

**SALES TAX RULES COMMITTEE
PRELIMINARY AGENDA**

The Committee convenes on Tuesday, August 20, 2013, at 1:30 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 027** Computer Equipment, Software, and Data Services. (*Draft 4*) House Bill 243 (2013) amended the definition of tangible personal property to exclude “application software accessed over the internet or through wireless media” resulting in the exemption of certain sales of “software as a service.” The rule will be amended to address the new statutory language and other changes in technology in recent years. { **TC "027. Computer Equipment, Software, And Data Services" \f C \l "1" }**
 - 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 046** Coatings (*Draft 2*) – 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.
3. Cigarette and Tobacco Products Tax Rules Discussion
 - a. **Rule 019** Tobacco Manufacturers and Distributors (*Draft 1*) – House Bill 7 (2011) amended the statutory definition of “wholesale sales price” to include “any person” selling tobacco products. The rule section on “wholesale sales price” needs to be updated to reflect this change. In addition, the rule change will address when separately stated charges are part of the wholesale sales price subject to tax and when those charges should be excluded.

4. Prepaid Wireless E911 Fee Rules (*Draft 1*)

- a. **Rules 000 – 999** House Bill 193 (2013) imposed a new 2.5% fee on the sale of prepaid wireless telecommunications service. Starting January 1, 2014, the fee will be collected by retailers of such service from their customers. A new chapter of rules will be created to address the administration of the fee. Where possible, this new chapter will reference or defer to the sales tax code and administrative rules as directed by the new statute.

5. Any Additional Items for Discussion

6. Meeting adjourned

For more information, please contact the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

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027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).

Section 63-3616, Idaho Code ()

01. ~~Hardware and Computers Defined.~~ Definitions. For purposes of this rule, the following terms will have the following meanings: (3-6-00)()

a. ~~Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies.~~ (3-6-00)

a. Application Software Accessed Over the Internet or Through Wireless Media. Application software accessed over the internet or through wireless media is software that is accessed by the user over the internet or other network and the software is not loaded and left. The vendor or an agent of the vendor owns or controls the computer hardware which hosts the software. The term does not include software for which the primary purpose is entertainment or software for which the vendor offers for sale the same or comparable software on storage media or by electronic download such that it can be loaded and left on the user's computer. For purposes of this rule, the term is interchangeable with "remotely accessed software." ()

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

b.c. Computers. A computer are is a programmable machines or devices having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)()

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

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

f. Custom Software. Custom software is software designed and written by a vendor

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at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. ()

g. Digital Good. See definition for "Information Stored in an Electronic Medium" in this subsection. ()

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

i. Loaded and Left. Software that is loaded and left is software that is copied or installed onto the user's storage media and remains copied or installed onto the user's storage media. The term applies whether the user loads the software from another storage medium or the user downloads the software directly over the internet or other network. ()

i. Offers For Sale. When a vendor offers for sale certain software, it means to publicly advertise or solicit sales, through web sites, promotional materials or other advertising methods, or through wholesale or retail channels. ()

k. Remotely Accessed Software. See definition for "application software accessed over the internet or through wireless media" in this subsection. ()

l. Software. Software is tangible personal property and is defined as one of the following: ()

i. A computer program, ()

ii. Any part of a computer program, ()

iii. Any other sequence of instructions that operates automatic data processing equipment, or ()

iv. Information stored in an electronic medium. ()

However, custom software or application software accessed over the internet or through wireless media is not tangible personal property.

~~**02.** Computer Software, Storage Media and Transfer Media Defined. (3-6-00)~~

~~**a.** Computer Software. Computer software, interchangeable with the terms program~~

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~~or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location.~~ (3-6-00)

b.m. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, ~~compact disks, floppy disks, diskettes, diskpacks,~~ optical media discs, diskettes, magnetic tape data storage, cards, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. ~~Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols.~~ (3-6-00)()

032. Computer Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)()

043. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software or remotely accessed software is a transfer of tangible personal property and is taxable. ~~Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.~~ (3-6-00)()

a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including ~~the~~ any charges for the storage media or ~~the~~ charges to effect complete an electronic transfer. (3-6-00)()

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the

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purchase price subject to tax.

(3-6-00)

d. Example 1: A user purchases canned software that is loaded and left on the user's storage media. The software provider releases software updates on a regular basis that are only available by download over the internet. Once downloaded, the updates are loaded and left on the user's storage media. The sale of the canned software is taxable. ()

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

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (3-30-07)

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

i. Then only the portion of the contract fee representing upgrades or enhancements is subject to sales tax if the fee for any maintenance agreement support services is separately stated; (3-30-07)

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements, then 50 percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (3-30-07)

iii. If the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire contract is taxable; (3-30-07)

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

065. Reports Compiled by a Computer. The sale of specifically designed and prepared statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the

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same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)()

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

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

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

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

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

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

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

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

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

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(3-6-00)

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

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

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

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

08. Digital Goods. The sale, purchase, and lease of a digital good is taxable when the user has the right to download the digital good and the digital good is loaded and left. For charges to access a remote database of digital goods, see Subsection 10 of this rule. ()

09. Remotely Accessed Software. Remotely accessed software is not tangible personal property. Therefore, the sale, lease, purchase, or use of remotely accessed software is not taxable. ()

a. If part of the software can be loaded and left on the user's storage media, the entire transaction must be analyzed to determine the primary object of the transaction. If the primary object of the transaction is a sale of remotely accessed software, the sale of the software is exempt. If the primary object of the transaction is a sale of canned software that can be loaded and left, the sale of the software is taxable. This analysis will involve a test similar to the test set forth in Rule 011 of these rules to determine the primary object in a sale of both tangible personal property and services. For purposes of the examples under subsection 09.a, it will be

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assumed that the primary use of the software is not entertainment and the vendor does not offer for sale the same or comparable software on storage media or by electronic download that can be loaded and left. ()

i. Example 1: A doctor's office pays to use software for entering and storing patient data. The user accesses the software over the internet using an internet browser. The software can also be used to generate reports from the data entered by the user. The reports can be downloaded to the user's computer and loaded and left. However, no other part of the software can be loaded and left. The remotely accessed computer program that allows the user to enter the data and generate reports is the primary purpose of the software. The ability to download the reports is inconsequential to the overall transaction. Therefore, the software is remotely accessed software and the sale of the software is exempt. ()

ii. Example 2: A business pays to use software that can remotely connect several users' computers and host a meeting between the users. To enable the connection, each user must download software that is loaded and left. However, the software serves no function without remotely connecting to the vendor's servers for each meeting. Because the primary function of the software requires remote access over the internet, the sale of the software is exempt. ()

iii. Example 3: A business pays to use software that requires each user to download a small part of the software that is loaded and left. This part of the software only functions to establish a user interface on the user's computer and facilitate a remote connection to the main computer program hosted on the vendor's servers. The primary object of the transaction is the remotely accessed software. The loaded and left software serves an inconsequential function. Therefore, the sale of the software is exempt. ()

iv. Example 4: A business pays to use software that requires the user to authenticate or validate that copy of the software over the internet. The entirety of the software is loaded and left. Besides the authentication of the software, no other functionality requires internet access. The authentication process is an inconsequential part of the transaction. Therefore, the sale of the software is taxable. ()

b. The determination of whether a vendor has offered for sale the same or comparable software as the remotely accessed software must be made at the time of the initial subscription or agreement granting access to the software. This initial determination of taxability will apply to all charges during the initial contract period. Subsequent addendums to or renewals of the agreement after the initial contract period will require a new determination. A taxpayer may establish that a transaction falls within the definition of remotely accessed software, by obtaining a statement from the vendor, stating that, at the time of initial subscription or agreement to remotely access software by the taxpayer, the same or comparable software was not offered for sale, as defined above. ()

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i. Example 1: Vendor sells remotely accessed software to Taxpayer 1. At the time of the initial subscription or agreement with Taxpayer 1 for the right to use the remotely accessed software, the vendor did not publicly advertise or solicit sales, through web sites, promotional materials or other advertising methods, or through wholesale or retail distribution channels, that same or comparable software through storage media or electronic download to the user's computer or server. Taxpayer 1 is not taxed on any payment made for the right to use the remotely accessed software for the duration of the initial contract period. ()

ii. Example 2: Same facts as Example 1. At the time of initial subscription or agreement with Taxpayer 1 for the right to use remotely accessed software, or at any time thereafter, the vendor has only made an isolated sale of the same or comparable software through electronic download or storage media to Taxpayer 2. This version of the software has not been generally offered for sale to the public by the vendor. Taxpayer 1 is not taxed on any payment made for the right to use the remotely accessed software for the duration of the initial contract period. Taxpayer 2 is taxed on the purchase price of the electronic download or storage media. ()

iii. Example 3: Same facts as Example 1. After the initial subscription or agreement for the right to use remotely accessed software by Taxpayer 1, the vendor begins publicly advertising or soliciting sales, through web sites, promotional materials or other advertising methods, or through wholesale or retail distribution channels, the same or comparable software in storage media or electronic download to a user's computer or server. Taxpayer 1's payments made for the continuing right to use the remotely accessed software are not taxable for the duration of the initial contract period. Any addendums to or renewals of the agreement for periods subsequent to the initial contract period will make the charges during those subsequent periods taxable. ()

10. Online Database Subscriptions. Subscription charges paid by a user for access to an online database of digital goods may be taxable or nontaxable depending on the facts of the transaction as outlined below. ()

a. If the user can only access the digital goods remotely over the internet or other network and the primary purpose of that digital goods is something other than entertainment, the subscription charge is not taxable. ()

b. If the user can export and download digital goods from the database and save it to the user's storage media for future use, the subscription charge may be taxable. The primary object test described in Subsection 09 above would need to be applied. ()

c. If the primary purpose of the digital goods is for entertainment, the subscription charge is taxable regardless of whether the digital goods can be loaded and left. ()

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d. Example 1: A user pays a subscription charge for access to a database of research papers over the internet. The primary use of the database is not entertainment. The database has a sophisticated search function only available over the internet. However, the user may download any of the research papers to be loaded and left on the user's personal storage media. Both the search function and the research papers are software, one of which can only be remotely accessed and the other can be loaded and left. The primary purpose of the subscription is the database of research papers all of which can be loaded and left. The search function is an inconsequential element of the transaction. Therefore, the subscription charge is taxable. ()

d. Example 1: A user pays a subscription charge for access to a database of research papers over the internet. The primary use of the database is not entertainment. The database has a search function only available over the internet. However, the user may download any of the research papers to be loaded and left on the user's personal storage media. Both the search function and the research papers are software, one of which can only be remotely accessed and the other can be loaded and left. Both the search function and the database of research papers are consequential elements of the transaction. Therefore, the portion of the subscription attributed to the online search function is exempt and the portion of the subscription attributed to the database of research papers is taxable. If the two charges are not separately stated, the entire subscription is taxable. ()

d. Example 1: A user pays a subscription charge for access to a database of research papers over the internet. The primary use of the database is not entertainment. The database has a sophisticated search function only available over the internet. However, the user may download any of the research papers to be loaded and left on the user's personal storage media. Both the search function and the research papers are software, one of which can only be remotely accessed and the other can be loaded and left. The primary purpose of the subscription is the search function which is only available over the internet. The database of research papers is an inconsequential element of the transaction. Therefore, the subscription charge is taxable. ()

e. Example 2: A user pays a subscription charge for access to a database of music or movies accessed remotely using an internet browser. The user cannot download the movies to the user's personal storage media; however, the primary content of the movies is entertaining in nature. Therefore, the subscription charge would be taxable. ()

0911. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

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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 (60 + 50 = 110 hours), are more than the hours used for flight instruction (100 hours). 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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046. PLATING AND REPLATING COATINGS ON TANGIBLE PERSONAL PROPERTY (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 tangible personal property usually intended to improve the durability or aesthetic appeal of the tangible personal property to which it is applied. There are a variety of coatings including paint, powder coating, chrome plating, spray-on bedliners, and anodized coatings. Effective July 1, 2014, this rule applies to all types of coatings and it is intended that such coatings receive the same tax treatment. This rule does not apply to coatings applied directly to real property such as paint applied to the walls of a building. ()

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 is taxable. If the seller is unable to measure the exact amount of material used, a reasonable method of estimation is acceptable. ()

04. Nontaxable Labor Charges. In any of the following circumstances, the labor to apply a coating will be nontaxable labor: ()

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

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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 labor is not taxable. ()

05. Taxable Labor Charges. In any of the following circumstances, the labor to apply a coating will be taxable 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. ()

06. Separate Statement. For circumstances under which the labor portion of the transaction is 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. ()

07. Used Tangible Personal Property. For purposes of this rule, tangible personal property is used if the tangible personal property has been previously put to the use for which it was intended. If a contractor hires someone to apply a coating to tangible personal property that the contractor intends to incorporate into real property, the tangible personal property has not been put to the use for which it was intended and is considered new tangible personal property. ()

a. Example 1: A contractor hires someone to apply a coating to metal ducting. The contractor intends to incorporate the metal ducts into a ventilation system in a building. Since the ducting has not yet been put to the use for which it was intended, it is not used tangible personal property and all labor and material charges will be taxable. ()

b. Example 2: A person buys a set of drawers for use in the home. The person uses the drawers for a year before hiring someone to apply a stain to the drawers. At that point, the drawers are used tangible personal property. If the drawers had a previous coating of any kind, the labor to apply the stain will be nontaxable. If the drawers had no previous coating, the labor to apply the stain will be taxable. ()

c. Example 3: A company buys production equipment from a supplier. Before the equipment is ever used in a production facility, the company takes the equipment to be coated by a different supplier. Since the equipment has not yet been put to the use for which it was intended, it is new tangible personal property. Regardless of whether the equipment already has a

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coating, both the materials and labor to apply the new coating are taxable. ()

08. Tangible Personal Property Held for Resale. For new or used tangible personal property held by a seller as part of its inventory, any labor costs incurred to apply a coating to the tangible personal property and charged to the end consumer are taxable services agreed to be rendered as part of the sale of the tangible personal property. The labor charges are exempt only if the sale of the tangible personal property is exempt. However, if the seller pays a third party to apply a coating to tangible personal property in its inventory, the seller may claim a resale exemption on the transaction. ()

a. Example 1: A dealership has a used truck in its inventory. A customer will purchase the truck on the condition that the dealership will apply a spray-on bedliner. The dealership hires another company to apply the spray-on bedliner and pays \$300 for the job (split evenly between materials and labor). The dealership fills out a resale exemption certificate for the spray-on bedliner company. No tax should be charged on this transaction. The dealership then charges its customer \$500 (split evenly between materials and labor) and separately states these charges from the sales price of the truck. The materials charge is a taxable sale of tangible personal property. The labor charge is a taxable service agreed to be rendered as part of the sale of the truck. The dealership must charge tax on the entire \$500. ()

09. Exemptions. Like any sale of tangible personal property, if the customer provides a valid exemption certificate to the seller claiming an exemption that applies to the transaction, the seller has no obligation to collect sales tax on the transaction. The seller must maintain a copy of the exemption certificate on file. See Rule 128 of these rules for additional information. ()

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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, and delivery 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. ()

b. 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. ()

i. 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 wholesale sales price shall be the price at which it sells to the Idaho distributor, retailer or end user. ()

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ii. 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 wholesale 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. ()

iii. 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 wholesale 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 wholesale 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

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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)

Prepaid Wireless E911 Fee Rules

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100. IMPOSITION OF THE PREPAID WIRELESS E911 FEE.

The prepaid wireless E911 fee is only imposed on a 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 a 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. ()

300. OUT-OF-STATE SALES

01. **Prepaid Wireless Telecommunications Service Cards.** As part of a sale of prepaid wireless telecommunications service, a seller may transfer to the customer a physical card or similar object containing a code required for activation or extension of the prepaid wireless telecommunications service. If the seller mails the card or similar object to a customer at an out-of-state address, the sale is not subject to the prepaid wireless E911 fee. ()

02. **Sales by Phone or Over the Internet.** If a seller completes a sale of prepaid wireless telecommunications service by phone or over the internet without transferring any

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physical object to the customer, the seller must rely on the billing address of the customer to determine whether the sale is subject to the prepaid wireless E911 fee. If the billing address is in the state of Idaho, the seller must charge the prepaid wireless E911 fee. If the billing address is outside the state of Idaho, the seller does not have to charge the prepaid wireless E911 fee.

a. If a seller relies on the billing address to determine whether the prepaid wireless E911 fee applies to a sale, the seller must retain documentation of the billing address. If a seller that holds or is required to hold a prepaid wireless E911 fee permit makes a sale of prepaid wireless telecommunications service without charging the fee and does not retain documentation of the billing address, the Tax Commission may hold the seller liable for the prepaid wireless E911 fee on that sale.

~~500. DOCUMENTING SALES OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FOR THE PURPOSE OF RESALE. (—)~~