

**SALES TAX RULES COMMITTEE MEETING  
AGENDA**

The Committee convenes on Thursday, August 21, 2014, at 1:30 p.m. in Room 1CR5

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

1. Welcome & Introductions
2. Review of Rulemaking Process
3. Negotiated Rulemaking Discussion
  - a. **Rule 049.** Warranties and Service Agreements [*Discussion Draft 1 – Unchanged since distribution in 07/17 meeting packet*] – We need to amend the rule to address more clearly service agreements which include guaranteed and routine provision of consumable items rather than a service agreement in which property is only provided in the event of a repair. In addition, overage charges levied when the customer exceeds a certain amount of usage of the property in question need to be addressed. A representative from the industry, J.T. Jones with Fisher’s Technology, has submitted a proposal to tax 50% of the service agreement sales price in line with estimates from industry on the labor and parts breakdown (see enclosed). This proposal differs from the current draft that requires the sale of the consumables to be separately stated from the rest of the service agreement. The Rules Committee has several concerns with the proposal (see list below) and proposes that we bump the rule from this year’s package to allow more time for further discussion next year. A summary of the Committee’s concerns:
    - i. Mr. Jones’ estimated breakdown of labor vs. parts lumps together all parts and supplies provided while the current rule treats repair parts and consumable supplies differently,
    - ii. Lack of statutory authority for a blanket 50% allocation, and
    - iii. Allowing specific treatment for service agreements in a particular industry (office equipment dealers) without giving other industries similar consideration.
  - b. **Rule 102.** Logging [*Discussion Draft 1 – Unchanged since distribution in 07/17 meeting packet*] – A recent decision from the Board of Tax Appeals determined that a contractor did not owe use tax for planting tree seedlings

provided by a project owner that did not pay sales tax on its purchase of the seedlings. The Board decided that the logging exemption applied due to language in subsection 07 of this rule. In reviewing the decision and its reliance on the rule, the Commission feels that the rule oversteps the statute by extending the logging exemption beyond its statutory bounds. The logging exemption in Idaho Code § 63-3622JJ along with the definition of logging in Idaho Code § 63-3605A applies to certain equipment and materials used in the tree harvesting process alone rather than the whole process of raising and maintaining trees. The production exemption (Idaho Code § 63-3622D) is a wholly separate exemption that has applicability in the broader scope of a full tree farm. However, the references to a “tree farm” in subsection 07 of this rule do not make this connection to the production exemption clear. In fact, the rule implies that materials and equipment used on a tree farm can qualify for the logging exemption even if they are used outside of the harvesting process which contradicts the statute. The rule needs to be amended to make it clear that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

- c. **Rule 128.** Certificates for Resale and Other Exemption Claims [*Discussion Draft 1 – Unchanged since distribution in 07/17 meeting packet*] – The sales tax audit staff proposes that we amend subsection 05 to clarify that Form ST-104-HM *must* be used in claiming an exemption on a sale of lodging accommodations. Currently, the rule allows the seller to use either Form ST-104HM or Form ST-101. However, the ST-101 does not provide enough information to determine whether the exempt organization or the non-exempt employee would be billed for the payment. The ST-104-HM provides detail and explanations so that the retailer can easily determine whether the lodging or other charges should be taxed, and the detail also gives the Tax Commission enough information to hold the paying guest liable for unpaid taxes in the event that it is determined the sale is not exempt.

4. Any Additional Items for Discussion?

5. Upcoming Meetings

- a. None currently scheduled

## **Participating in the Rules Process**

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

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

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

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

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

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

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

# Sales Tax Rule 049

## Proposal from Fisher's Technology

**From:** J.T. Jones [<mailto:jtjones@fisherstech.com>]  
**Sent:** Wednesday, July 30, 2014 9:01 AM  
**To:** Sherry Briscoe  
**Subject:** Fisher's Proposal on Rule 49

Hi Sherry,

Please forward this analysis on to McLean as well as anyone else in the sales tax rules division who may be involved.

As we discussed briefly at the sales tax rules meeting on July 17<sup>th</sup>, Fisher's is proposing a simplification of rule 49 for copier dealers and all users of copiers in the state. This applies to customers who have service contracts that cover parts, supplies, & labor who are billed directly by a copier dealer. This does not apply to end users who are billed directly by a leasing company for both equipment and service, as those are bundled amounts and are taxed together at 6%.

What we're proposing is that only ½ of service contract invoices (both base charges and overages) be taxable at 6% (for a net of 3%) as labor makes up very close to 50% of a contract. The main difficulty of charging sales tax to a customer who has a service contract is that both their supplies and service calls that include parts and labor are done free of charge under the contract. This means that the customer does not receive an invoice at each occurrence so there is no way to charge them tax. It must be charged up front.

The basis for the 50% labor comes from years of research by copier industry associations. The two main industry associations are the Business Technology Association and the Copier Dealers Association.

<http://www.bta.org/>  
<http://cdainfo.org/>

Member dealers of these associations send their financial data to an independent industry consultant, Strategic Business Associates, each year. They compile that data to create benchmarks for the industry to help us run our businesses.

I've reached out to these experts for their thoughts on this proposed rule and it turns out that they have gone down this road in other states as well. Here is the response I received from the attorney that represents both organizations, Bob Goldberg.

JT, this issue has arisen previously. In the past I have reached out to Hay and Hanson for data they have regarding the ratio of labor and parts and supplies in a Maintenance Agreement. BTA has typically used 60% labor and 40% parts and supplies. The goal has always been to increase the non-taxable portion. Since Boards are a significant cost it has been pointed out that Boards are exchanged rather than sold. The same argument can be used for other parts as well. I cannot provide you with a White Paper, but can share what has been done in similar circumstances.

Bob

# Sales Tax Rule 049

## Proposal from Fisher's Technology

**Robert C. Goldberg**  
**General Counsel**  
**Business Technology Association**  
**222 S. Riverside Plaza, Suite 2100**  
**Chicago, Illinois 60606**  
**Office: 312/648-2300**  
**Fax: 312/559-1172**  
**Mobile: 847/226-3254**  
**[Bob.Goldberg@sfnr.com](mailto:Bob.Goldberg@sfnr.com)**

The "Hay (sic) and Hanson" that Goldberg refers to above is the men who started Strategic Business Associates and control all the data collection. The response I received from John Hey is consistent with the 50% I'm proposing as well.

JT,

The ALL COMPANY median performance from our surveys shows that labor is 51.6% of service costs. That's the median results from the Strategic Business Associates (SBA) database that includes 135 companies with \$1.92B in revenues collectively. In our opinion, the 50% being proposed is right on target.

Hope this helps.

John Hey  
[john.hey@strategicbusinessassoc.com](mailto:john.hey@strategicbusinessassoc.com)  
612-860-7282

In my opinion, it would be an overall win to make this specific rule apply to copier dealer service contracts. You have dealers around the state all treating sales tax differently at the moment and end customers really have no idea what they're being taxed on. It would also reduce time and energy needed to comply for the dealers and your auditors as well.

I look forward to discussing this further.



**J.T.Jones, CPA** | CFO | Fisher's Technology  
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Twin Falls: 822 Blue Lakes Blvd. North | Twin Falls, Idaho 83301  
Idaho Falls: 804 Pancheri | Idaho Falls, Idaho 83402  
Rexburg: 76 W 1st North | Rexburg, Idaho 83440

#### Fisher's Accolades:

2013 Boise Metro Chamber of Commerce Small Business of the Year  
2008, 2009, 2010, 2011, 2012 Top Ten Best Places to Work in Idaho  
2009, 2011, 2012, 2013 Inc. Magazine Inc 500/5000 Award  
2013 Elite Dealer Award

## **Rule 049**

### **Warranties and Service Agreements**

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

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

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

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

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

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

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

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

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

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

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

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

## Rule 049

### Warranties and Service Agreements

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

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

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

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

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

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

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

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

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

## Rule 102 Logging

**63-3622JJ. LOGGING EXEMPTION.** There are exempted from the taxes imposed by this chapter:

(1) The sale at retail, storage, use or other consumption in this state of tangible personal property which is primarily and directly used or consumed in logging including, but not limited to, log loaders, log jammers, log skidders and fuel used in logging trucks, provided that the use or consumption of such tangible personal property is necessary or essential to logging.

(2) The exemption allowed by subsection (1) of this section does not include machinery, equipment, materials and supplies used in a manner that is incidental to logging such as maintenance and janitorial equipment and supplies, and hand tools with a unit purchase price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than the actual logging, such as office equipment and supplies, equipment and supplies used in selling or distributing activities or, except for fuel used in logging trucks, in transportation activities; nor shall this exemption include motor vehicles or aircraft, without regard to the use to which such motor vehicles or aircraft are put; nor shall this exemption apply to vehicles or equipment described in section 63-3622HH, Idaho Code.

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**63-3605A. LOGGING.** The term "logging" means the harvesting of forest trees by cutting, skidding, loading, thinning or decking, regardless of whether the forest trees are owned by the person performing the harvesting when such harvesting is for resale of the product harvested.

# Rule 102

## Logging

### 102. LOGGING (RULE 102).

[Sections 63-3605A & 63-3622JJ, Idaho Code.](#) ( )

**01. In General.** The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

**02. Real Property.** The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

**03. Property Used in Logging Operations.** The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

**04. Logging Process Begins and Ends.** The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

**05. Logging Exemption.** Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

**a.** Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)

**b.** Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)

**c.** Log loaders and log jammers which are not licensed motor equipment. (7-1-93)

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

**e.** Fuel, such as diesel, gasoline, and propane consumed by equipment while

## Rule 102 Logging

performing exempt logging activities. (7-1-93)

**06. Directly Used.** Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

**a.** The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)

**b.** The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

**c.** The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

**d.** The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (4-11-06)

**07. Not Included in Logging Exemption.** Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

**a.** Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

**b.** Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, ~~except when part of the operation of a tree farm.~~ (7-1-93)( )

**c.** Reforestation equipment and supplies, ~~except when part of the operation of a tree farm.~~ (7-1-93)( )

**d.** Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

**e.** Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

**f.** Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies

## Rule 102 Logging

which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

**g.** Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

**h.** Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)

**i.** Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

**08. Election to Pay Sales Tax.** The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)

**a.** Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

**b.** Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

**09. Timber Production.** Activities and equipment excluded from the logging exemption in Section 63-3622JJ, Idaho Code, such as slash disposal, brush piling, or clearing, and reforestation equipment and supplies may qualify under the production exemption in Section 63-3622D, Idaho Code. See also Rule 079 of these rules. ( )

## **Rule 128**

### **Certificates For Resale And Other Exemption Claims**

**63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES.** (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

...(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

...(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

Idaho State Tax Commission  
SALES TAX RESALE OR EXEMPTION CERTIFICATE

Seller's Name			Buyer's Name		
Address			Address		
City	State	Zip Code	City	State	Zip Code

**1. Buying for Resale.** I will sell, rent, or lease the goods I am buying in the regular course of my business.

a. Primary nature of business \_\_\_\_\_ Describe the products you sell, lease, or rent \_\_\_\_\_

b. Check the block that applies:

- Idaho registered retailer. Seller's permit number \_\_\_\_\_ (required - see instructions)
- Wholesale only; no retail sales
- Out-of-state retailer; no Idaho business presence
- Idaho registered prepaid wireless service seller. E911 fee permit number \_\_\_\_\_ (required - see instructions)

**2. Producer Exemptions** (see instructions). I will put the goods purchased to an exempt use in the business indicated below.

Check all that apply and complete the required information.

- Logging Exemption
- Broadcasting Exemption
- Publishing Free Newspapers
- Production Exemption (check all that apply):  Farming  Ranching  Manufacturing  Processing  Fabricating  Mining

List the products you produce: \_\_\_\_\_

**3. Exempt Buyer.** All purchases are exempt, and no permit number is required. Check the block that applies.

<input type="checkbox"/> Advocates for Survivors of Domestic Violence and Sexual Assault, Inc.	<input type="checkbox"/> Center for Independent Living	<input type="checkbox"/> Nonprofit Children's Free Dental Service Clinic	<input type="checkbox"/> Senior Citizen Center
<input type="checkbox"/> American Indian Tribe	<input type="checkbox"/> Emergency Medical Service Agency	<input type="checkbox"/> Nonprofit Hospital	<input type="checkbox"/> State/Federal Credit Union
<input type="checkbox"/> American Red Cross	<input type="checkbox"/> Federal/Idaho Government Entity	<input type="checkbox"/> Nonprofit Museum	<input type="checkbox"/> Volunteer Fire Department
<input type="checkbox"/> Amtrak	<input type="checkbox"/> Forest Protective Association	<input type="checkbox"/> Nonprofit School	
<input type="checkbox"/> Blind Services Foundation, Inc.	<input type="checkbox"/> Idaho Foodbank Warehouse, Inc.	<input type="checkbox"/> Qualifying Health Organization (see instructions for list)	
	<input type="checkbox"/> Nonprofit Canal Company		

**4. Contractor Exemptions** (see instructions).

a. Invoice, purchase order, or job number to which this claim applies \_\_\_\_\_

b. City and state where job is located \_\_\_\_\_

c. Project owner name \_\_\_\_\_

d. This exempt project is: (check appropriate box)

- In a nontaxing state. (To qualify, materials must become part of the real property.)
- An agricultural irrigation project.
- For production equipment owned by a producer who qualifies for the production exemption.

**5. Other Exempt Goods and Buyers** (see instructions).

<input type="checkbox"/> Aircraft used to transport passengers or freight for hire	<input type="checkbox"/> Livestock sold at a public livestock market
<input type="checkbox"/> Aircraft purchased by nonresident for out-of-state use	<input type="checkbox"/> Medical items that qualify
<input type="checkbox"/> American Indian buyer holding Tribal ID No. _____	<input type="checkbox"/> Pollution control items
This form doesn't apply to vehicles or boats. See instructions.	<input type="checkbox"/> Research and development goods
<input type="checkbox"/> Church buying goods for food bank or to sell meals to members	<input type="checkbox"/> Snowmaking/grooming equipment; or aerial tramway component
<input type="checkbox"/> Food bank or soup kitchen buying food or food service goods	<input type="checkbox"/> Other goods or entity exempt by law under the following statute (required) _____
<input type="checkbox"/> Glider kits for IRP-registered vehicles	
<input type="checkbox"/> Heating fuel	

**Buyer: Read and sign.** I certify that all statements I have made on this form are true and correct to the best of my knowledge. I understand that falsification of this certificate for the purpose of evading payment of tax is a misdemeanor. Other penalties may also apply.

Buyer's Signature	Buyer's Name (please print)	Title
Buyer's Federal EIN or Driver's License No. and State of Issue		Date

**Seller:** Each exemption a customer may claim on this form has special rules (see instructions). It's your responsibility to learn the rules. You must charge tax to any customers and on any goods that don't qualify for a claimed exemption and are taxable by law.

- This form is valid only if all information is complete.
- The seller must keep this form.
- The blank form may be reproduced.

## Form ST-101 Instructions

**1. BUYING FOR RESALE:** Buyers must have an Idaho seller's or E911 fee permit number unless they are wholesalers who make no retail sales or are out-of-state retailers with no Idaho business presence (e.g. physical location, representatives, employees, etc.). An Idaho seller's or E911 fee permit number has nine digits. **For example, 000123456.** If the number contains an inappropriate number, such as a federal Employer Identification Number, the certificate isn't valid. To verify a seller's permit number, contact the Tax Commission or visit our website at [tax.idaho.gov](http://tax.idaho.gov).

**2. PRODUCER EXEMPTIONS:** Businesses that are primarily devoted to producing products for resale can buy goods that are directly and primarily used in the production process without paying tax. Loggers, broadcasters, and publishers of newspapers that are free to the public (with at least 10% informational content, not ads) are granted a similar exemption. However, a seller must charge these buyers sales tax on any of the following:

- A hand tool with a unit cost of \$100 or less
- Transportation equipment and supplies
- Goods used in selling/distribution
- Janitorial or cleaning equipment or supplies
- Maintenance or repair equipment and supplies
- Office equipment and supplies
- Any licensed motor vehicle or trailer and parts
- Aircraft and parts
- Recreational vehicle (e.g. snowmobile, ATV, off-road motorcycle, camper, travel trailer)
- Goods that become improvements to real property (e.g. fence posts)

**Seller:** *You can stamp or print a production exemption statement on the front of your invoice. If customers fill in their exemption claim on a stamped or imprinted statement each time you make an exempt sale to them, you don't have to keep a form ST-101 on file for them. Contact the Tax Commission to get the required language for the exemption statement.*

**3. EXEMPT BUYERS:** These buyers are exempt from tax on all purchases.

**Hospitals:** Only licensed nonprofit hospitals qualify. Nursing homes or similar institutions don't.

**Schools:** Only nonprofit schools qualify, including colleges and universities; primary, secondary, and charter schools; and the Idaho Digital Learning Academy. Schools primarily teaching subjects like business, dancing, dramatics, music, cosmetology, writing, and gymnastics don't qualify. Auxiliary organizations, such as parent-teacher associations and alumni groups, don't qualify.

**Museums:** Only nonprofit museums qualify. A museum collects, preserves, and displays objects and information to help the public interpret the past and present and to

explore the future. Examples include institutions that exhibit science, history, art, and culture.

**Centers for Independent Living:** To qualify, centers must be:

- Nonresidential,
- Nonprofit,
- Run by disabled persons, and
- Provide independent living programs to people with various disabilities.

### **Qualifying Health Organizations:**

American Cancer Society  
American Diabetes Association  
American Heart Association  
American Lung Association of Idaho  
Arc, Inc., The  
Arthritis Foundation  
Camp Rainbow Gold  
Children's Home Society of Idaho  
Easter Seals  
Family Services Alliance of Southeast Idaho  
Idaho Community Action Agency  
Idaho Cystic Fibrosis Foundation  
Idaho Diabetes Youth Programs  
Idaho Epilepsy League  
Idaho Primary Care Association and its Community Health Centers  
Idaho Ronald McDonald House  
Idaho Women's and Children's Alliance  
March of Dimes  
Mental Health Association  
Muscular Dystrophy Foundation  
National Multiple Sclerosis Society  
Rocky Mountain Kidney Association  
Special Olympics Idaho  
United Cerebral Palsy

**Government:** Only the federal government and Idaho state, county, and city governments qualify. Sales to other states and their political subdivisions are taxable.

**4. CONTRACTOR EXEMPTIONS:** Three exemptions apply to contractors. In each case, a contractor must list the job location and project owner, and whether the exemption claim applies to a specific invoice or purchase order, or to all purchases for a specific job number.

**Nontaxing State:** Construction materials for a job in a nontaxing state are exempt from Idaho sales tax. This exemption applies only to materials that will become part of real property and only if the contractor isn't subject to a use tax or a similar tax in the other state. Jobs in Oregon, Montana, and Alaska qualify, as do some jobs in Washington.

**Agricultural Irrigation:** Irrigation equipment and materials for an agricultural irrigation project are exempt. An irrigation system for a golf course or a residence doesn't qualify.

## Form ST-101 Instructions - continued

**Production Equipment:** A contractor who installs production equipment for a producer/manufacturer can buy the materials for the equipment exempt from tax. This exemption doesn't apply to materials that become part of real property.

**5. OTHER EXEMPT GOODS AND BUYERS:** If buyers claim an exemption that isn't listed on this form, they must mark the "other" block and list the section of the law that applies to the exemption, or the certificate isn't valid.

**Aircraft Purchased by Nonresidents for Out-of-State Use:** An aircraft sold to a nonresident is exempt if it will be immediately removed from Idaho and registered in another state and won't be stored or used in Idaho more than 90 days in any 12-month period. Repair parts installed on a nonresident's aircraft by an FAA-approved Idaho repair station are also exempt. Aircraft kits and hang gliders don't qualify for this exemption. A business is a "nonresident" if it has no business presence in Idaho. A business with property in Idaho or employees working in the state doesn't qualify.

**Aircraft Primarily Used to Transport Passengers or Freight for Hire:** Only aircraft purchased by an airline, charter service, air ambulance service, or air freight company qualify. Parts for the exempt aircraft are also exempt. Examples of aircraft that don't qualify for this exemption are those used for recreational flights, aerial spraying, dumping, or logging.

**American Indian:** Sales to an enrolled Indian tribal member are exempt if the seller delivers the goods on the reservation. The buyer's Tribal Identification Number is required. For sales of vehicles or boats, use form ST-133, Sales Tax Exemption Certificate - Transfer Affidavit.

**Church:** A church may buy food to sell meals to its members or qualifying goods for its food bank without paying tax. Churches must pay tax on all other goods they buy to use.

**Food Banks and Soup Kitchens:** Food banks and soup kitchens may buy food or other goods used to grow, store, prepare, or serve the food exempt from sales tax. The exemption doesn't include licensed motor vehicles or trailers.

**Heating Fuels:** Heating fuels such as wood, coal, petroleum, propane, and natural gas are exempt when purchased to heat an enclosed building or a building under construction, or when used for cooking or water heating.

**Livestock:** Sales of cattle, sheep, mules, horses, pigs, and goats are exempt when sold at a public livestock market. Sales of other animals don't qualify.

**Medical Items:** Only the following medical goods qualify if a licensed practitioner will administer or distribute them: drugs, oxygen, insulin, syringes, prosthetic devices, durable medical equipment, dental and orthopedic appliances (including fillings), urinary and colostomy supplies, enteral and parenteral feeding equipment and supplies, hemodialysis and peritoneal dialysis drugs and supplies, and chemicals and equipment used to test or monitor blood or urine of a diabetic.

**Pollution Control Items:** The following items qualify: tangible personal property purchased to meet air or water quality standards of a federal or state agency; liners and reagents purchased to meet water quality standards; tangible personal property purchased to meet air or water quality standards and which become an improvement to real property of manufacturing, mining, farming, or toxic waste treatment and storage businesses; and "dry to dry transfer systems" used by the dry cleaning industry. This exemption isn't available for items used in road construction, septic systems, treating drinking water, or preventing soil erosion. Motor vehicles and buildings don't qualify. See Idaho Code section 63-3622X for more details.

**Research and Development (R & D):** Purchases of goods that are directly and primarily used to develop, design, manufacture, process, or fabricate a product or potential product qualify. Also, the Idaho National Laboratory and its contractors may claim an R & D exemption to buy goods directly and primarily used to advance scientific knowledge in areas that don't have a commercial application. Items that will become a part of real property don't qualify.

**Snowmaking/Grooming Equipment, Aerial Tramway:** The owner or operator of a downhill ski area with an aerial passenger tramway may buy parts, materials, and equipment that become component parts of the tramway and snow grooming and snowmaking equipment (and parts) for the slopes exempt from tax. An aerial tramway includes chair lifts, gondolas, T-bar and J-bar lifts, platter lifts, rope tows, and similar devices.



## Definitions for Idaho Form ST-104-HM Sales Tax Exemption on Lodging Accommodations

**Exempt Entities.** Rooms or campground spaces furnished to government entities, educational institutions, or hospitals are exempt from the taxes if the charge is billed directly to—and paid directly by—the government entity, educational institution, or hospital.

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

“Paid directly by” means a payment by an exempt entity to the facility operator. It does not include a payment by an exempt entity 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.

Credit cards issued to employees of government agencies are NOT considered to be billed directly to, and paid directly by, the government entity when the employee is responsible for paying the credit card company.

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### QUALIFIED ORGANIZATIONS

**American Indian Tribes** - Tribal entity only, sales made to tribal members off the reservation do not qualify.

**American Red Cross**

**Amtrak**

**Blind Services Foundation, Inc.**

**Centers for Independent Living** - Only non residential centers run by disabled persons that provide independent living programs to people with various disabilities qualify.

**Emergency Medical Service Agencies**

**Forest Protective Association**

**Idaho Foodbank Warehouse, Inc.**

**Nonprofit Canal Companies**

**Nonprofit Hospitals**

**Nonprofit Schools** - Only nonprofit colleges, universities, and primary, charter, and secondary schools qualify. Schools primarily teaching subjects like business, dancing, dramatics, music, cosmetology, writing, and gymnastics do not qualify. Auxiliary organizations, such as parent-teacher associations and alumni groups, do not qualify.

**Senior Citizen Centers**

**State/Federal Credit Unions**

**Volunteer Fire Departments**

**Qualified Health Organizations** - Only these qualify:

American Cancer Society  
American Diabetes Association  
American Heart Association  
Arthritis Foundation  
The Arc, Inc.  
Children's Home Society of Idaho  
Easter Seals  
Idaho Community Action Agency  
Family Services Alliance of SE Idaho  
Idaho Cystic Fibrosis Foundation  
Idaho Diabetes Youth Programs  
Idaho Epilepsy League  
Idaho Lung Association  
Idaho Primary Care Association and  
its Community Health Centers  
Idaho Ronald McDonald House  
Idaho Women's and Children's Alliance  
March of Dimes  
Mental Health Association  
Muscular Dystrophy Foundation  
National Multiple Sclerosis Society  
Rocky Mountain Kidney Association  
Special Olympics Idaho  
United Cerebral Palsy

**Government** - Only the federal government and Idaho State, county, or city government qualify. Sales to other states and their political subdivisions are taxable.

**ST-104G**

Idaho State Tax Commission  
**SALES TAX EXEMPTION CLAIM**  
 for Cash Purchases by Government Agencies

**This form must be completed and given to the seller by the Government Agency.**

Seller's name	Government agency or department name
Address	Address
City, state and zip	City, state and zip

Signature and title of government purchasing agent

ITEM(S) PURCHASED	PRICE	ITEM(S) PURCHASED	PRICE

I CERTIFY THAT ALL STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I understand that falsification of this form to evade payment of tax is a misdemeanor and punishable by a fine up to \$1,000.00, or imprisonment up to one (1) year, or both.

Signature of person making claim	Date
Print name	Print title

What is this form used for?

It is used for cash purchases by federal government agencies, the State of Idaho or its agencies, departments and political subdivisions. **IT CANNOT BE USED FOR:**

- Lodging and meals bought by a traveling government employee;
- Expenses for using a private car for which an allowance has been authorized; or
- Purchases by other states, their agencies, departments and political subdivisions.

Is this form required?

Yes. A Form ST-104G must document each tax-exempt cash sale to a government agency, unless the buyer provides other proof (such as a government purchase order) that the sale is exempt. A separate form must be completed for each sale. **PHOTOCOPIES ARE NOT ACCEPTABLE.** To be valid, this form must be legible, complete and signed by both the government purchasing agent and the employee making the purchase.

Sellers must keep completed forms with the appropriate invoice(s) on file for at least four years. If a form is not obtained from the buyer when a sale is made, the sale is taxable.

What if the list of items purchased is too long for the form?

If there is not enough room on the form to list items purchased, continue on the back or use additional pages. A separate list may be attached to the form instead of completing the Items Purchased columns on the form.

## Rule 128

### Certificates For Resale And Other Exemption Claims

#### 128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).

**01. In General.** This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

**02. Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

**03. Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

**04. Qualified Buyers for Purposes of Resale.** The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

**a.** A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

**b.** A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

**c.** An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

**05. Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

**a.** To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and

## Rule 128

### Certificates For Resale And Other Exemption Claims

Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

i. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

ii. Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

iii. Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may must be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. (3-6-00)( )

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees and by Employees of Other Qualified Exempt Organizations Using Credit Card Payment, Form ST-104-HM, applies must be used when a credit card company will directly bill to and be paid by a federal, Idaho State, ~~or~~ local government agency, or other qualifying employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency or other qualifying employer. Each lodging transaction

## Rule 128

### Certificates For Resale And Other Exemption Claims

requires a newly executed form signed by the employee/purchaser. (3-6-00)( )

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State 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. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (4-4-13)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to

## Rule 128

### Certificates For Resale And Other Exemption Claims

resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

**a.** Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

**b.** Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

**c.** Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

**07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or other required form has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-4-10)( )

**a.** A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

## Rule 128

### Certificates For Resale And Other Exemption Claims

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)
- iv. Selling and distribution equipment and supplies; (3-6-00)
- v. Property used in transportation activities; (3-6-00)
- vi. Equipment or other property used to make repairs; (3-6-00)
- vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- viii. Licensed motor vehicles; (3-6-00)
- ix. Aircraft; and (3-6-00)
- x. Recreational vehicles. (3-6-00)

**b.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)

**c.** Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

**d.** A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

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### Certificates For Resale And Other Exemption Claims

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

f. In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

\_\_\_\_\_  
NATURE OF BUSINESS

\_\_\_\_\_  
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

g. Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption

## Rule 128

### Certificates For Resale And Other Exemption Claims

from tax. (4-4-13)

**08. Purchaser's Responsibility.** A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars (\$200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

**a.** Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

**b.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars (\$200), whichever is greater, against the restaurant. (3-4-10)

**09. Timely Acceptance of Certificates.** A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

## **Rule 128**

### **Certificates For Resale And Other Exemption Claims**

**a.** Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

**b.** Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

**c.** Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

**d.** When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)