promoter shall forward to the State Tax Commission the names, address, tax identification number and phone number, if known, of participants who do not complete a new Form ST-124 as described in Subsection 130.03.~~

(3-30-01)

~~**03. Participant's Failure to Provide a Form ST-124 to the Promoter.** If a participant does not provide the completed Form ST-124 to the promoter, the promoter will provide to the State Tax Commission within ten (10) days following the beginning of the event, a list of participants who have failed to provide a completed Form ST-124.~~

(3-30-01)

~~04. Examples.~~

(3-30-01)

~~**a.** The promoter sponsors events on July 16, September 22, and December 18, of year one (1), and March 4, and July 30 of year two (2). Participant A attends and makes sales at all events. The promoter will need to obtain a copy of the Form ST-124 from Participant A for the July 16, year one (1) event and the July 30, year two (2) event. For the other events, the promoter will only need to include Participant A in the list of participants who did not complete a Form ST-124 and forward this list to the State Tax Commission.~~

(3-30-01)

~~**b.** Participant B attends the July 16, event and completes a Form ST-124 stating it will not be selling any items of tangible personal property. Participant B also attends the September 22, event but in this event it will be selling tangible personal property. The promoter will need to obtain a new Form ST-124 and forward it to the State Tax Commission.~~

(3-30-01)

~~**052. Use of the Form ST-124.** The Form ST-124 must be used every time a promoter~~

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~~issues a temporary seller's permit. A promoter must use the Form ST-124 to issue temporary permits, even to those participants who have attended events during the preceding year. The promoter will provide the each participant with the Form ST-124, who will u~~ Upon completing the sales tax declaration section of the form, the participant must return it to the promoter. In this section, the participant states that the participant either has a valid seller's permit, will use Form ST-124 as a temporary seller's permit for the event, or will not make any taxable sales at that event. If a participant uses Form ST-124 as a temporary seller's permit, the promoter will be considered the issuer of that permit as an agent of the State Tax Commission. The promoter will retain a copy of the Form ST-124 and provide a copy to the State Tax Commission. The Form ST-124's sales tax declaration shall include the following: ~~(3-30-01)()~~

- a. The name of the promoter sponsoring the event, the name of the event, the event location, and the dates of the event. (3-30-01)
- b. The name, address, and phone number of participant in the event. (3-30-01)
- ~~e.~~ ~~The participant's federal employer identification number.~~ ~~(5-8-09)~~
- ~~d.~~ Either: (3-30-01)
 - i. The participant's valid seller's permit number; or ~~(3-30-01)()~~
 - ii. ~~A statement that an Idaho sales tax permit will be obtained before the date of the event~~ A statement from the participant that the Form ST-124 will be used as a temporary seller's permit for the event; or ~~(3-30-01)()~~
 - iii. A statement from the participant that no taxable retail sales will be made at this event. (3-30-01)
- ~~g.~~ d. Other information the State Tax Commission may deem necessary. (3-30-01)

03. Participant's Failure to Provide a Form ST-124 to the Promoter. For every participant that does not provide the completed sales tax declaration portion of Form ST-124 to the promoter, the promoter must provide to the State Tax Commission a list of those participants within ten (10) days following the beginning of the event. The promoter shall include the following: names of the individuals who own and operate the business, the business name, address, and phone number, of those participants. ()

064. Temporary Seller's Permit Issued by Promoter. Before a promoter may claim the income tax credit provided for by Section 63-3620C, Idaho Code, the promoter must forward a completed Form ST-124 to the State Tax Commission for each ~~temporary seller's permit the~~

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~~promoter assigns, along with the documentation for the permit~~ Form ST-124 used as a temporary seller's permit. (3-30-01)()

075. Promoter's Sales Tax Liability. The promoter shall not be held responsible for collecting sales tax on sales made by participants other than sales made by the promoter himself. (3-30-01)

DRAFT

Travel & Convention Tax Rules 010 & 016

Relevant Statutes (Unofficial Copy)

67-4711. Definitions. As used in sections 67-4710 through 67-4719, Idaho Code, unless the context requires otherwise:

... (2) "Campground" means any privately owned business which rents areas or places used for camping or parking campers, travel trailers, motorhomes or tents.

... (5) "Hotel/Motel" means an establishment which provides lodging to members of the public for a fee, and shall include condominiums, townhouses or any other establishment which makes a sale as herein defined.

... (7) "Sale" means the renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days. "Sale" shall not include the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

67-4718. Assessment -- Council account. -- (1) From and after January 1, 1985, there is hereby levied and imposed an assessment at the rate of two percent (2%) of the amount of a sale as defined in section 67-4711, Idaho Code. The receipts from the assessment levied by this section shall be paid to the state tax commission in like manner, and under the definitions, rules and regulations of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. No assessment shall be collected where there is an original written agreement that the space is to be occupied by the same person pursuant to a lease or similar agreement for a period in excess of thirty (30) days.

Hotel/Motel Tax Rule 010

Draft 1

010. DEFINITIONS (RULE 010).

01. Campground Defined. Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. ~~(7-1-93)~~()

02. Hotel or Motel Defined. The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. ~~(7-1-93)~~()

a. Furnishing rooms for a consideration includes rooms provided for personal occupancy and rooms provided for meeting, convention, or other commercial purposes. (7-1-93)

b. The rental of condominiums or townhouses is subject to tax unless exempted under the provisions of Rule 016 of these rules. The rental of rooms by a public or private educational institution is subject to tax, unless exempted under the provisions of Rule 016 of these rules. The rental of rooms by hospitals, nursing homes, or similar institutions to nonpatients is subject to tax, unless exempted under the provisions of Rule 016 of these rules. (4-6-05)

c. The rental of an outdoor site on which a structure is provided for sleeping will be considered a hotel or motel rather than a campground. These structures include cabins, lookout towers, and yurts. ()

03. Travel and Convention Tax Defined. Travel and convention tax means the tax imposed by Section 67-4718, Idaho Code. ~~(4-6-05)~~()

Hotel/Motel Tax Rule 016

Draft 1

016. EXEMPTIONS (RULE 016).

01. Exemptions. Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax.

(7-1-93)

02. Exempt Entities. Rooms or campground spaces furnished to governmental entities, educational institutions, or hospitals are exempt from the taxes if and only if the charge for the room or campground space occupancy is billed directly to and paid directly by the governmental entity, educational institution, or hospital.

(7-1-93)

a. “Governmental entity” includes the federal government and any of its instrumentalities, the state of Idaho and any of its agencies or any city, county or taxing district of the state of Idaho. Governmental entity does not include states other than Idaho or their political subdivisions.

(7-1-96)

b. “Educational institution” means any nonprofit colleges, universities, primary, and secondary schools in which systematic instruction in the usual branches of learning is given. The exemption does not include educational institutions that operate for profit or schools primarily teaching special accomplishments, such as business or cosmetology.

(7-1-96)

c. “Hospital” means a nonprofit institution licensed as a hospital by any state. This exemption does not include hospitals that operate for profit, nursing homes, or similar institutions.

(7-1-96)

d. “Billed directly to” means a contractual agreement between the facility operator and the governmental entity, educational institution, or hospital whereby the charge for the room or campground space is directed to and is the responsibility of the governmental agency or institution. “Billed directly to” also includes credit card charges billed to an account opened by an exempt agency, educational institution, or hospital.

(7-1-96)

e. “Paid directly by” means a remittance tendered directly by the governmental entity, educational institution, or hospital to the facility operator. It does not include a payment by the governmental entity or institution to an employee or agent for reimbursement of expenses incurred during business travel. However, “paid directly by” does include payments made by an exempt entity to a financial institution for credit card charges made on a charge account in the name of the exempt entity with a credit card issued to the entity itself and not to any individual or employee.

(7-1-96)

f. Credit cards issued to employees of governmental agencies are NOT considered to be billed directly to and paid directly by the governmental entity when the employee is responsible for making payment to the credit card company.

(7-1-93)

Hotel/Motel Tax

Rule 016

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03. Continuous Occupancy Exemptions. (7-1-93)

a. Continuous occupancy means maintaining residency for a continuous period of time by the same individual or individuals. The continuous occupancy exemption does not apply when a room or campground space is furnished to a business enterprise that rotates numerous employees as occupants of the room or space with no one (1) employee remaining continuously for the minimum number of days required to meet the continuous stay requirements. (7-1-93)

b. Continuous Occupancy--Hotels and Motels. When continuous residency is maintained in a hotel or motel by the same individual or individuals for a period of thirty-one (31) days or more, the room charges are exempt from the taxes. When residency is maintained continuously for a period of less than thirty-one (31) days, the room charges are subject to the state sales tax, the statewide Travel and Convention tax, and, if the hotel or motel is located within the boundaries of the Greater Boise Auditorium District, the Greater Boise Auditorium District tax. (7-1-96)

c. Continuous Occupancy--Campgrounds: When continuous residency is maintained by the same individual or individuals in a campground space for a period of thirty-one (31) or more days the rental of the space is exempt from the taxes governed by these rules. If continuous residency is maintained for less than thirty-one (31) days, the state sales tax and the Idaho Travel and Convention tax apply. Greater Boise Auditorium District tax does not apply to campground spaces. See Subsection 016.05 of this rule. (7-1-96)

d. The continuous occupancy exemptions apply if, and only if, a lease or other documentation evidencing the period of the occupancy is maintained by the operator of the hotel, motel or campground. A guest registration card verifiable by a billing document is acceptable documentation. (7-1-93)

04. Rooms Let for Purposes Other Than Sleeping. The statewide Travel and Convention tax applies only to rooms let to an individual as a place to sleep. The tax does not apply to rooms let only for other purposes, such as for meetings. However, both the state sales tax and the Greater Boise Auditorium District tax apply to rooms let by a hotel or motel for purposes other than sleeping. Rooms supplied with beds shall be presumed to be let for the purpose of sleeping unless the contrary is established by the operator. Rooms, other than dormitory rooms, let by an educational institution for purposes other than sleeping, are not taxable as a sale of lodging; however, it is possible that renting such a room may be taxable as a fee for the privilege of using a facility for a recreational purpose. (7-1-99)

05. Campgrounds Exempted. The Greater Boise Auditorium District tax does not apply to campground charges. The state sales tax and the travel and convention tax apply to the charge for campground spaces. [Sales Rentals](#) of spaces in campgrounds owned or operated by

Hotel/Motel Tax Rule 016

Draft 1

the state of Idaho, its agencies or political subdivisions are subject to the state sales tax but not the travel and convention tax. (7-1-96)()

06. Outdoor Sites with Structures for Sleeping. Rentals of sites on which a structure is provided to the customer for the purpose of sleeping are considered a hotel or motel rather than a campground for purposes of the travel and convention tax and the Greater Boise Auditorium District tax. The state of Idaho and its agencies must charge sales tax, travel and convention tax, and the Greater Boise Auditorium District tax (where applicable) on rentals of such sites. ()

067. Foreign Diplomats. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Vendors must document an exempt charge to a foreign diplomat by: (7-1-93)

a. Retaining a photocopy of the front and back of the federal tax exemption card; or (7-1-93)

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

078. Direct Pay Authority. A taxpayer granted direct pay authority as provided by Idaho Sales and Use Tax Administrative Rule 112 may not use this authority for hotel/motel room or campground space charges. State sales tax, Travel and Convention tax, and, when applicable, Greater Boise Auditorium District tax must be charged by the hotel, motel, or campground and paid to the hotel, motel, or campground by the direct pay authority permittee. (7-1-96)

Wine Tax Rule 012

Relevant Statutes (Unofficial Copy)

23-1319. Excise tax -- Sales included -- Refund for export sales -- Refund for breakage or spoilage -- Distribution of revenue. Upon all wines sold by a distributor or winery to a retailer or consumer and upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code, for use within the state of Idaho pursuant to this chapter there is hereby imposed an excise tax of forty-five cents (45¢) per gallon. Sales of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from the taxes on wine imposed by this chapter.

23-1309A. Shipment and receipt of wine authorized -- Labeling requirement. (1) Notwithstanding any other provision of law, rule or regulation to the contrary, any holder of a winery license under section 23-1306, Idaho Code, or any person holding a license to manufacture wine in another state who obtains a wine direct shipper permit pursuant to this section may sell and ship up to twenty-four (24) nine-liter cases of wine annually directly to a resident of Idaho, who is at least twenty-one (21) years of age, for the resident's personal use and not for resale.

(2) Before sending any shipment to a resident of Idaho, the wine direct shipper permit holder must:

- (a) File an application with the director;
 - (b) Pay a fifty dollar (\$50.00) annual registration fee if the winery is not currently licensed by the director;
 - (c) Provide the director its Idaho winery license number or a true copy of its current alcoholic beverage license issued by another state;
 - (d) Obtain from the director a wine direct shipper permit;
 - (e) Register with the state tax commission for the payment of sales and use taxes and excise taxes on wine sold to residents of Idaho under the wine direct shipper permit.
- (3) A wine direct shipper permit authorizes the permit holder to do all of the following:
- (a) Sell and ship not more than twenty-four (24) nine-liter cases of wine annually to any person twenty-one (21) years of age or older for his or her personal use and not for resale;
 - (b) Ship wine directly to a resident in this state only in compliance with subsections (8) and (9) of this section;
 - (c) Report to the director, no later than January 31 of each year, the total amount of wine shipped during the preceding calendar year under the wine direct shipper permit;
 - (d) If the permit holder is located outside this state, pay to the state tax commission all sales and use taxes, and excise taxes on sales to residents of Idaho under the wine direct shipper permit. For excise tax purposes, all wine sold pursuant to a direct shipper permit shall be deemed to be wine sold in this state;
 - (e) Permit the director and the state tax commission to perform an audit of the wine direct shipper permit holder's records upon request;
 - (f) Be deemed to have consented to the jurisdiction of the alcohol beverage control division of the Idaho state police, or any other state agency and the Idaho courts

Wine Tax Rule 012

Relevant Statutes (Unofficial Copy)

concerning enforcement of this section and any related laws, rules or regulations.

(4) A wine direct shipper permit holder located outside the state may annually renew its permit with the director by paying a twenty-five dollar (\$25.00) renewal fee and providing the director a true copy of its current alcoholic beverage license issued in another state. A wine direct shipper permit holder located in Idaho shall renew its wine direct shipper permit in conjunction with its license to manufacture wine. All registration fees and renewal fees shall be shared equally by the state police and the state tax commission.

(5) The director may enforce the requirements of this section by administrative proceedings or suspend or revoke a wine direct shipper permit, and the director may accept payment of an offer in compromise in lieu of suspension, such payments to be determined by rule promulgated by the director.

(6) Sales and shipments of wine directly to consumers in Idaho from wine manufacturers in Idaho or in another state who do not possess a current wine direct shipper permit are prohibited. Any person who knowingly makes such a shipment is guilty of a misdemeanor.

(7) A licensee who holds a license for the retail sale of wine for consumption off the licensed premises may ship not more than two (2) cases of wine, containing not more than nine (9) liters per case, per shipment, for personal use and not for resale, directly to a resident of another state if the state to which the wine is sent allows residents of this state to receive wine sent from that state without payment of additional state tax, fees or charges. The sale shall be considered to have occurred in this state.

(8) The shipping container of any wine shipped under this section must be clearly labeled to indicate that the container contains alcoholic beverages and cannot be delivered to a person who is not at least twenty-one (21) years of age.

(9) For wine shipped under this section to an Idaho resident, the delivery person shall:

- (a) Have the person who receives the wine shipment sign for it; and
- (b) Not make deliveries to anyone who is under twenty-one (21) years of age or to anyone who is visibly intoxicated; and
- (c) Keep the signature record for one (1) year.

(10) Sales authorized under this section are sales made by a retailer who is not authorized to sell at wholesale or sales by a winery of wine produced or bottled by the winery.

(11) The director and the state tax commission may promulgate rules to effectuate the purposes of this section and are authorized to exchange necessary information to implement the provisions of this section.

Wine Tax Rule 012

Draft 1

012. EXEMPTIONS (RULE 012).

01. Burden Of Proof. The burden of proving any exemption, deduction, credit, or refund allowed by the Act and these rules is upon the person claiming it. (7-1-93)

02. Wholesale Sales Of Wine Outside This State. Every resale of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state ~~shall be~~ is exempt from tax on wine. (~~7-1-93~~)()

03. Sales By Wine Direct Shippers Outside This State. If an Idaho wine direct shipper is licensed as a wine direct shipper in another state, sales of wine by the wine direct shipper to a resident of that state and delivered to a location in that state are exempt from tax on wine. ()

034. Sales To Purchasers On Military Reservations. Sales to authorized purchasers on military reservations for the purpose of and resulting in sale or consumption on such reservation ~~shall be~~ are exempt from ~~the~~ tax on wine. (~~7-1-93~~)()

045. Sales To Idaho State Liquor Dispensary. Sales of wine to the Idaho State Liquor Dispensary ~~shall be~~ are exempt from ~~the~~ tax on wine. (~~7-1-93~~)()

056. Dispositions From One Distributor To Another. Any disposition of wine by transfer or sale or any other means from one distributor to another distributor ~~shall be~~ is exempt. (~~7-1-93~~)()

Cigarette & Tobacco Products Tax

Rule 019

Relevant Statutes (Unofficial Copy)

63-2551. Tobacco Products Tax -- Definitions. As used in this act:

(1) "Tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco except cigarettes;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer or any person sells a tobacco product to a distributor that is not a related person as defined in section 267 of the Internal Revenue Code, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane or train;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Commission" means the Idaho state tax commission.

63-2552. Tax imposed -- Rate. (1) From and after July 1, 1972, there is levied and there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of thirty-five per cent (35%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers...

Cigarette and Tobacco Products Tax

Rule 019

Draft 1

019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).

01. Shipments to Retailers/Distributors. In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax. (3-30-07)

02. Nontaxed Tobacco Purchases from Outside the State. Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed. (7-1-93)

03. Determining Wholesale Sales Price. Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for. (7-1-93)()

a. Separately Stated Nontaxable Charges. Separately stated nontaxable charges for shipping, handling, transportation, delivery, and packaging, may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Idaho State Tax Commission may adjust it. ()

04. Determining Wholesale Sales Price for Out-of-State Distributors. An out-of-state distributor with nexus in the state of Idaho must use the same method in determining “wholesale sales price” as other distributors that distribute tobacco products in Idaho. If an out-of-state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining “wholesale sales price” as other distributors that distribute tobacco products in Idaho. ()

a. Example 1. An out-of-state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesales sales price shall be the price at which it sells to the Idaho distributor, retailer or end

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user. ()

b. Example 2: An out-of-state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under Subsection 19.03 of these rules, where the wholesale sales price is unknown, the wholesales sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The “purchase price of the product” is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor. ()

c. Example 3: An out-of-state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC § 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesales sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then Subsection 19.03 of these rules requires the wholesales sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. ()

Prepaid Wireless E911 Fee Rules

Relevant Statutes (Unofficial Copy)

Statute as Amended by House Bill 193 (2013):

31-4809. FUND AND APPROPRIATIONS. *[Effective January 1, 2014]* The county treasurer of each county or the administrator for a 911 service area in which an emergency communications system has been established pursuant to this chapter shall establish a fund to be designated the emergency communications fund in which all fees collected pursuant to this chapter, including fees distributed pursuant to section 31-4818(6), Idaho Code, shall be deposited and such fund shall be used exclusively for the purposes of this chapter. The moneys collected and the interest earned in this fund shall be appropriated by the county commissioners, or governing board, for expenses incurred by the emergency communications system as set forth in an annual budget prepared by the joint powers board, or in their absence, the county commissioners and incorporated into the annual county budget.

New Statutes Enacted by House Bill 193 (2013):

31-4813. PREPAID CALLING CARDS WIRELESS TELECOMMUNICATIONS SERVICE EMERGENCY COMMUNICATIONS FEE. *[Effective January 1, 2014]* The imposition of the emergency communications fee shall not apply to the prepaid calling cards for all forms of access fees. Prepaid wireline, wireless and VoIP phones with a service address or place of primary use within Idaho are not considered prepaid calling cards.

(1) As used in this section:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(b) "Prepaid wireless E911 fee" means the fee imposed by subsection (2)(a) of this section on prepaid wireless telecommunications service that is required to be collected by a seller from a consumer;

(c) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars;

(d) "Provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the federal communications commission;

(e) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale;

(f) "Seller" means a person who sells prepaid wireless telecommunications service to another person;

(g) "Tax commission" means the Idaho state tax commission.

(2) (a) There is hereby imposed a prepaid wireless E911 fee in the amount of two and one-half percent (2.5%) of the sales price on each retail transaction.

(b) The prepaid wireless E911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless E911 fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the

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consumer.

(c) For purposes of paragraph (b) of this subsection, a retail transaction is considered to have occurred in Idaho if:

(i) The retail transaction is effected in person by the customer at a seller's location in Idaho;

(ii) When subparagraph (i) of this paragraph does not apply, the prepaid wireless telecommunications service is delivered to the subscriber at an Idaho address provided to the retailer;

(iii) When subparagraphs (i) and (ii) of this paragraph do not apply, the retailer's records that are maintained in the ordinary course of business indicate that the subscriber's address is in Idaho and the records are not made or kept in bad faith;

(iv) When subparagraphs (i) through (iii) of this paragraph do not apply, the subscriber gives an Idaho address during the consummation of the sale, including the subscriber's payment instrument if no other address is available, and the address is not given in bad faith;

(v) When subparagraphs (i) through (iv) of this paragraph do not apply, the subscriber's mobile telephone number is associated with an Idaho location.

(d) The prepaid wireless E911 fee is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless E911 fees that the seller collects or is required to collect from consumers as provided pursuant to the provisions of this section, including all such fees that the seller is deemed to collect where the amount of the fee has not been separately stated on an invoice, receipt or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless E911 fee that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) The prepaid wireless E911 fee shall be proportionately increased or reduced, as applicable, upon any change to the fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code. The amount of the prepaid wireless E911 fee shall be the percentage calculated by adding the amounts authorized pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code, and then dividing such sum by fifty dollars (\$50.00). Such increase or reduction shall be effective on the effective date of the change to the fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code, or if later, the first day of the first calendar month to occur at least sixty (60) days after the enactment of the change to fees imposed pursuant to the provisions of sections 31-4804 and 31-4819, Idaho Code. The tax commission shall provide not less than thirty (30) days of advance notice of such increase or reduction on its website.

(g) When prepaid wireless telecommunications service is sold with one (1) or more other products or services for a single, nonitemized price, then the percentage specified in paragraph (a) of this subsection shall apply to the entire nonitemized price unless the seller elects to apply such percentage to:

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- (i) If the amount of the prepaid wireless telecommunications service is disclosed to the consumer as a dollar amount, such dollar amount; or
 - (ii) If the seller can identify the portion of the price that is attributable to the prepaid wireless telecommunications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes including, but not limited to, non-tax purposes, such portion. Provided however, if a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the percentage specified in paragraph (a) of this subsection to such transaction. For purposes of this subparagraph, an amount of service denominated as ten (10) minutes or less, or five dollars (\$5.00) or less, is minimal.
- (3) (a) Prepaid wireless E911 fees collected by sellers shall be remitted to the tax commission at the times and in the manner provided by chapter 36, title 63, Idaho Code, with respect to the sales tax. The tax commission shall establish registration, reporting and payment procedures that substantially coincide with the registration and payment procedures that apply to the sales tax pursuant to the provisions of chapter 36, title 63, Idaho Code.
- (b) A seller shall be permitted to deduct and retain three percent (3%) of prepaid wireless E911 fees that are collected by the seller from consumers.
- (c) The following provisions of chapter 36, title 63, Idaho Code, with respect to sales tax shall apply to the prepaid wireless E911 fee:
- (i) Audit and appeal procedures;
 - (ii) Collection, enforcement, penalties and interest; and
 - (iii) Statute of limitations and refunds of fees paid erroneously.
- The tax commission shall have the authority to promulgate administrative rules applicable to the prepaid wireless E911 fee. Such rules shall, to the extent practicable, minimize administrative burdens on sellers by incorporating existing provisions of chapter 36, title 63, Idaho Code, that apply to audits, appeals, collection, enforcement, penalties, interest, statute of limitations and refunds of fees paid erroneously.
- (d) The tax commission shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to the provisions of chapter 36, title 63, Idaho Code, with respect to the sales tax.
- (e) The tax commission shall distribute revenue from the prepaid wireless E911 fees as follows:
- (i) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the tax commission shall be paid through the state refund account; and
 - (ii) Pay all remaining remitted prepaid wireless E911 fees over to the Idaho emergency communications fund provided for in section 31-4818(1), Idaho Code, within thirty (30) days of receipt. The tax commission may deduct an amount, not

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to exceed two percent (2%) of remitted fees, to reimburse its actual costs of administering the collection and remittance of prepaid wireless E911 fees. The tax commission may also retain an amount, not to exceed seventy thousand dollars (\$70,000), of remitted revenues in the fiscal year 2014 only for programming and one-time implementation costs.

(4) Each provider and seller of prepaid wireless telecommunications service is covered by the liability provisions of section 31-4812, Idaho Code.

(5) The prepaid wireless E911 fee imposed pursuant to this section shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency, for E911 funding purposes, upon any provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless telecommunications service.

31-4818. IDAHO EMERGENCY COMMUNICATIONS FUND -- ESTABLISHMENT AND ADMINISTRATION. *[Effective January 1, 2014]* (1) There is hereby created within the treasury of the state of Idaho a separate fund known as the Idaho emergency communications fund, which shall consist of moneys received from counties, cities, consolidated emergency communications operations, the fee imposed pursuant to the provisions of section 31-4813, Idaho Code, grants, donations, gifts and revenues from any other source to support the delivery of consolidated emergency communications systems.

(2) Moneys in the fund are hereby continuously appropriated and shall be utilized exclusively for the purposes set forth in this chapter as determined by the commission.

(3) Annually, at the direction of the commission, not more than one percent (1%) of the total emergency communications fees collected in the state of Idaho is hereby dedicated for and shall be placed in the fund on a quarterly basis by county, city or consolidated emergency communications systems. The commission, on an annual basis, shall prepare a budget indicating that portion of the fee necessary for the continuous operation of the commission to achieve the purposes of this chapter.

(4) The commission shall authorize disbursement of moneys in the fund to eligible entities.

(5) The state treasurer shall invest idle moneys in the fund and interest earned from such investments shall be returned to the fund.

(6) Funds received from the fee imposed pursuant to the provisions of section 31-4813, Idaho Code, shall be distributed quarterly to each governing board based upon population served, excluding one percent (1%) to be used for administration of the emergency communications commission as described in this section.

(7) This act is necessary for the immediate preservation of the public peace, health, safety or support of the state government and its existing public institutions and takes effect January 1, 2014.

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000. LEGAL AUTHORITY.

In accordance with Sections 63-105 and 31-4813, Idaho Code, the Tax Commission has the authority to promulgate rules implementing and administering the prepaid wireless E911 fee.

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001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 35.01.XX, “Prepaid Wireless E911 Fee Rules.”

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02. Scope. These rules will be construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a fee on all sales of prepaid wireless communications service in Idaho.

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002. WRITTEN INTERPRETATIONS.

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address.

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003. ADMINISTRATIVE APPEALS.

This chapter allows administrative relief as provided in Sections 31-4813, 63-3631, 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code.

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004. INCORPORATION BY REFERENCE

These rules incorporate IDAPA 35.01.02, “Idaho Sales and Use Tax Administrative Rules” and IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.”

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005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Main Office. The Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The phone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the fax number is (208) 334-7846. The e-mail address is “taxrep@tax.idaho.gov.” All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays.

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006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076, 63-3077 or 9-337 through 9-350, Idaho Code.

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007. -- 099. (RESERVED)

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100. IMPOSITION OF THE PREPAID WIRELESS E911 FEE.

The prepaid wireless E911 fee is only imposed on the sale of prepaid wireless telecommunications service at two and one-half percent (2.5%) of the sales price. The prepaid wireless E911 fee is not imposed on the sale of any device, such as a cell phone, that utilizes the prepaid wireless telecommunications service. However, if all of the following apply, the sale of the device will be subject to the fee: ()

a. The seller does not separately state the cost of the prepaid wireless telecommunications service from the rest of the transaction,

b. The amount of the prepaid wireless telecommunications service sold exceeds ten (10) minutes or five dollars (\$5.00), and

c. The seller cannot show from its records the portion of the sale that should properly be applied to the sale of the prepaid wireless telecommunications service.

200. SELLERS REQUIRED TO COLLECT THE PREPAID WIRELESS E911 FEE.

01. Requirements to Collect. If any of the following apply to a seller making sales of prepaid wireless telecommunications service in Idaho, the seller must register for a prepaid wireless E911 fee permit and collect the prepaid wireless E911 fee:

a. The seller is legally required to hold an Idaho sales tax permit, ()

b. The seller already holds an Idaho sales tax permit, whether it is legally required or not, or ()

c. The seller has a physical presence in Idaho. ()

02. Sales into Idaho by an Out-of-State Seller. If a seller does not meet any of the above requirements, the seller does not need to collect the prepaid wireless E911 fee even if making sales to Idaho customers.

500. DOCUMENTING SALES OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR THE PURPOSE OF RESALE.