300. TAX ON CORPORATIONS (RULE 300).
Sections 63-3025 and 63-3025A, Idaho Code

01. Excise Tax. A corporation excluded from the tax on corporate income imposed by Section 63- 3025, Idaho Code, is subject to the excise tax imposed by Section 63-3025A, Idaho Code. If a corporation is subject to the excise tax imposed by Section 63-3025A, Idaho Code, it is not subject to the tax on corporate income imposed by Section 63-3025, Idaho Code. (3-31-22)

02. Minimum Tax. A name-holder or inactive corporation that is authorized to do business in Idaho pays the minimum tax of twenty dollars ($20) even though the corporation did not conduct Idaho business activity during the taxable year. A nonproductive mining corporation generally is not required to pay the minimum tax. (3-31-22)

03. Nonproductive Mining Corporations. A nonproductive mining corporation is a corporation that does not own any producing mines and does not engage in any business other than mining. A corporation that qualifies as a nonproductive mining corporation is required to file and pay tax if it receives any other income. (3-31-22)

04. Protection Under Public Law 86-272. A corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (3-31-22)

05. Corporate Income Tax Rates. Corporate tax rates are listed at https://tax.idaho.gov/busit. (3-31-22)

301. -- 309. (RESERVED)

310. APPORTIONMENT ELECTIONS FOR MULTISTATE CORPORATIONS (RULE 310).
Section 63-3027, Idaho Code

01. Available Options. A multistate corporation transacting business in Idaho may elect to be taxed pursuant to the provisions of the Idaho Income Tax Act or pursuant to the Multistate Tax Compact, Section 63-3701, Idaho Code. This provides three (3) options: (3-31-22)

a. Apportionment and allocation pursuant to Section 63-3027, Idaho Code. (3-31-22)

b. Apportionment and allocation pursuant to Article III, Section 1 of the Multistate Tax Compact. However, if this option is elected, ~~business apportionable income is to be apportioned using the apportionment formula~~ in any case in which the provisions of Article III, Section 1 of the Multistate Tax Compact are inconsistent with the provisions of ~~pursuant to~~ Section 63-3027~~(i)~~, Idaho Code, the provisions of Section 63-3027 shall control. Because of Subsection 63-3027(3), Idaho Code, this option is indistinguishable from the standard apportionment option identified above in .01.a of this rule. (3-31-22)

c. Tax based on one percent (1%) of sales pursuant to Article III, Section 2 of the Multistate Tax Compact and Section 63-3702, Idaho Code. This option is available to corporations whose only activity in Idaho consists of sales that are not in excess of one hundred thousand dollars ($100,000) during the taxable year. (3-31-22)

02. Three Factor Apportionment Election for Certain Taxpayers.. The default apportionment factor for taxpayers under section 63-3027, Idaho Code, is sales factor only. However, multistate taxpayers subject to section 63-3027(23), Idaho Code, are an exception to the default provision of apportioning income and are subject separate accounting where required. Pursuant to section 63-3027(10)(b), an electrical corporation, a telephone corporation, a communications company, or a taxpayer subject to a special industry regulation pursuant to Rule 580 may elect to apportion all apportionable income of the taxpayer to Idaho by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

~~02.~~**03. Electing an Option**. A multistate corporation is to file pursuant to Section 63-3027, Idaho Code, unless it elects to report and pay income tax pursuant to one of the options specified in Subsections 310.01.b., ~~and~~ 310.01.c, or 310.02. The election must be made on the return by checking the applicable box if provided, otherwise, ~~is made by attaching a written statement of the election to the return. The statement must affirmatively state each~~

~~element required by statute to qualify for the option elected. The return must include any additional schedules needed to show how the tax due was computed~~. After the election has been made, the election may not be changed for a taxable year thereafter ~~the return for that year has been filed~~ without permission of the Tax Commission. A petition to change the election must include an explanation of the legal or factual basis for requesting the change and a computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. The written petition requesting the change of apportionment method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. (3-31-22)

04. Election for members of a combined group. The elections identified in this Rule apply at the entity level, not to the entire combined group. For example, if an entity in a combined group is one of the types of corporations allowed to make the three factor election, and choses to do so, but the other entities in the group are not the types of corporations allowed to make the three factor election, these other entities will still use single sales factor. If mixing entities using different apportionment methods within a combined group produces apportionment results that do not fairly represent the business activity in Idaho of any of the taxpayers, then, pursuant to section 63-3027(17), Idaho Code, the taxpayer may petition for or the Tax Commission may require, a reasonable alternative apportionment. A written statement must be attached to the combined return specifying which entities have or are electing to use three factor apportionment.

311. -- 319. (RESERVED)

320. APPLICATION OF MULTISTATE RULES (RULE 320).
Section 63-3027, Idaho Code

01. Prologue. Rules 320 through 699 of these rules are intended to set forth the application of the apportionment and allocation provisions of Section 63-3027, Idaho Code. The only exceptions to these allocation and apportionment rules are those set forth in these rules pursuant to the authority of Sections 63-3027(~~s~~18) and 63-3027(~~u~~23), Idaho Code. (3-31-22)

02. Taxpayers Conducting Business Within and Without Idaho. Section 63-3027, Idaho Code, and related rules apply to corporations conducting business within and without Idaho, and to other taxpayers if required by other provisions of the Idaho Code or of these rules. However, only C corporations may use the combined report to determine Idaho taxable income. See Rule 360 of these rules. (3-31-22)

321. -- 324. (RESERVED)

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (RULE 325).
Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-31-22)

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly controlled group of which the taxpayer is also a member. The commonly controlled group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common control, see Rule 344 of these rules. (3-31-22)

02. Allocation. Allocation refers to the assignment of ~~nonbusiness~~ nonapportionable income to a particular state. (3-31-22)

03. Apportionment. Apportionment refers to the division of ~~business~~ apportionable income between states in which the business is conducted by the use of a formula containing apportionment factors. (3-31-22)

04. Business Activity. Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations. (3-31-22)

05. Combined Group. Combined group means the group of corporations that comprise a unitary

business and are includable in a combined report pursuant to Section 63-3027(~~t~~22) or 63-3027B, Idaho Code, if the water's edge election is made. (3-31-22)

06. Combined Report. Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. (3-31-22)

07. Gross Receipts. (3-31-22)

a. Gross receipts are the gross amounts realized, (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces ~~business~~ apportionable income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if ~~business~~ apportionable income, do not include such items as, for example: (3-31-22)

i. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument; (3-31-22)

ii. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan; (3-31-22)

iii. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock; (3-31-22)

iv. Damages and other amounts received as the result of litigation; (3-31-22)

v. Property acquired by an agent on behalf of another; (3-31-22)

vi. Tax refunds and other tax benefit recoveries; (3-31-22)

vii. Pension reversions; (3-31-22)

viii. Contributions to capital; (3-31-22)

ix. Income from forgiveness of indebtedness; or (3-31-22)

x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. (3-31-22)

b. Exclusion of an item from the definition of gross receipts is not determinative of its character as ~~business~~ apportionable or ~~nonbusiness~~ nonapportionable income. Nothing in this definition is to be construed to modify, impair or supersede any provision of Rules 560 through 595 of these rules. (3-31-22)

08. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-31-22)

09. MTC. The Multistate Tax Commission. (3-31-22)

10. Multistate Corporation. A multistate corporation is a corporation that operates in more than one (1) state. For purposes of this definition, state is defined in Section 63-3027(~~a~~ 1)(~~6~~ j), Idaho Code. (3-31-22)

11. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. (3-31-22)

326. -- 329. (RESERVED)

330. ~~BUSINESS~~ APPORTIONABLE AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED: APPORTIONMENT AND ALLOCATION (RULE 330).
Section 63-3027(~~a~~ 1), Idaho Code. Sections 63-3027(~~a~~ 1)(~~1~~ a) and 63-3027(~~a~~ 1)(~~4~~ h), Idaho Code, require that every item of income be classified either as ~~business~~ apportionable income or ~~nonbusiness~~ nonapportionable income. Income for purposes of classification as ~~business~~ apportionable or ~~nonbusiness~~ nonapportionable includes gains and losses. ~~Business~~ Apportionable income is apportioned among jurisdictions by use of a formula. ~~Nonbusiness~~ Nonapportionable income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as ~~business~~ apportionable income if it falls within the definition of ~~business~~ apportionable income. An item of income is ~~nonbusiness~~ nonapportionable income only if it does not meet the definitional requirements for being classified as ~~business~~ apportionable income. (3-31-22)

331. ~~BUSINESS~~ APPORTIONABLE AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED: ~~BUSINESS~~ APPORTIONABLE INCOME (RULE 331).
Section 63-3027(~~a~~ 1)(~~1~~ a), Idaho Code

01. In General. ~~Business~~ Apportionable income means income of any type or class and from any activity that meets the "transactional test" described in Rule 332 of these rules, or the "functional test" described in Rule 333 of these rules. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is ~~business~~ apportionable or ~~nonbusiness~~ nonapportionable income. (3-31-22)

02. Terms Used in Definition of ~~Business~~ Apportionable income and in Application of Definition. As used in the definition of ~~business~~ apportionable income and in the application of the definition. (3-31-22)

a. "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Idaho. (3-31-22)

b. "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business. (3-31-22)

332. ~~BUSINESS~~ APPORTIONABLE AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED: TRANSACTIONAL TEST (RULE 332).
Section 63-3027(~~a~~ 1)(~~1~~ a), Idaho Code

01. In General. ~~Business~~ Apportionable income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business. (3-31-22)

02. ~~Business~~ Apportionable income for Idaho. If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Idaho, the resulting income of the transaction or activity is ~~business~~ apportionable income for Idaho. Income may be ~~business~~ apportionable income even though the actual transaction or activity that gives rise to the income does not occur in Idaho. (3-31-22)

03. Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services that are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of ~~business~~ apportionable income of a kind that is sold or replaced with some regularity, even if replaced less frequently than once a year. (3-31-22)

333. ~~BUSINESS~~ APPORTIONABLE AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED: FUNCTIONAL TEST (RULE 333).

Section 63-3027(~~a~~ 1)(~~1~~ a), Idaho Code

01. In General. ~~Business~~ Apportionable income also includes income from tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. (3-31-22)

02. Terms. (3-31-22)

a. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of ~~business~~ apportionable income. (3-31-22)

b. "Acquisition" refers to the act of obtaining an interest in property. (3-31-22)

c. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. (3-31-22)

d. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. (3-31-22)

e. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner that materially contributed to the production of ~~business~~ apportionable income. (3-31-22)

03. Integral, Functional, or Operative Component of Trade or Business. Under the functional test, ~~business~~ apportionable income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of ~~business~~ apportionable income of the trade or business, part of which trade or business is or was conducted within Idaho. Depending on the facts and circumstances of each case, property that has been converted to ~~nonbusiness~~ nonapportionable use through the passage of a sufficiently lengthy period of time or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale. (3-31-22)

04. Examples of ~~Business~~ Apportionable income Under the Functional Test. Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is ~~business~~ apportionable income, if the property is or was used in the taxpayer's trade or business operations. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes ~~business~~ apportionable income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired. (3-31-22)

05. Operational Function Versus Investment Function. Under the functional test, income from intangible property is ~~business~~ apportionable income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general. (3-31-22)

06. Property Held in Furtherance of Trade or Business. If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be ~~business~~

apportionable income even though the actual transaction or activity involving the property that gives rise to the income dos not occur in Idaho.

07. Presumptions. If with respect to an item of property a taxpayer takes a deduction from ~~business~~ apportionable income that is apportioned to Idaho or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions. (3-31-22)

08. Application of the Functional Test. Application of the functional test is generally unaffected by the form of the property (for example, tangible or intangible property, real or personal property). Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is ~~business~~ apportionable income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as ~~business~~ apportionable income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment. (3-31-22)

334. BUSINESS AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME DEFINED: RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).

Section 63-3027(~~a~~-1)(~~1~~-a), Idaho Code. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income as ~~business~~ apportionable income that has no rational relationship with the taxing state. The protection against extraterritorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Idaho. The unitary business that is conducted in Idaho includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) to be tied to the same trade or business that is being conducted within Idaho. Determination of the scope of the unitary business being conducted in Idaho is without regard to the extent to which Idaho requires or permits combined reporting. (3-31-22)

335. NONBUSINESS NONAPPORTIONABLE INCOME (RULE 335).

Section 63-3027(~~a~~-1)(~~4~~-h), Idaho Code

01. ~~Nonbusiness~~ nonapportionable Income. ~~Nonbusiness~~ Nonapportionable income is all income other than ~~business~~ apportionable income. All deductions relating to the production of ~~nonbusiness~~ nonapportionable income is to be allocated with the income produced. Any allowable deduction that applies to both business and ~~nonbusiness~~ nonapportionable income of the taxpayer is to be prorated to those classes of income to determine income subject to tax. When used in these rules, the term ~~nonbusiness~~ nonapportionable income includes ~~nonbusiness~~ nonapportionable losses unless the context clearly indicates otherwise. (3-31-22)

02. Offset of Interest Expense Against ~~Nonbusiness~~ Nonapportionable Income. Interest on indebtedness incurred or continued to purchase or to carry investment that generates ~~nonbusiness~~ nonapportionable income is offset against the income produced. If the facts do not support such a matching of the interest expense to the ~~nonbusiness~~ nonapportionable income, the portion of the taxpayer's interest expense that is offset against income from ~~nonbusiness~~ nonapportionable investments is to be an amount that bears the same ratio to the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year as the taxpayer's ~~nonbusiness~~ nonapportionable income mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year. Aggregate amount allowable means the taxpayer's total interest expense deducted in determining taxable income as defined in Section 63-3011B, Idaho Code, plus interest expense disallowed under Sections 265 and 291 of the Internal Revenue Code, plus interest expense from a pass-through entity, plus the interest expense of a corporation that, pursuant to Sections 63-3027 and 63-3027B through 63-3027E, Idaho Code, is included in a combined report with the taxpayer for the taxable year. See Rule 115 of these rules for the calculation of total income. (3-31-22)

03. Allocated to Idaho. ~~Nonbusiness~~ Nonapportionable income, net of interest and other related

expense offsets, that is attributable to Idaho is allocated to Idaho. (3-31-22)

04. Allocated to Other States. ~~Nonbusiness~~ Nonapportionable income, together with interest and other related expense offsets, is allocated to other states if it is not attributable to Idaho. (3-31-22)

336. BUSINESS AND ~~NONBUSINESS~~ NONAPPORTIONABLE INCOME: APPLICATION OF DEFINITIONS (RULE 336).
Section 63-3027(~~a~~ 1)(~~1~~ a), 63-3027(~~a~~ 1)(~~4~~ h), Idaho Code

01. In General. The following applies the foregoing principles for purposes of determining whether particular income is ~~business~~ apportionable or ~~nonbusiness~~ nonapportionable income. (3-31-22)

02. Rent From Real and Tangible Personal Property. Rental income from real and tangible property is business apportionable income if the property for which the rental income was received is or was used in the taxpayer's trade or business and, therefore, is includable in the property factor under Rule 465 of these rules. (3-31-22)

03. Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property is ~~business~~ apportionable income if the property while owned by the taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was used to produce ~~nonbusiness~~ nonapportionable income, the gain or loss is ~~nonbusiness~~ nonapportionable income. (3-31-22)

04. Interest Income. Interest income from an intangible is ~~business~~ apportionable income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations. (3-31-22)

05. Dividends. Dividends from stock are ~~business~~ apportionable income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations. (3-31-22)

06. Patent and Copyright Royalties. Royalties from patents and copyrights are ~~business~~ apportionable income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is an integral, functional, operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of ~~business~~ apportionable income of the trade or business operations. (3-31-22)

337. -- 339. (RESERVED)

340. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: UNITARY BUSINESS PRINCIPLE (RULE 340).
Section 63-3027, Idaho Code

01. The Concept of a Unitary Business. (3-31-22)

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion ~~business~~ apportionable income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The ~~business~~ apportionable income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. (3-31-22)

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. (3-31-22)

02. Constitutional Requirement for a Unitary Business. (3-31-22)

a. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. (3-31-22)

b. In Idaho, the unitary business principle will be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle will not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution. (3-31-22)

03. Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its ~~nonbusiness~~ nonapportionable income, which is specifically allocated. The ~~business~~ apportionable income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. (3-31-22)

04. Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship is to be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates is to be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. (3-31-22)

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: DETERMINATION OF A UNITARY BUSINESS (RULE 341).
Section 63-3027, Idaho Code

01. In General. Unity can be established under any one (1) of the judicially acceptable tests (Butler Brothers, Edison California Stores, Container, etc.), and cannot be denied merely because another of those tests does not simultaneously apply. (3-31-22)

02. Significant Flows of Value. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. (3-31-22)

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).
Section 63-3027, Idaho Code

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that

must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. (3-31-22)

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. (3-31-22)

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) (3-31-22)

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. (3-31-22)

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. (3-31-22)

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. (3-31-22)

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) (3-31-22)

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. (3-31-22)

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. (3-31-22)

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of

centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. (3-31-22)

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. (3-31-22)

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. (3-31-22)

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. (3-31-22)

343. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: INDICATORS OF A UNITARY BUSINESS (RULE 343).
Section 63-3027, Idaho Code

01. Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, for example, a multistate grocery chain. (3-31-22)

02. Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices. (3-31-22)

03. Strong Centralized Management. Business activities that might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong centralized management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1) unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing. (3-31-22)

344. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS: COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES (RULE 344).
Section 63-3027, Idaho Code

01. In General. Separate corporations can be a part of a unitary business only if they are members of a commonly controlled group. (3-31-22)

02. Commonly Controlled Group. A "commonly controlled group" means any of the following: (3-31-22)

a. A parent corporation and any one (1) or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if: (3-31-22)

i. The parent owns stock possessing more than fifty percent (50%) of the voting power of a least one (1) corporation, and, if applicable, (3-31-22)

ii. Stock cumulatively possessing more than fifty percent (50%) of the voting power of each of the corporations, except the parent, is owned by the parent, one (1) or more corporations described in Subparagraph 344.02.a.i., of this rule, or one (1) or more other corporations that satisfy the conditions of this subparagraph. (3-31-22)

b. Any two (2) or more corporations, if stock, possessing more than fifty percent (50%) of the voting power of the corporations is owned, or constructively owned, by the same person. (3-31-22)

c. Any two (2) or more corporations that constitute stapled entities. (3-31-22)

i. For purposes of this paragraph, "stapled entities" means any group of two (2) or more corporations if more than fifty percent (50%) of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. (3-31-22)

ii. Two (2) or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one (1) of the interests the other interest or interests are also transferred or required to be transferred. (3-31-22)

d. Any two (2) or more corporations, if stock possessing more than fifty percent (50%) of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of Paragraph 344.05.a., of this rule) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers, sisters, grandparents, children and grandchildren, and their respective spouses. (3-31-22)

03. Elections and Terminations. (3-31-22)

a. If, in the application of Subsection 344.02 of this rule, a corporation is a member of more than one (1) commonly controlled group of corporations, the corporation elects to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one (1) of those groups, it elects to be treated as a member of only one (1) of the commonly controlled groups with respect to which it has a unitary business relationship. This election remains in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the State Tax Commission. (3-31-22)

b. Membership in a commonly controlled group is to be treated as terminated in any year, or fraction thereof, in which the conditions of Subsection 344.02 of this rule are not met, except as follows: (3-31-22)

i. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group will not be terminated, if the requirements of Subsection 344.02 of this rule are again met immediately after the sale, exchange, or disposition. (3-31-22)

ii. The State Tax Commission may treat the commonly controlled group as remaining in place if the conditions of Subsection 344.02 of this rule are again met within a period not to exceed two (2) years. (3-31-22)

04. Controlled. A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of Paragraph 344.02.d., of this rule by showing that those members of the group are not controlled directly or indirectly by the same interest, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. (3-31-22)

05. Stock Ownership. Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned. (3-31-22)

a. An individual constructively owns stock that is owned by any of the following: (3-31-22)

i. The individual's spouse. (3-31-22)

ii. Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of twenty-one (21) years. (3-31-22)

iii. An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children. (3-31-22)

b. Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. (3-31-22)

c. In the application of Paragraph 344.02.d., of this rule, (dealing with stock possessing voting power held by members of the same family), if more than fifty percent (50%) of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation is to be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation. (3-31-22)

d. Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner. (3-31-22)

e. In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. (3-31-22)

f. In the application of Paragraph 344.02.d., of this rule (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner's capital interest in the limited partnership. (3-31-22)

06. Terms. For purposes of the definition of a commonly controlled group, each of the following applies: (3-31-22)

a. "Corporation" means a corporation as defined in Section 63-3006, Idaho Code. (3-31-22)

b. "Person" means a person as defined in Section 63-3005, Idaho Code. (3-31-22)

c. "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation. (3-31-22)

d. "More than fifty percent (50%) of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation. (3-31-22)

e. "Stock possessing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners: (3-31-22)

i. For one (1) year or less. (3-31-22)

ii. By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor. (3-31-22)

f. In the case of an entity treated as a corporation under Paragraph 344.06.a., of this rule, "stock possessing voting power" refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity. (3-31-22)

345. -- 349. (RESERVED)

350. PRORATION OF DEDUCTIONS (RULE 350).
Section 63-3027, Idaho Code

01. In General. In most cases a taxpayer's allowable deduction applies only to the ~~business~~ apportionable income arising from a particular trade or business or to a particular item of ~~nonbusiness~~ nonapportionable income. In some cases an allowable deduction applies to the ~~business~~ apportionable income of more than one trade or business, to several items of ~~nonbusiness~~ nonapportionable income, or to both. In these cases the deduction is to be prorated among the trades or businesses and the items of ~~nonbusiness~~ nonapportionable income in a manner that fairly distributes the deduction among the classes of income to which it applies. (3-31-22)

02. Year to Year Consistency. If a taxpayer departs from or modifies the method used for prorating any deduction in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. (3-31-22)

03. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in applying or prorating any deduction, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. (3-31-22)

351. -- 354. (RESERVED)

355. APPLICATION OF SECTION 63-3027 -- APPORTIONMENT (RULE 355).
Section 63-3027, Idaho Code. If a corporation has business activity both within and without Idaho, and is taxable in another state as a result of this business activity, the portion of the net income or net loss derived from sources in Idaho will be determined by apportionment pursuant to Section 63-3027, Idaho Code. (3-31-22)

356. -- 359. (RESERVED)

360. APPLICATION OF SECTION 63-3027 -- COMBINED REPORT (RULE 360).
Section 63-3027, Idaho Code. If a particular trade or business is carried on by a corporation and one (1) or more affiliates, nothing in these rules is to preclude using a combined report in which the entire ~~business~~ apportionable income of the trade or business is apportioned pursuant to Section 63-3027, Idaho Code. The use of the combined report is restricted to C corporations. (3-31-22)

361. -- 364. (RESERVED)

365. USE OF THE COMBINED REPORT (RULE 365).
Section 63-3027, Idaho Code

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary ~~business~~ apportionable income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. (3-31-22)

02. Separate Computations. Each included corporation will: (3-31-22)

a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report; (3-31-22)

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules; and (3-31-22)

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. (3-31-22)

03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See

Rule 200 of these rules. (3-31-22)

04. Nexus. Each corporation is to determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. (3-31-22)

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, applies. Therefore, only the activities conducted by or on behalf of the corporation is to be considered for this purpose. (3-31-22)

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. (3-31-22)

07. Dividends and Other Intangible Income. Dividends and other intangible income is to be included in income subject to apportionment to the extent they constitute ~~business~~ apportionable income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. (3-31-22)

366. -- 369. (RESERVED)

370. APPLICATION OF SECTION 63-3027 -- ALLOCATION (RULE 370).
Section 63-3027, Idaho Code. A taxpayer subject to the taxing jurisdiction of Idaho allocates all of its ~~nonbusiness~~ nonapportionable income or loss within or without Idaho pursuant to Section 63-3027, Idaho Code. (3-31-22)

371. -- 374. (RESERVED)

375. CONSISTENCY AND UNIFORMITY IN REPORTING (RULE 375).
Section 63-3027, Idaho Code

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for classifying income as ~~business~~ apportionable income or ~~nonbusiness~~ nonapportionable income in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. (3-31-22)

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in classifying business and ~~nonbusiness~~ nonapportionable income, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. (3-31-22)

376. -- 384. (RESERVED)

385. TAXABLE IN ANOTHER STATE: IN GENERAL (RULE 385).
Section 63-3027(~~e~~4), Idaho Code

01. In General. A taxpayer is subject to the allocation and apportionment provisions of Section 63-3027, Idaho Code, if it has income from business activity that is taxable both within and without Idaho. A taxpayer's income from business activity is taxable without Idaho if the taxpayer is taxable in another state within the meaning of Section 63-3027(~~e~~4), Idaho Code, as a result of that business activity. A taxpayer is taxable in another state if it meets either of the following tests: (3-31-22)

a. The taxpayer is subject to one (1) of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code, as a result of its business activity in another state; or (3-31-22)

b. Another state has jurisdiction to subject the taxpayer to a net income tax as a result of its business activity, regardless of whether the state imposes the tax on the taxpayer. (3-31-22)

02. Not Taxable in Another State. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in the other state pertaining to the production of ~~nonbusiness~~ nonapportionable income or business activities relating to a separate trade or business. (3-31-22)

386. -- 389. (RESERVED)

390. TAXABLE IN ANOTHER STATE: WHEN A TAXPAYER IS SUBJECT TO TAX (RULE 390).
Section 63-3027(~~e~~4)(~~1~~a), Idaho Code

01. Subject to Tax. A taxpayer is subject to one of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code, if it carries on business activity in a state and that state imposes one of those taxes on it. A taxpayer that claims it is subject to one (1) of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code, is to furnish the Tax Commission, at its request, evidence to support this claim. The Tax Commission may request that evidence include proof the taxpayer has filed the required tax return in the other state and has paid any taxes imposed by the law of that state. The taxpayer's failure to provide proof may be considered in determining whether the taxpayer is subject to one of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code. (3-31-22)

02. Concept of Taxability. The concept of taxability in another state is based on the premise that every state in which the taxpayer transacts business may impose an income tax even though every state does not do so. A state may impose other types of taxes as a substitute for an income tax. Only those taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code, that are revenue producing rather than regulatory in nature is to be considered in determining taxability in another state. (3-31-22)

03. Examples of Taxability. (3-31-22)

a. State A requires each corporation that qualifies or registers in State A to pay the Secretary of State an annual license fee or tax for the privilege of doing business in the state, regardless of whether it exercises the privilege. The amount paid is determined according to the total authorized capital stock of the corporation; the rates progressively increase. The statute sets a minimum fee of fifty dollars ($50) and a maximum fee of five hundred dollars ($500). Failure to pay the tax bars a corporation from using the state courts to enforce its rights. State A also imposes a corporation income tax. Corporation X is qualified in State A and pays the required fee to the Secretary of State, but does not transact business in State A, although it may use the courts of State A. Corporation X is not taxable in State A. (3-31-22)

b. Assume the same facts as in Subsection 390.03.a., except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is subject to the net income tax of State A and is taxable in State A. (3-31-22)

c. State B requires all corporations qualified or registered in State B to pay the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of: outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three (3) factor apportionment formula. Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is taxable in State B. (3-31-22)

d. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state, but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax. (3-31-22)

04. Voluntary Tax Payment. A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code, if the taxpayer voluntarily files and pays the tax when not required to do so by the laws of that state. (3-31-22)

05. Minimum Tax or Fee. A taxpayer is not subject to one (1) of the taxes specified in Section 63-3027(~~e~~4)(~~1~~a), Idaho Code if it pays a minimal fee for qualification, organization, or the privilege of doing business in that state, but: (3-31-22)

a. Does not transact business in that state; or (3-31-22)

b. Engages in business activity not sufficient for nexus, and the minimum tax bears no relationship to

the taxpayer's business activity within that state. (3-31-22)

c. Example. State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the fifty dollar ($50) minimum tax, although it does not transact business in State A. Corporation X is not taxable in State A. (3-31-22)

391. -- 394. (RESERVED)

395. TAXABLE IN ANOTHER STATE: WHEN A STATE HAS JURISDICTION TO SUBJECT A TAXPAYER TO A NET INCOME TAX (RULE 395).
Section 63-3027(~~e~~4)(~~2~~b), Idaho Code

01. In General. The test in Section 63-3027(~~e~~4)(~~2~~b), Idaho Code, applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity pursuant to the Constitution and statutes of the United States. Jurisdiction to tax is not present if the state is prohibited from imposing the tax due to Public Law 86-272, Title 15, Sections 381 through 385, United States Code. (3-31-22)

a. When determining if a state has jurisdiction to subject a taxpayer to a net income tax, the jurisdictional standards applicable to a state of the United States is to also apply to the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. (3-31-22)

b. The provisions of a treaty between a state and the United States are not considered when determining jurisdiction to tax. (3-31-22)

02. Example. Corporation X is engaged in manufacturing farm equipment in State A and in Foreign Country B. Both State A and Foreign Country B impose a net income tax but Foreign Country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and Foreign Country B. (3-31-22)

396. -- 449. (RESERVED)

450. APPORTIONMENT FORMULA (RULE 450).
Section 63-3027(~~i~~10), Idaho Code

01. Apportionment Factors. All of a taxpayer's ~~business~~ apportionable income is to be apportioned to Idaho using the apportionment formula set forth in Section 63-3027(~~i~~10), Idaho Code. ~~For most taxpayers, the~~ Generally, a taxpayer's apportionment formula consists of the sales factor only. Pursuant to Section 63-3027(10)(b), ~~some~~ however, certain taxpayers may elect an ~~The elements of the~~ apportionment formula ~~are~~ that includes the property factor, the payroll factor, and the sales factor. See Rules 460 through 559 of these rules for general rules applicable to these factors. See Rules 560 through 599 of these rules for special rules and exceptions to the apportionment formula. The denominator of each factor may not exceed the sum of the numerators of that factor. (3-31-22)

02. Intercompany Transactions. Intercompany transactions are to be eliminated to the extent necessary to properly compute the numerators and the denominators of the apportionment factors of a combined group. The apportionment factor computation may not include property, payroll, or receipts of any affiliated corporation unless its income is included in the combined report. (3-31-22)

03. Rounding. The individual factors and the average apportionment factor is to be calculated six (6) digits to the right of the decimal point. If the seventh digit is five (5) or greater, the sixth digit is rounded to the next higher number. If the seventh digit is less than five (5), the sixth digit remains unchanged and any digits remaining to its right are dropped. (3-31-22)

04. Verification of Factors. The taxpayer is to make available the fifty-one (51) state apportionment factor detail when requested by the Tax Commission. Failure to do so may justify the imposition of the negligence penalty provided by Section 63-3046(a), Idaho Code. (3-31-22)

451. -- 459. (RESERVED)

460. PROPERTY FACTOR: IN GENERAL (RULE 460).
Section 63-3027(~~k~~16)(a), Idaho Code

01. In General. The property factor of the apportionment formula for each trade or business of the taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the taxable year in the regular course of its trade or business. The term real and tangible personal property includes land, buildings, fixtures, inventory, equipment, and other property of a tangible nature, but does not include coin or currency. (3-31-22)

02. ~~Nonbusiness~~ Nonapportionable Income. Property used in connection with the production of ~~nonbusiness~~ nonapportionable income is to be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of ~~nonbusiness~~ nonapportionable income is to be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor depends on the facts of each case. (3-31-22)

03. Average Value. The property factor is to reflect the average value of property includable in the factor. See Rule 490 of these rules. (3-31-22)

04. Denominator. The denominator of the factor may not exceed the sum of all the numerators. (3-31-22)

461. -- 464. (RESERVED)

465. PROPERTY FACTOR: PROPERTY USED FOR THE PRODUCTION OF ~~BUSINESS~~ APPORTIONABLE INCOME (RULE 465).
Section 63-3027(~~k~~16)(a), Idaho Code

01. In General. (3-31-22)

a. Property is to be included in the property factor if it is used, is available for use, or capable of being used during the taxable year in the regular course of the taxpayer's trade or business. Property held as reserves or standby facilities or property held as a reserve source of materials is to be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. (3-31-22)

b. Property or equipment under construction during the taxable year, except inventoriable goods in process, is to be excluded from the factor until the property is used in the regular course of the taxpayer's trade or business. (3-31-22)

c. If the property is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property is to be included in the property factor to the extent used. (3-31-22)

d. Property used in the regular course of the taxpayer's trade or business is to remain in the property factor until it is permanently withdrawn by an identifiable event such as its sale, abandonment, or any event or circumstance that renders the property incapable of being used in the regular course of the taxpayer's trade or business. (3-31-22)

02. Examples. (3-31-22)

a. A taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one (1) year later. The value of the manufacturing plant is included in the property factor until the plant is sold. (3-31-22)

b. Assume the same facts as in Subsection 465.02.a., except the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold. (3-31-22)

466. -- 469. (RESERVED)

470. PROPERTY FACTOR: CONSISTENCY IN REPORTING (RULE 470).
Section 63-3027(~~k~~16)(a), Idaho Code

01. Year to Year Consistency. If a taxpayer departs from or modifies the method used for valuing property, or for excluding or including property in the property factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. (3-31-22)

02. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in valuing property and in excluding or including property in the property factor, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. (3-31-22)

471. -- 474. (RESERVED)

475. PROPERTY FACTOR: NUMERATOR (RULE 475).
Section 63-3027(~~k~~16)(a), Idaho Code

01. In General. The numerator of the property factor is to include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Idaho during the taxable year in the regular course of the taxpayer's trade or business. (3-31-22)

02. Property in Transit. Property of the taxpayer that is in transit between locations is to be considered to be at the destination for purposes of the property factor. If property in transit between a buyer and seller is included by a taxpayer in the denominator of its property factor, it is to be included in the numerator according to the state of destination. (3-31-22)

03. Mobile or Movable Property. (3-31-22)

a. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment located within and without Idaho during the taxable year will be determined on the basis of total time and use in Idaho as a percentage of total time and use everywhere. (3-31-22)

b. An automobile assigned to a traveling employee is to be included in the numerator of the state to which the employee's compensation is assigned for the payroll factor or in the numerator of the state in which the automobile is licensed. (3-31-22)

c. The value of aircraft used within and without Idaho during the taxable year will be determined by multiplying the value of the aircraft by the ratio of departures from locations in Idaho to total departures. (3-31-22)

476. -- 479. (RESERVED)

480. PROPERTY FACTOR: VALUATION OF OWNED PROPERTY (RULE 480).
Section 63-3027(~~l~~16)(b), Idaho Code

01. In General. Property owned by a taxpayer is to be valued at its original cost. As a general rule, original cost is deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments at the time of acquisition and adjusted by subsequent capital additions or improvements and partial disposition, by reason of sale, exchange, abandonment, etc. However, capitalized intangible drilling and development costs of producing property is to be included in the property factor whether or not they have been expensed for either federal or state tax purposes. (3-31-22)

02. Examples. (3-31-22)

a. A taxpayer acquired a factory building in Idaho at a cost of five hundred thousand dollars ($500,000). Eighteen (18) months later the taxpayer remodeled the building for a cost of one hundred thousand dollars ($100,000). The taxpayer files its return on the calendar year basis. The taxpayer claimed a depreciation deduction of twenty-two thousand dollars ($22,000) on its current year return. The value of the building included in the numerator and denominator of the property factor is six hundred thousand dollars ($600,000). The depreciation deduction is not taken into account in determining the value of the building for purposes of the factor. (3-31-22)

b. During the current taxable year, X Corporation merged into Y Corporation in a tax-free reorganization pursuant to the Internal Revenue Code. At the time of the merger, X Corporation owned a factory that

it built five (5) years earlier at a cost of one million dollars ($1,000,000). X has been depreciating the factory at the rate of two percent (2%) per year. Its basis in X's hands at the time of the merger is nine hundred thousand dollars ($900,000). Since Y acquired the property in a tax-free transaction, Y includes the property in its property factor at X's original cost of one million dollars ($1,000,000). (3-31-22)

03. Unknown Original Cost. If the original cost of property cannot be determined, the property is included in the factor at its fair market value on the date it was acquired. (3-31-22)

04. Inventory. Inventory is to be included in the factor according to the valuation method used for federal income tax purposes. (3-31-22)

05. Gifts or Inheritance. Property acquired by gift or inheritance is to be included in the factor at its basis pursuant to the Internal Revenue Code. (3-31-22)

481. -- 484. (RESERVED)

485. PROPERTY FACTOR: VALUATION OF RENTED PROPERTY (RULE 485).
Section 63-3027(~~1~~16)(b), Idaho Code

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute ~~business~~ apportionable income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. (3-31-22)

02. Examples of Subrents. (3-31-22)

a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are ~~business~~ apportionable income, they are not deducted from rent paid by the taxpayer for the food market. (3-31-22)

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business. The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business. Since the subrents are ~~business~~ apportionable income, they are not deducted from the rent paid by the taxpayer. (3-31-22)

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year is to be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. (3-31-22)

04. Examples of Annual Rental Rate. (3-31-22)

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars ($2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars ($10,000). After the rent is annualized the net rent is thirty thousand dollars ($30,000) or ($2,500 x 12). (3-31-22)

b. Assume the same facts as in Paragraph 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars ($20,000) or ($2,500 x 8). (3-31-22)

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: (3-31-22)

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. (3-31-22)

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent is to be determined by considering the relative values of the rent and the other items. (3-31-22)

06. Examples of Annual Rent. (3-31-22)

a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars ($1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars ($400,000). The annual rent is sixteen thousand dollars ($16,000) or ($12,000 + (1% x $400,000)). (3-31-22)

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars ($12,000) a year for rent, plus taxes of two thousand dollars ($2,000) and mortgage interest of one thousand dollars ($1,000). The annual rent is fifteen thousand dollars ($15,000). (3-31-22)

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars ($1,000), of which seven hundred dollars ($700) is for storage space and three hundred dollars ($300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars ($700). (3-31-22)

07. Exclusions. Annual rent does not include any of the following: (3-31-22)

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. (3-31-22)

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. (3-31-22)

08. Leasehold Improvements. Leasehold improvements is to be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements is to be included in the lessee's factor. (3-31-22)

09. Safe Harbor Lease. Property subject to a safe harbor lease will be reported in the factor of the actual user of the property at original acquisition cost. (3-31-22)

486. -- 489. (RESERVED)

490. PROPERTY FACTOR: AVERAGING PROPERTY VALUES (RULE 490).
Section 63-3027(~~m~~16)(c), Idaho Code

01. In General. The average value of property owned by a taxpayer is to be determined by averaging the values at the beginning and end of the taxable year. (3-31-22)

02. Monthly Averaging. The Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the taxable year. Averaging by monthly values generally applies if there are substantial fluctuations in the property values during the taxable year or if property is acquired or disposed of during the taxable year. (3-31-22)

03. Rented Property. Rented property is averaged automatically by determining the net annual rental rate of the property as set forth in Rule 485 of these rules. (3-31-22)

491. -- 499. (RESERVED)

500. PAYROLL FACTOR: IN GENERAL (RULE 500).
Section 63-3027(~~a~~16)(d), Idaho Code

01. In General. The payroll factor of the apportionment formula for each trade or business of the taxpayer includes the total amount paid for compensation during the taxable year by the taxpayer in the regular course of its trade or business. (3-31-22)

02. Compensation. For purposes of the payroll factor, compensation means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. (3-31-22)

a. Compensation includes the value of board, rent, housing, lodging, and other benefits or services the taxpayer furnished to employees in return for personal services if the amounts constitute income to the recipient pursuant to the Internal Revenue Code. (3-31-22)

b. If employees are not subject to the Internal Revenue Code, for example, those employed in foreign countries, the determination of whether the benefits or services would constitute income to the employees is made as if the employees were subject to the Internal Revenue Code. (3-31-22)

c. If wages paid to employees are capitalized into the cost of an asset that is used in the regular course of the taxpayer's trade or business, these wages are included in the payroll factor. (3-31-22)

03. Amount Paid. The total amount paid to employees is determined by the taxpayer's accounting method. If the taxpayer uses the accrual method of accounting, all compensation properly accrued is deemed to have been paid. At the election of the taxpayer, compensation paid to employees may be included in the payroll factor by using the cash method if the taxpayer is required to use that method to report compensation for unemployment insurance purposes. (3-31-22)

04. Employee. For purposes of the payroll factor, employee means any officer of a corporation, or any individual who, pursuant to the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person is considered an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act (FICA); except that, since certain individuals are included within the term employees in the FICA who would not be employees pursuant to the usual common-law rules, it may be established that a person who is included as an employee for purposes of the FICA is not an employee for purposes of this rule. (3-31-22)

05. Exclusions. The following are excluded from the payroll factor: (3-31-22)

a. Compensation paid to an employee for services connected with the production of ~~nonbusiness~~ nonapportionable income; (3-31-22)

b. Payments to an independent contractor or a person not properly classifiable as an employee. (3-31-22)

06. Year to Year Consistency. If a taxpayer departs from or modifies the method used for treating compensation paid in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. (3-31-22)

07. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in treating compensation paid, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. (3-31-22)

501. -- 504. (RESERVED)

505. PAYROLL FACTOR: DENOMINATOR (RULE 505).
Section 63-3027(~~a~~16)(d), Idaho Code

01. In General. The denominator of the payroll factor is the total compensation paid everywhere during the taxable year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, is included in the denominator of the payroll factor. The denominator may not exceed the sum of all numerators. (3-31-22)

02. Example. A taxpayer has employees in States A, B, and C. However, in State C the taxpayer is immune from taxation by Public Law 86-272. The compensation paid to employees for services performed in State C is assigned to that state. This compensation is included in the denominator even though the taxpayer is not taxable in State C. (3-31-22)

506. -- 509. (RESERVED)

510. PAYROLL FACTOR: NUMERATOR (RULE 510).
Section 63-3027(~~a~~16)(d), Idaho Code. The numerator of the payroll factor is the total amount the taxpayer paid for compensation in Idaho during the taxable year. The tests in Section 63-3027(~~a~~16)(e), Idaho Code, apply in determining whether compensation is paid in Idaho. It will be presumed that the total wages reported by the taxpayer to Idaho for unemployment insurance purposes constitute compensation paid in Idaho except compensation excluded by Rules 500 through 524 of these rules. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Idaho for unemployment insurance purposes. (3-31-22)

511. -- 514. (RESERVED)

515. PAYROLL FACTOR: COMPENSATION PAID IN IDAHO (RULE 515).
Section 63-3027(~~a~~16)(e), Idaho Code

01. In General. Compensation is paid in Idaho if one of the tests in Section 63-3027(~~a~~16)(e), Idaho Code, is met. (3-31-22)

02. Definitions. The following definitions are to be used for purposes of the payroll factor: (3-31-22)

a. Incidental means a service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction. (3-31-22)

b. Base of operations means the place of a more or less permanent nature where the employee starts his work and where he customarily returns to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to his trade or profession. (3-31-22)

c. Place from which the service is directed or controlled means the place where the power to direct or control is exercised by the taxpayer. (3-31-22)

516. -- 524. (RESERVED)

525. SALES FACTOR: IN GENERAL (RULE 525).
Section 63-3027(~~p~~10)(a), Idaho Code

01. In General. Sales means all gross receipts of a taxpayer not allocated as ~~nonbusiness~~ nonapportionable income. The sales factor for each trade or business of the taxpayer includes all gross receipts derived by the taxpayer from transactions and activity in the regular course of that trade or business or otherwise required to be included as apportionable income. (3-31-22)

02. Examples. (3-31-22)

a. If a taxpayer manufactures and sells or purchases and resells goods or products, sales includes all gross receipts from sales of the goods or products held primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Sales also includes gross receipts from the sale of other property that would be properly included in the taxpayer's inventory if on hand at the close of the taxable year. Gross receipts means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales taxes, are included in gross receipts if

these taxes are passed on to the buyer or included in the product's selling price. (3-31-22)

b. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost plus the fee. (3-31-22)

c. If a taxpayer provides services, such as operating an advertising agency, or performing equipment service contracts or research and development contracts, sales includes the gross receipts from performing the service, including fees, commissions, and similar items. (3-31-22)

d. If a taxpayer rents real or tangible property, sales includes the gross receipts from the renting, leasing, or licensing the use of the property. (3-31-22)

e. If a taxpayer sells, assigns, or licenses intangible personal property, such as patents and copyrights, sales includes the gross receipts from these transactions. (3-31-22)

f. If a taxpayer derives receipts from selling equipment used in its business, the receipts constitute sales. For example, a trucking company owns a fleet of trucks and sells its trucks according to a regular replacement program. The gross receipts from the sale of the trucks are included in the sales factor. (3-31-22)

g. If a taxpayer derives receipts from foreign source dividends that are apportionable ~~business~~ apportionable income, the receipts constitute sales. No other apportionment factor relief is permitted to include this dividend income. Section 78, Internal Revenue Code, foreign dividend gross-up is excluded from sales. (3-31-22)

03. Disregarding Gross Receipts. In some cases, certain gross receipts should be disregarded in determining the sales factor so that the apportionment formula operates fairly to apportion the income of the taxpayer's trade or business to Idaho. See Rule 570 of these rules. (3-31-22)

04. Year to Year Consistency. If a taxpayer departs from or modifies the basis used for excluding or including gross receipts in the sales factor in prior year Idaho returns, the taxpayer is to disclose the nature and extent of all modifications in its current year return. (3-31-22)

05. State to State Consistency. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports pursuant to Section 63-3027, Idaho Code; Article IV of the Multistate Tax Compact; or the Uniform Division of Income for Tax Purposes Act are not uniform in including or excluding gross receipts, the taxpayer is to disclose the nature and extent of the variance in its current year Idaho return. (3-31-22)

526. -- 529. (RESERVED)

530. SALES FACTOR: DENOMINATOR (RULE 530).
Section 63-3027(~~p~~10)(a), Idaho Code. The denominator of the sales factor includes the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business or otherwise required to be included as apportionable income, except receipts excluded by Rules 525 through 559 and Rule 570 of these rules. The denominator may not exceed the sum of all the numerators.
(3-31-22)

531. -- 534. (RESERVED)

535. SALES FACTOR: NUMERATOR (RULE 535).
Section 63-3027(~~p~~10)(a), Idaho Code. The numerator of the sales factor includes gross receipts attributable to Idaho and derived by the taxpayer from transactions and activity in the regular course of its trade or business or otherwise required to be included as apportionable income. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts are included regardless of where the accounting records are maintained or the location of the contract or other evidence of indebtedness. (3-31-22)

536. -- 539. (RESERVED)

540. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 540).
Section 63-3027(~~q~~12), Idaho Code

01. Gross Receipts. Gross receipts from sales of tangible personal property, except sales to the United

States Government as discussed in Rule 545 of these rules, are in Idaho if: (3-31-22)

a. The property is delivered or shipped to a purchaser in Idaho regardless of the f.o.b. point or other conditions of sale; or (3-31-22)

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho and the taxpayer is not taxable in the state of the purchaser. (3-31-22)

02. Destination Sales. (3-31-22)

a. Property is deemed to be delivered or shipped to a purchaser in Idaho if the recipient is in Idaho even though the property is ordered from outside Idaho. Example: A taxpayer, with inventory in State A, sold one hundred thousand dollars ($100,000) of its products to a purchaser with branch stores in several states including Idaho. The order for the purchase was placed by the purchaser's central purchasing department in State B. Twenty- five thousand dollars ($25,000) of the purchase order was shipped directly to purchaser's branch store in Idaho. The branch store in Idaho is the purchaser in Idaho with respect to twenty-five thousand dollars ($25,000) of the taxpayer's sales. (3-31-22)

b. Property is delivered or shipped to a purchaser in Idaho if the shipment terminates in Idaho, even if the property is subsequently transferred to another state by the purchaser. Example: A taxpayer makes a sale to a purchaser who maintains a central warehouse in Idaho where all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in Idaho constitute property delivered or shipped to a purchaser in Idaho. (3-31-22)

03. Purchaser. The term purchaser in Idaho includes the ultimate recipient of the property if at the request of the purchaser the taxpayer in Idaho delivers to or has the property shipped to the ultimate recipient in Idaho. Example: A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Idaho according to the purchaser's instructions. The sale by the taxpayer is in Idaho. (3-31-22)

04. Diverted Shipment. If a seller ships property from the state of origin to a consignee in another state, and the property is diverted while en route to a purchaser in Idaho, the sales are in Idaho. Example: The taxpayer, a produce grower in State A, begins shipping perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in Idaho where the taxpayer is subject to tax. The sale by the taxpayer is in Idaho. (3-31-22)

05. Throwback Sales. If a taxpayer is not taxable in the state of the purchaser, the sale is attributed to Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. Example: A taxpayer has its head office and factory in State A. It has a branch office and inventory in Idaho. The taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Idaho for approval and are filled by shipment from the inventory in Idaho. Since the taxpayer is immune from tax in State B by Public Law 86-272, all sales of merchandise to purchasers in State B are attributed to Idaho, the state from which the merchandise was shipped. (3-31-22)

06. Third-Party Throwback Sales. If a taxpayer's salesman operating from an office in Idaho makes a sale to a purchaser in another state where the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply: (3-31-22)

a. If the taxpayer is taxable in the state from which the third-party ships the property, the sale is in that state. (3-31-22)

b. If the taxpayer is not taxable in the state from which the property is shipped, the sale is in Idaho. (3-31-22)

c. Example. A taxpayer in Idaho sold merchandise to a purchaser in State A. The taxpayer is not taxable in State A. On direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Idaho. (3-31-22)

541. -- 544. (RESERVED)

545. SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO THE UNITED STATES GOVERNMENT IN IDAHO (RULE 545).
Section 63-3027(~~c~~12), Idaho Code

01. In General. Gross receipts from sales of tangible personal property to the United States Government are in Idaho if the property is shipped from an office, store, warehouse, factory, or other place of storage in Idaho. For purposes of this rule, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States Government. Generally, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, are not sales to the United States Government. (3-31-22)

02. Examples. (3-31-22)

a. A taxpayer contracts with the General Services Administration to deliver a truck that was paid for by the United States Government. The sale is a sale to the United States Government. (3-31-22)

b. A taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a rocket component for one million dollars ($1,000,000). The sale by the subcontractor to the prime contractor is not a sale to the United States Government. (3-31-22)

546. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE – GENERAL RULES
Section 63-3027(13), Idaho Code

01. Definitions. For the purposes of this Rules 546 through 551 these terms have the following meanings:

a. Billing address. Billing address means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

b. Business customer. Business customer means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

c. Individual customer. Individual customer means a customer that is not a business customer.

d. Intangible property. Intangible property generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in these rules, computer software.

e. Place of order. Place of order, means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

f. Population. Population means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.

g. Related Party. Related party means:

i. a stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock;

ii. a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or

iii. a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

h. State where a contract of sale is principally managed by the customer. State where a contract of sale is principally managed by the customer, means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

02. General Principles of Application; Contemporaneous Records.

a. A taxpayer shall apply the principles set forth in Rules 546 through 551 based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including the taxpayer's books and records kept in the normal course of the taxpayer's business. A taxpayer shall determine its method of assigning receipts in good faith and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its receipts, including its underlying assumptions, and shall provide those records to the Tax Commission upon request.

b. Rules 546 through 551 provide various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

c. A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the standards set forth in Rules 546 through 551, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

.03 Rules of Reasonable Approximation.

a. In General. In general, Rules 546 through 551 establish uniform provisions for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in this state. These rules also set forth provisions of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific provisions of approximation prescribed in these rules. In other cases, the applicable provision in these rules permits a taxpayer to reasonably

approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable provisions or standards set forth in these rules.

b. Approximation Based Upon Known Sales. In an instance where, applying the applicable provisions set forth in Rule 548 (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it shall include receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in its sales factor in the same proportion as its assigned receipts. This provision also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See* Rule 549.05 and 550.01.c.

c. Related-Party Transactions – Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to these rules from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer, unless the taxpayer shows that imputing such knowledge is unreasonable.

547. SALES FACTOR: RENTAL, LEASE OR LICENSE OF TANGIBLE PERSONAL PROPERTY (RULE 547)

Section 63-3027(13)(b), Idaho Code. In the case of a rental, lease or license of tangible personal property, the receipts from the sale are in this state if and to the extent that the property is in this state. If property is mobile property that is located both within and without this state during the period of the lease or other contract, the receipts assigned to this state are the receipts from the contract period multiplied by the fraction computed under Rule 475.03 (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

548. SALES FACTOR: SALE OF A SERVICE (RULE 548)

Section 63-3027(13)(c)

.01 General Rule. The receipts from a sale of a service are in this state if and to the extent that the service is delivered to a location in this state. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth below in subsections 548.02 through 548.04.

.02 In-Person Services.

a. In General. Except as otherwise provided in this subsection (548.02), in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule (548) includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays and mental health care and treatment; childcare; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in subsection .04 of this rule (548), although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this subsection (548.02).

b. Assignment of Receipts, Rule of Determination. Except as otherwise provided in this paragraph (b.), if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the

service is received. Therefore, the receipts from a sale are in this state if and to the extent the customer receives the in-person service in this state. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:

i. If the service is performed with respect to the body of an individual customer in this state (e.g. hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g. live entertainment or athletic performances), the service is received in this state.

ii. If the service is performed with respect to the customer's real estate in this state or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in this state, the service is received in this state.

iii. If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside this state, the service is received in this state if the property is shipped or delivered to the customer in this state.

c. Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

d. In-Person Services Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in each state to which its receipts would be assigned. Note that for purposes of the examples it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example (i). Salon Corp has retail locations in this state and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations are in this state. The receipts from sales of services provided at Salon Corp's locations outside this state, even when provided to residents of this state, are not receipts from in-state sales.

Example (ii). Landscape Corp provides landscaping and gardening services in this state and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside this state at the time the services are performed. The receipts from sale of services provided at the in-state location are in this state.

Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in this state and in other states. The receipts from the sale of services provided to Retail Corp are in this state to the extent the services are provided in this state.

Example (iv). Camera Corp provides camera repair services at an in-state retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's in-state location. The receipts from sale of these services are in this state.

Example (v). Same facts as in Example (iv), except that a customer located in this state mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed,and receives the repaired camera back in this state by mail. The receipts from sale of the service are in this state.

Example (vi). Teaching Corp provides seminars in this state to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in this state the receipts from sales of the services are in this state.

.03 Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

a. In General. If the service provided by the taxpayer is not an in-person service within the meaning of subsection 548.02 of this rule (548) or a professional service within the meaning of subsection 548.04 of this rule (548), and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in this state if and to the extent that the service is delivered in this state. For purposes of this subsection (548.03), a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience (see subparagraph 548.03.b.i below and Example (iv) under 548.03.b.i.C below). A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.

b. Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this subsection (548.03), a service delivered by an electronic transmission is not a delivery by a physical means). If a rule of assignment set forth in this subsection (548.03) depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer.

i. **Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer**. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this subparagraph (548.03.b.i) apply whether the taxpayer's customer is an individual customer or a business customer.

A. **Rule of Determination**. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it shall assign the receipts to that state or states.

B. **Rule of Reasonable Approximation**. If the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate the state or states.

C. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer Examples:

Example (i). Direct Mail Corp, a corporation based outside this state, provides direct mail services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in this state and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from the sale of Direct Mail Corp's services to Business Corp are assigned to this state to the extent that the services are delivered on behalf of Business Corp to this state customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in this state).

Example (ii). Ad Corp is a corporation based outside this state that provides advertising and advertising-related services in this state and in neighboring states. Ad Corp enters into a contract at a location outside this state with an individual customer who is not a resident of this state to design advertisements for billboards to be displayed in this state, and to design fliers to be mailed to residents in this state. All of the design work is performed outside this state. The receipts from the sale of the design services are in this state because the service is physically delivered on behalf of the customer to the customer's intended audience in this state.

Example (iii). Same facts as example (ii), except that the contract is with a business customer that is based outside this state. The receipts from the sale of the design services are in this state because the services are physically delivered on behalf of the customer to the customer's intended audience in this state.

Example (iv). Fulfillment Corp, a corporation based outside this state, provides product delivery fulfillment services in this state and in neighboring states to Sales Corp, a corporation located outside this state that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in this state, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located outside this state. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp are assigned to this state to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in this state.

Example (v). Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in this state, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside this state, and then physically installs the software on Buyer Corp's computer hardware located in this state. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to this state because the software is physically delivered to the customer in this state.

Example (vi). Same facts as Example (v), except that Buyer Corp has offices in this state and several other states, but is commercially domiciled outside this state and orders the software from a location outside this state. The receipts from the development and sale of the custom software service are assigned to this state because the software is physically delivered to the customer in this state.

ii. **Delivery to a Customer by Electronic Transmission.** Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following provisions apply.

A. Services Delivered By Electronic Transmission to an Individual Customer.

aa. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to that state or states.

bb. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate the state or states using the customer's billing address.

B. Services Delivered By Electronic Transmission to a Business Customer.

aa. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in this state if and to the extent that the taxpayer's customer receives the service in this state. If the taxpayer can determine the state or states where the service is received, it shall assign the receipts from that sale to the state or states. For purposes of this subpart (548.03.b.ii.B), it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.

bb. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate the state or states.

cc. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer shall reasonably approximate the state or states as set forth in Rules 546 through 551. In these cases, unless the taxpayer can apply the safe harbor set forth in subpart 548.03.b.ii.B.dd below, the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than 5% of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

dd. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under subpart 548.03.b.ii.B.bb above, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at subpart 548.03.b.ii.B.cc above, apply the safe harbor stated in this subpart. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.

ee. Related Party Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in subpart 548.03.b.ii.B.cc above, but may use the rule of reasonable approximation in subpart 548.03.b.ii.B.bb above, and the safe harbor in subpart 548.03.b.ii.B.dd above, provided that the Tax Commission may aggregate sales to related parties in determining whether the sales exceed 5% of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.

C. Delivery to a Customer by Electronic Transmission Examples:

In these examples, unless otherwise stated, assume that the taxpayer is not related to either the customer to which the service is delivered. Further, assume if relevant, unless otherwise stated, that the safe harbor set forth at subpart 548.03.b.ii.B.dd above does not apply.

Example (i). Support Corp, a corporation that is based outside this state, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in this state and other states. Support Corp supplies its services on a case by case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in this state to the extent that Support Corp's services are received in this state. *See* parts 548.03.b.ii.A. and B. above.

Example (ii). Online Corp, a corporation based outside this state, provides web-based services through the means of the Internet to individual customers who are resident in this state and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, it has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to this state the receipts from sales for which it does not know the customers' location in the same proportion as those receipts for which it has this information. *See* Rule 546.03.b.

Example (iii). Same facts as in Example (ii), except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses. *See* part 548.03.b.ii.A above.

Example (iv). Net Corp, a corporation based outside this state, provides web-based services to a business customer, Business Corp, a company with offices in this state and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in this state were responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25% of Business Corp's use of Net Corp's services. In this case, 75% of the receipts from the sale are received in this state. *See* subpart 548.03.b.ii.A.aa above. Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives 5% or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under subpart 548.03.b.ii.B.cc above to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (v). Net Corp, a corporation based outside this state, provides web-based services through the means of the Internet to more than 250 individual and business customers in this state and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp

does not derive more than 5% of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor stated in subpart 548.03.b.ii.B.dd above, and may assign its receipts using each customer's billing address.

iii. **Services Delivered Electronically Through or on Behalf of an Individual or Business Customer.** A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

A. Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in this state if and to the extent that the end users or other third-party recipients are in this state. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in this state to the extent that the audience for the advertising is in this state. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in this state to the extent that the end users or other third-party recipients receive the services in this state. The rules in this part (548.03.b.iii.A) apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

B. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate the state or states.

C. Select Secondary Rules of Reasonable Approximation.

aa. If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.

bb. If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third party recipients from which it can determine or reasonably approximate that location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.

cc. When using the secondary reasonable approximation methods provided above, the relevant specific geographic area [of delivery] include only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.

D. Services Delivered Electronically Through or on Behalf of an Individual or Business Customer Examples:

Example (i). Cable TV Corp, a corporation that is based outside of this state, has two revenue streams. First, Cable TV Corp sells advertising time to business customers pursuant to which the business customers' advertisements will run as commercials during Cable TV Corp's televised programming. Some of these business customers, though not all of them, have a physical presence in this state. Second, Cable TV Corp sells monthly subscriptions to individual customers in this state and in other states. The receipts from Cable TV Corp's sale of advertising time to its business customers are assigned to this state to the extent that the audience for Cable TV Corp's televised programming during which the advertisements run is in this state. *See* part 548.03.b.iii.A above. If Cable TV Corp is unable to determine the actual location of its audience for the programming, and lacks sufficient information regarding audience location to reasonably approximate the location, Cable TV Corp must approximate its Idaho audience using the percentage that reflects the ratio of its this state subscribers in the geographic area in which Cable TV Corp's televised programming featuring the advertisements is delivered relative to its total number of subscribers in that area. *See* subpart 548.03.b.iii.C.aa above. To the extent that Cable TV Corp's sales of monthly subscriptions represent the sale of a service, the receipts from these sales are properly assigned to this state in any case in which the programming is received by a customer in this state. *See* part 548.03.b.ii.A above. In any case in which Cable TV Corp cannot determine the actual location where the programming is received, and lacks sufficient information regarding the location of receipt to reasonably approximate the location, the receipts from these sales of Cable TV Corp's monthly subscriptions are assigned to this state where its customer's billing address is in this state. *See* part 548.03.b.ii.A.bb above. Note that whether and to the extent that the monthly subscription fee represents a fee for a service or for a license of intangible property does not affect the analysis or result as to the state or states to which the receipts are properly assigned. *See* Rule 549.05.

Example (ii). Network Corp, a corporation that is based outside of this state, sells advertising time to business customers pursuant to which the customers' advertisements will run as commercials during Network Corp's televised programming as distributed by unrelated cable television and satellite television transmission companies. The receipts from Network Corp's sale of advertising time to its business customers are assigned to this state to the extent that the audience for Network Corp's televised programming during which the advertisements will run is in this state. *See* part 548.03.b.iii.A above. If Network Corp cannot determine the actual location of the audience for its programming during which the advertisements will run, and lacks sufficient information regarding audience location to reasonably approximate the location, Network Corp must approximate the receipts from sales of advertising that constitute this state sales by multiplying the amount of advertising receipts by a percentage that reflects the ratio of the this state population in the specific geographic area in which the televised programming containing the advertising is run relative to the total population in that area. *See* part 548.03.b.iii.C.bb. and cc. above.

Example (iii). Web Corp, a corporation that is based outside this state, provides Internet content to viewers in this state and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. The receipts from Web Corp's sale of advertising space to its business customers are assigned to this state to the extent that the viewers of the Internet content are in this state, as measured by viewings or clicks. *See* part 548.03.b.iii.A above. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp must approximate the amount of its this state receipts by multiplying the amount of receipts from sales of advertising by a percentage that reflects the this state population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in that area. *See* part 548.03.b.iii.C above.

Example (iv). Retail Corp, a corporation that is based outside of this state, sells tangible property through its retail stores located in this state and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered

to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co must approximate the amount of its this state receipts by multiplying the amount of its fee from Retail Corp by a percentage that reflects the this state population in the specific geographic area from which the calls are placed relative to the total population in that area. *See* subpart 548.03.b.iii.C.aa above.

Example (v). Web Corp, a corporation that is based outside of this state, sells tangible property to customers via its Internet website. Design Co. designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co.'s services are delivered to Web Corp, the proceeds from which are assigned pursuant to subparagraph 548.03.b.ii above. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co.'s services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example (vi). Wholesale Corp, a corporation that is based outside this state, develops an Internet-based information database outside this state and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both, but for purposes of analysis it does not matter. *See* Rule 549.05. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its receipts from sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp must approximate the extent to which its services are received by end users in this state by using a percentage that reflects the ratio of the this state population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in that area. *See* subpart 548.03.b.iii.C.bb above. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both. *See* Rule 549.05.

04. Professional Services.

a. In General. Except as otherwise provided in this subsection (548.04), professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

b. Overlap with Other Categories of Services.

i. Certain services that fall within the definition of "professional services" set forth in this subsection (548.04) are nevertheless treated as "in-person services" within the meaning of subsection 548.02 above, and are assigned under the rules of that subsection. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the

customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under the rules of this subsection (548.04), notwithstanding the fact that these services may involve some amount of in-person contact.

ii. Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in this subsection (548.04), and not those set forth in subsection .03 above, pertaining to services delivered to a customer or through or on behalf of a customer.

c. Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services.

i. General Rule. Receipts from sales of professional services other than those services described in subparagraph .04.c.ii below (architectural and engineering services), subparagraph .04.c.iii below (services provided by a financial institution) and subparagraph 548.04.c.iv below (transactions with related parties) are assigned in accordance with this subparagraph (548.04.c.i).

A. Professional Services Delivered to Individual Customers. Except as otherwise provided in this subsection (548.04) (see in particular subparagraph 548.04.c.iv), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in part 548.04.c.i.A of this rule. In particular, the taxpayer shall assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from an individual customer, the taxpayer shall identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

B. Professional Services Delivered to Business Customers. Except as otherwise provided in this subsection (548.04), in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth at part 548.04.c.i.C below, the taxpayer shall assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

C. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in parts 548.04.c.i.A and .B above, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more

than 250 customers, whether individual or business, and (2) does not derive more than 5% of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of this subparagraph (548.04.c.i, Professional Services General Rule) and not otherwise.

ii. Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this subsection (548.04). However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this subparagraph (548.04.c.ii), the receipts from a sale of these services must be assigned under the general rule for professional services. *See* subparagraph 548.04.c.i above.

iii. Services Provided by a Financial Institution. The apportionment rules that apply to financial institutions are set forth in Rule 582. Rule 582 includes specific rules to determine a financial institution's sales factor. However, the Financial Institutions Rule also provides that receipts from sales, other than sales of tangible personal property, including service transactions, that are not otherwise apportioned under the Financial Institutions Rule [see section 3(o) of the 1995 MTC version of the regs or section 3(n) of the 1994 version], are to be assigned pursuant to section 63-3027, Idaho Code, and these rules. In any instance in which a financial institution performs services that are to be assigned pursuant to section 63-3027, Idaho Code. and these rules including, for example, financial custodial services, those services are considered professional services within the meaning of this subsection (548.04), and are assigned according to the general rule for professional service transactions as set forth at subparagraph 548.04.c.i above.

iv. Related Party Transactions. In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in part 548.04.c.i.B above, the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related party's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related party's payroll in those states. The taxpayer may use the safe harbor provided by part 548.04.c.i.C provided that Tax Commission may aggregate the receipts from sales to related parties in applying the 5% rule if necessary or appropriate to avoid distortion.

v. Professional Services Examples:

Assume also that the customer is not a related party and that the safe harbor set forth at part 548.04.c.i.C above does not apply.

Example (i). Broker Corp provides securities brokerage services to individual customers who are resident in this state and in other states. Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know this state of primary residence, it knows the customer's billing address. Also assume that Broker Corp does not derive more than 5% of its receipts from sales of all services from any one individual customer. If Broker Corp knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it shall assign the receipts to that state. *See* part 548.04.c.i.A above.

Example (ii). Same facts as in Example (i), except that Broker Corp has several individual customers from whom it derives, in each instance, more than 5% of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives 5% or less of its receipts from sales of all services must be assigned as described in example 1. For each customer from whom it derives more than 5% of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a 5% customer's state of primary residence is this state, receipts from a sale made to that customer must be assigned to this state; in any case in which a 5% customer's state of primary residence is not this state receipts from a sale made to that customer are not assigned to this state.

Example (iii). Architecture Corp provides building design services as to buildings located, or expected to be located, in this state to individual customers who are resident in this state and other states, and to business customers that are based in this state and other states. The receipts from Architecture Corp's sales are assigned to this state because the locations of the buildings to which its design services relate are in this state, or are expected to be in this state. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to this state even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than this state or are electronically delivered to its customer in a state other than this state. *See* subparagraphs 548.04.b.ii and .c.ii above.

Example (iv). Law Corp provides legal services to individual clients who are resident in this state and in other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know this state of primary residence, it knows the client's billing address. Also assume that Law Corp does not derive more than 5% of its receipts from sales of all services from any one individual client. If Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the receipts to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state. *See* subparagraphs 548.04.b.ii and .c.i above.

Example (v). Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in this state; in the other cases, the agreement is principally managed in a state other than this state. If the agreement for legal services is principally managed by the client in this state the receipts from sale of the services are assigned to this state; in the other cases, the receipts are not assigned to this state. In the case of receipts that are assigned to this state, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state. *See* subparagraphs 548.04.b.ii and .c.i above.

Example (vi). Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Co is principally managed by Law Corp in this state, the receipts from the sale of Consulting Corp's services are assigned to this state. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly. *See* part 548.04.c.i.B above.

Example (vii). Bank Corp provides financial custodial services to 100 individual customers who are resident in this state and in other states, including the safekeeping of some of its customers' financial assets. Assume for purposes of this example that Bank Corp knows the state of primary residence for many of its customers, and where it does not

know this state of primary residence, it knows the customer's billing address. Also assume that Bank Corp does not derive more than 5% of its receipts from sales of all of its services from any single customer. Note that because Bank Corp does not have more than 250 customers, it may not apply the safe harbor for professional services stated in part 548.04.c.i.C above. If Bank Corp knows its customer's state of primary residence, it must assign the receipts to that state. If Bank Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. Bank Corp's receipts are assigned to this state if the customer's state of primary residence (or billing address, in cases where it does not know the customer's state of primary residence) is in this state, even if Bank Corp's financial custodial work, including the safekeeping of the customer's financial assets, takes place in a state other than this state. *See* part 548.04.c.i.A above.

Example (viii). Same facts as Example (vii), except that Bank Corp has more than 250 customers, individual or business. Bank Corp may apply the safe harbor for professional services stated in part 548.04.c.i.C above, and may assign its receipts from sales to a state or states using each customer's billing address.

Example (ix). Same facts as Example (viii), except that Bank Corp derives more than 5% of its receipts from sales from a single individual customer. As to the sales made to this customer, Bank Corp is required to determine the individual customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state. *See* part 548.04.c.i.A and subparagraph 548.04.c.iii above. Receipts from sales to all other customers are assigned as described in Example (viii).

Example (x). Advisor Corp, a corporation that provides investment advisory services, provides these advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are resident in numerous states, which may or may not include this state. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in this state, receipts from the sale of Advisor Corp's services are assigned to this state. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states. *See* part 548.04.c.i.B above.

Example (xi). Advisor Corp provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in this state, receipts from the sale of Advisor Corp's services are assigned to this state. *See* part 548.04.c.i.B above. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.

Example (xii). Design Corp is a corporation based outside this state that provides graphic design and similar services in this state and in neighboring states. Design Corp enters into a contract at a location outside this state with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than 5% of its receipts from sales of services from the individual customer. All of the design work is performed outside this state. Receipts from the sale are in this state if the customer's billing address is in this state. *See* Part 548.04.c.i.A above.

549. SALES FACTOR: LICENSE OR LEASE OR INTANGIBLE PROPERTY (RULE 549)

Section 63-3027(13)(d)(i)

01. General Rules.

a. The receipts from the license of intangible property are in this state if and to the extent the intangible is used in this state. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several

specific types of licensing transactions are set forth at subsections 549.02 through .05 of this rule. For purposes of the rules set forth in this rule (549), a lease of intangible property is to be treated the same as a license of intangible property.

b. In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of section 63-3027, Idaho Code, and these rules. *See* Rule 550. Note, however, that for purposes of this rule (549) and Rule 550, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property.

c. Intangible property licensed as part of the sale or lease of tangible property is treated under section 63-3027, Idaho Code, and these rules as the sale or lease of tangible property.

d. Nothing in this Rule (548) shall be construed to allow or require inclusion of receipts in the sales factor that are not included in the definition of "receipts" pursuant to section 63-3027(1)(i) or related rules.

02. License of a Marketing Intangible. Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to this state to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in this state. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from this state consumers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the this state population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to this state must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the this state population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

03. License of a Production Intangible. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to this state to the extent that the use for which the fees are paid takes place in this state. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the Tax Commission can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in this state, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside this state. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

04. License of a Mixed Intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Tax Commission will accept that separate statement for purposes of section 63-3027, Idaho Code, and these rules. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the [tax administrator] can reasonably establish otherwise.

05. License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

a. In general. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the provisions set forth in Rule 548.03.b.ii and .iii, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this subsection (549.05) include, without limitation, the license of database access, the license of access to information, the license of digital goods (*see* Rule 551.02), and the license of certain software (*e.g.*, where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property, *see* Rule 551.01.

b. Sublicenses. Pursuant to paragraph 549.05.a above, the provisions of of Rule 548.03.b.iii may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth in Rule 548.03.b.iii. that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.

c. License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services Examples:

In these examples, assume that the customer is not a related party.

Example (i). Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without this state. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to this state are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its this state stores relative to Dealer Co's total receipts. *See* subsection 549.02 above.

Example (ii). Program Corp, a corporation that is based outside this state, licenses programming that it owns to licensees, such as cable networks, that in turn will offer the programming to their customers on television or other media outlets in this state and in all other U.S. states. Each of these licensing contracts constitutes the license of a marketing intangible. For each licensee, assuming that Program Corp lacks evidence of the actual number of viewers

of the programming in this state, the component of the licensing fee paid to Program Corp by the licensee that constitutes Program Corp's this state receipts is determined by multiplying the amount of the licensing fee by a percentage that reflects the ratio of the Idaho audience of the licensee for the programming relative to the licensee's total U.S. audience for the programming. *See* subsection .05 above. Note that the analysis and result as to the state or states to which receipts are properly assigned would be the same to the extent that the substance of Program Corp's licensing transactions may be determined to resemble a sale of goods or services, instead of the license of a marketing intangible. *See* subsection 549.05 above.

Example (iii). Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Idaho receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Idaho population in the specific geographic region relative to the total population in that region. *See* subsection 549.02 above. If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city; then none of the foreign country's population beyond the population of the major city is include in the population ratio calculation.

Example (iv). Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in this state and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the Tax Commission can reasonably establish that the actual use of the intangible property takes place in part in this state, the royalty is assigned based to the location of that use rather than to location of the licensee's commercial domicile, in accordance with subsection 549.01 above. It is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside this state. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in this state using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's this state receipts. *See* subsection .05 above.

Example (v). Axel Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside this state. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co.'s receipts that are derived from this state customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Idaho population constitutes 25% of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the Tax Commission reasonably establishes otherwise. Assuming that neither party establishes otherwise, 25% of the licensing fee constitutes this state receipts. *See* subsections 549.02 and .04 above.

Example (vi). Same facts as Example (v), except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the Tax Commission will: (1) assign no part of the licensing fee paid for the production intangible to this state, and (2) assign 25% of the licensing fee paid for the marketing intangible to this state. *See* subsection 549.04 above.

Example (vii). Better Burger Corp, which is based outside this state, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in this state. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Idaho franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute this state receipts because the franchises are for the right to make this state sales. The monthly franchise fees paid by this state franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how) and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute this state receipts because in each case the use of the intangibles is to take place in this state. *See* subsections 549.02 and .03 above. The fees paid for the personal services are to be assigned pursuant to Rule 548.

Example (viii). Online Corp, a corporation based outside this state, licenses an information database through the means of the Internet to individual customers that are resident in this state and in other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with subsection 549.05 above. If Online Corp can determine or reasonably approximate the state or states where its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in this state in any case in which the customer's billing address is in this state. *See* Rule 548.03.b.ii.A.

Example (ix). Net Corp, a corporation based outside this state, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in this state and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services and are assigned in accordance with subsection 549.05 above. Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that 75% of Business Corp's database access took place in this state, and 25% of Business Corp's database access took place in other states. In that case, 75% of the receipts from database access is in this state. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives 5% or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under Rule 548.03.b.ii.B to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state. *See* Rule 548.03.b.ii.B.

Example (x). Net Corp, a corporation based outside this state, licenses an information database through the means of the Internet to more than 250 individual and business customers in this state and in other states. The license is a license of intangible property that resembles a sale of goods or services and receipts from that license are assigned in accordance with subsection 549.05 above. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than 5% of its

receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in Rule 548.03.b.ii.B.dd and may assign its receipts to a state or states using each customer's billing address.

Example (xi). Web Corp, a corporation based outside of this state, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in this state and in other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and are assigned by applying the rules set forth in Rule 548.03.b.iii. *See* subsection 549.05 above. If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in this state using a percentage that represents the ratio of the Idaho population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area. *See* Rule 548.03.b.iii.C.

550. SALES FACTOR: SALE OF INTANGIBLE PROPERTY (RULE 550)

Section 63-3027(13)(d)(ii)

01. Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this Rule (550), a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, *see* Rule 549.01.

a. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in Idaho the taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or is authorized to be used in this state and one or more other states, the taxpayer shall assign the receipts from the sale to this state to the extent that the intangible property is used in or authorized for use in this state, through the means of a reasonable approximation.

b. Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property). In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in Rule 549 (pertaining to the license or lease of intangible property).

c. Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in Rule 549.05 (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in Rule 549.05.

d. Sale of Intangible Property Examples.

Example (i). Airline Corp, a corporation based outside Idaho, sells its rights to use several gates at an airport located in Idaho to Buyer Corp, a corporation that is based outside Idaho. The contract of sale is negotiated and signed outside of Idaho. The receipts from the sale are in Idaho because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Idaho. *See* subsection 550.01 above.

Example (ii). Wireless Corp, a corporation based outside Idaho, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Idaho to Buyer Corp, a corporation that is based outside Idaho. The contract of sale is negotiated and signed outside of Idaho. The receipts from the sale are in Idaho because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Idaho. *See* paragraph 550.01.a above.

Example (iii). Same facts as in Example (ii) except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Idaho and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or may be used in Idaho. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two states covered by the license. *See* paragraph 550.01.a above.

Example (iv). Sports League Corp, a corporation that is based outside Idaho, sells the rights to broadcast the sporting events played by the teams in its league in all 50 U.S. states to Network Corp. Network Corp.'s commercial domicile is in a state other than Idaho. Paragraph 550.01.a above does not apply in this situation because section 63-3027(13)(e), Idaho Code, specifically addresses broadcast right sales. Pursuant to section 63-3027(13)(e), the sales are not in this state because the commercial domicile of Network Corp. is not in this state.

551. SALES FACTOR: SPECIAL RULES (RULE 551)

Section 63-3027(13)

01. Software Transactions.

A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in this state as determined under the rules for the sale of tangible personal property set forth under section 63-3027(12), Idaho Code, and related rules. In all other cases, the receipts from a license or sale of software are to be assigned to this state as determined otherwise under Rules 546 through 551 (e.g., depending on the facts, as the development and sale of custom software, *see* Rule 548.03, as a license of a marketing intangible, *see* Rule 549.02, as a license of a production intangible, *see* Rule 549.03, as a license of intangible property where the substance of the transaction resembles a sale of goods or services, *see* Rule 549.05, or as a sale of intangible property, *see* Rule 550.

02. Sales or Licenses of Digital Goods or Services.

a. In general. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in Rule 548.03.b.ii or .iii, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. *See* Rule 549.05 and 550.01.c.

b. Telecommunications Companies. In the case of a taxpayer that provides telecommunications or ancillary services, receipts from the sale or license of digital goods or services are assigned by applying the rules set forth in Rule 548.03.b.ii or .iii as if the transaction were a service delivered to an individual or business customer or

delivered through or on behalf of an individual or business customer. However, in applying these rules, if the taxpayer cannot determine the state or states where a customer receives the purchased product it may reasonably approximate this location using the customer's "place of primary use" of the purchased product.

i. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

552. -- 557. (RESERVED)

558. SALES FACTOR: COSTS OF PERFRMANCE ELECTION FOR COMMUNICATIONS COMPANIES (RULE 551)
Section 63-3027(15)

01. Election. A communications company as defined in Section 63-3027(1)(e), Idaho Code, shall source gross receipts from transactions other than sales of tangible personal property pursuant to Section 63-3027(13), Idaho Code, and Rules 546, 548, 549, as applicable, unless it elects to source such gross receipts pursuant to Section 63-3027(15), Idaho Code, and Rule 559. The election is made by attaching a written statement of the election to the return. The statement must affirmatively state whether (1) all the income-producing activity is performed in this state, or (2) the income-producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance. This election may not be changed for a taxable year after the return for that year has been filed. An election under Section 63-3027(15), Idaho Code, and Rule 559 is independent from any election made pursuant to Section 63-3027(10)(b), Idaho Code, and Rule 310.03.

02. Election binding for future years. The election is binding for all years thereafter; a change of election in future years may only occur with the written permission of the tax commission. A petition to change the election must include an explanation of the legal or factual basis for requesting the change and a computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return

55~~0~~9. SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO FOR COMMUNICATIONS COMPANIES ELECTING TO USE COSTS OF PERFORMANCE (RULE 55~~0~~9).
Section 63-3027(~~r~~15), Idaho Code

01. In General. ~~Section 63-3027(r15), Idaho Code,~~ Communications companies as defined in section 63-3027(1)(e), Idaho Code, may elect to source ~~provides for the inclusion in the numerator of the sales factor of~~ gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government, under the provisions of section 63-3027(15) and this rule (559). Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. (3-31-22)

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of producing that item of income. The activity includes transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. (3-31-22)

a. Income producing activity includes the following: (3-31-22)

i. The rendering of personal services by employees or by an agent or independent contractor acting on behalf of the taxpayer or the use of tangible and intangible property by the taxpayer or by an agent or independent contractor acting on behalf of the taxpayer in performing a service; (3-31-22)

ii. The sale, rental, leasing, licensing or other use of real property; (3-31-22)

iii. The rental, leasing, licensing or other use of tangible personal property; and (3-31-22)

iv. The sale, licensing or other use of intangible personal property. (3-31-22)

b. The mere holding of intangible personal property is not, by itself, an income producing activity. (3-31-22)

03. Costs of Performance. Costs of performance are the direct costs determined in a manner consistent with generally accepted accounting principles and according to accepted conditions or practices of the taxpayer's trade or business to perform the income producing activity that gives rise to the particular item of income. Included in the taxpayer's cost of performance are taxpayer's payments to an agent or independent contractor for the performance of personal services and utilization of tangible and intangible property that give rise to the particular item of income. (3-31-22)

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: (3-31-22)

a. The income producing activity is performed wholly in Idaho; or (3-31-22)

b. The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. (3-31-22)

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: (3-31-22)

a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. (3-31-22)

b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho will be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. (3-31-22)

c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) / (ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. (3-31-22)

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. (3-31-22)

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-31-22)

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars ($9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars ($3,000): (200 man hours/600 man hours) x $9,000. (3-31-22)

06. Services on Behalf of the Taxpayer. An income producing activity performed on behalf of a taxpayer by an agent or independent contractor is attributed to Idaho if such income producing activity is in Idaho. (3-31-22)

a. Such income producing activity is in Idaho: (3-31-22)

i. When the taxpayer can reasonably determine at the time of filing that the income producing activity is actually performed in Idaho by the agent or independent contractor. However, if the activity occurs in more than one state, the location where the income producing activity is actually performed will be deemed to be not reasonably determinable at the time of filing under Subparagraph 55~~0~~9.06.a.i. of this rule. (3-31-22)

ii. If the taxpayer cannot reasonably determine at the time of filing where the income producing activity is actually performed, when the contract between the taxpayer and the agent or independent contractor indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract. (3-31-22)

iii. If it cannot be determined where the income producing activity is actually performed and the agent or independent contractor's contract with the taxpayer does not indicate where it is to be performed, when the contract between the taxpayer and the taxpayer's customer indicates it is to be performed in Idaho and the portion of the taxpayer's payment to the agent or contractor associated with such performance is determinable under the contract; or (3-31-22)

iv. If it cannot be determined where the income producing activity is actually performed and neither contract indicates where it is to be performed or the portion of the payment associated with such performance, when the domicile of the taxpayer's customer is in this state. If the taxpayer's customer is not an individual, "domicile" means commercial domicile. (3-31-22)

b. If the location of the income producing activity by an agent or independent contractor, or the portion of the payment associated with such performance, cannot be determined under Subparagraphs 55~~0~~9.06.a.i. through 55~~0~~9.06.a.iii. of this rule, or the taxpayer's customer's domicile cannot be determined under Subparagraph 55~~0~~9.06.a.iv. of this rule, or, although determinable, such income producing activity is in a state in which the taxpayer is not taxable, such income producing activity is to be disregarded. (3-31-22)

560. SPECIAL RULES (RULE 560).
Section 63-3027(~~s~~17), Idaho Code

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases where the apportionment and allocation provisions contained in Section 63-3027, Idaho Code, produce incongruous results. (3-31-22)

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: (3-31-22)

a. Separate accounting; (3-31-22)

b. The exclusion of one (1) or more of the factors; (3-31-22)

c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or (3-31-22)

d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. (3-31-22)

03. Special Industry Methods. ~~Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in~~ Section 63-3027(~~s~~18), Idaho Code, ~~or in Rules 560 through 599 of these rules precludes~~ authorizes the Tax Commission ~~from~~to establish~~ing~~ appropriate procedures ~~pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code,~~ for determining the apportionment factors for each of these industries. These procedures will be applied uniformly. See Rule 580 of these rules for the list of the special industries. (3-31-22)

561. -- 564. (RESERVED)

565. SPECIAL RULES: PROPERTY FACTOR (RULE 565).
Section 63-3027(~~s~~18), Idaho Code

01. Subrents. (3-31-22)

a. In General. If the subrents taken into account in determining the net annual rental rate pursuant to Rule 485 of these rules produce a negative or clearly inaccurate value for any item of property, another method that properly reflects the value of rented property may be required by the Tax Commission or requested by the taxpayer. The value may not be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property. (3-31-22)

b. Example. A taxpayer rents a ten (10) story building at an annual rental rate of one million dollars ($1,000,000). The taxpayer occupies two (2) stories and sublets eight (8) stories for one million dollars ($1,000,000) a year. The taxpayer's net annual rental rate may not be less than two-tenths (0.2) of the taxpayer's annual rental rate for the entire year, or two hundred thousand dollars ($200,000). (3-31-22)

02. Market Rental Rate. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property is determined based on a reasonable market rental rate for the property. (3-31-22)

566. -- 569. (RESERVED)

570. SPECIAL RULES: SALES FACTOR (RULE 570).
Section 63-3027(~~s~~18), Idaho Code

~~**01. Gross Receipts from Intangibles**. (3-31-22)~~

~~**a.** If the income producing activity in respect to business apportionable income from intangible personal property can be readily identified, the gross receipts are included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. (3-31-22)~~

~~**b.** Notwithstanding Rules 546 through 551, and 5509 of these rules, gross receipts from the sale of an ownership interest in another entity are included in the sales factor numerator based on the proportion of the entity's operational assets located in Idaho. The amount included is determined by multiplying the gross receipts received by the percentage of the entity's total real and tangible personal property located in Idaho at the time of the sale. (3-31-22)~~

~~**c.** If business apportionable income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the gross receipts are excluded from the denominator and numerator of the sales factor. For example, if business apportionable income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest are excluded from the denominator and numerator of the sales factor. (3-31-22)~~

~~**d.** This rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business apportionable income derived from intangible personal property can be readily identified. (3-31-22)~~

~~02.~~01. **Net Gains**. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses are treated as provided in Subsection 570.02 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce ~~business~~ apportionable income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.02 of this rule, each treasury function is considered separately. (3-31-22)

a. For purposes of Subsection 570.02 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. (3-31-22)

b. For purposes of Subsection 570.02 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (3-31-22)

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (3-31-22)

d. Examples. (3-31-22)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (3-31-22)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.02 of this rule does not operate to classify those sales as attributable to a treasury function. (3-31-22)

~~**03. Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property.** Notwithstanding the provisions of Rules 546 through 551, and 5509 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property are sourced to the state where the real property is located.~~ (3-31-22)

571. SPECIAL RULES: SALES FACTOR - Taxpayers With Less than 3.33 Percent of Apportionable Gross Receipts Assignable
Section 63-3027(18), Idaho Code

01. Definitions. As used in this Rule:

a. "Receipts" means sales or receipts as defined in section 63-3027(1)(i), Idaho Code;

b. "Gross receipts" means gross receipts as defined in Rule 325.07 that give rise to apportionable income included in the tax base;

c. "MTC Financial Institutions Apportionment Model" means the Multistate Tax Commission's Recommended Formula for the Apportionment and Allocation of the Net Income of Financial Institutions, as amended July 29, 2015;

d. "Gross receipts from lending activities" means interest income and other gross receipts arising from the activities described in subsections 3(d) through 3(j) of the MTC Financial Institutions Apportionment Model; and,

e. An entity's apportionment factor is "*de minimis*" if the denominator is less than 3.33 percent of the entity's apportionable gross receipts or if the factor is insignificant in producing income.

f. "Related parties" means related parties as described in section 267 of the Internal Revenue Code.

02. Applicability. This Rule 571 applies when the state of assignment could not be determined (under subsections (12) and (13) of 63-2027) for more than 96.77 percent of a taxpayer's apportionable gross receipts.

03. Sales factor. The following gross receipts are included in the sales factor denominator and are assigned to the sales factor numerator in this state as follows:

a. Dividends paid by a related party are assigned to the sales factor numerator in this state as follows:

i. If paid from earnings that can be reasonably attributed to a particular year, the dividends are assigned to the sales factor numerator in this state in a proportion equal to the dividend payor's apportionment factors in this state for that year as determined pursuant to section 63-3027, Idaho Code.

ii. If the dividends were paid from earnings that cannot reasonably be attributed to a particular year, the dividends are assigned to the sales factor numerator in this state in a proportion equal to the dividend payor's average apportionment factors in this state for the current and preceding year as determined pursuant to section 63-3027, Idaho Code.

b. Gains are assigned to the sales factor numerator in this state as follows:

i. Gains (net of related losses, but not less than zero) from the disposition of stock (or other intangible property rights) representing at least a 20% ownership interest in an entity, are assigned to the sales factor numerator in this state in a proportion equal to what the entity's separate apportionment factor was in this state for the tax year preceding the disposition as determined pursuant to state law.

ii. Gains (net of related losses, but not less than zero) from the disposition of assets of an entity or segment of a business are assigned to the sales factor numerator in this state in a proportion equal to what the entity's separate apportionment factor was in this state in the tax year preceding the disposition as determined pursuant to section 63-3027, Idaho Code.

iii. In applying subparagraphs i..and ii. of this paragraph b., in any case in which the entity did not exist in the prior year, or had an apportionment factor of zero [or had only a *de minimis* apportionment factor], the gross receipts from the gain are attributed to the sales factor numerator of this state under subsections 04., 05., or 06. of this rule 571 as appropriate.

iv. In applying this paragraph b., in the case of an entity which was not subject to entity-level taxation, the apportionment percentage shall be computed as if the entity were a C corporation.

EXAMPLES:

(i) Taxpayer, Nuclear Corp. (Nuclear) is a holding company and the state of assignment could not be determined (under subsections (12) and (13) of 63-2027) for any of its apportionable gross receipts. In the prior tax year, Nuclear formed Target Corp. (Target) and transferred its stock ownership interest in three power plants, located in three states, one of which is in this state, to Target in exchange for the stock of Target. In the current tax year, Nuclear sells the stock of Target to Risky Investments for $500 million in cash, recognizing a gain of $100 million. In the tax year preceding the sale, Target's apportionment factor in this state was 30%. Based on Target's prior year

apportionment factor, Nuclear would include $100 million in the denominator of its sales factor and would assign $30 million to the sales factor numerator in this state.

(ii) Same facts as (i) except during the current tax year Nuclear formed Target and then sold the Target stock on the same day. Because Target did not exist in the year preceding the disposition, Nuclear would have to use paragraph (4), (5) or (6), as appropriate, to assign a portion of the $100 million gain to its sales factor numerator in this state.

(iii) Same facts as (i) except Nuclear makes an IRC 338(h)(10) election, which this state conforms to, so the sale is treated as the sale by Target of its assets. The sale of Target's assets in this state (the power plant) generated a gain of $150 million, and the sale of Target's remaining two power plants generated a loss of $50 million. Target would include $100 million of gain (the net amount) in the denominator of its sales factor and would include 30% of that gain in the sales factor in this state based on Target's apportionment factors in this state in the year preceding the sale.

c. Gross receipts from lending activities are included in the sales factor denominator and assigned to the sales factor numerator in this state to the extent those gross receipts would have been assigned to this state under the MTC Financial Institutions Apportionment Model (including the rule of assignment to commercial domicile under 3(p) of that model statute) as if the taxpayer were a financial institution subject to the MTC Financial Institutions Apportionment Model, except that:

i. in the case of gross receipts derived from loans to a related party, which are not secured by real property, including interest, fees, and penalties, the gross receipts are included in this state's numerator in a proportion equal to the related party's apportionment factor in this state as determined by section 63-3027, Idaho Code, in the year the gross receipts were included in apportionable income; and,

ii. Gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer are assigned under paragraph d. of this rule.

d. Gross receipts derived from accounts receivable previously sold to or otherwise transferred to the taxpayer are included in the denominator and assigned to the sales factor numerator in this state to the extent those accounts receivable are attributed to borrowers located in this state; provided however, that if the taxpayer is not taxable in a state in which the borrowers are located, those gross receipts are excluded from the denominator of the taxpayer's sales factor.

EXAMPLES:

(i) Taxpayer IH Factoring, Inc. (Factoring) is a Delaware corporation that has twenty employees all of whom are located in Delaware. Factoring purchases installment agreements (accounts receivable) from its parent corporation, Iron Horse Motorcycles, Inc. (Iron Horse). Factoring has access to information showing the addresses of the installment agreement customers. Factoring purchases installment agreements originating from Iron Horse's borrowers in States A and B, and this state. Factoring is taxable in State A and this state, but not State B. Factoring re-sells the agreements as securitized instruments to institutional investors. Factoring's gross receipts from selling the securitized instruments originating from Iron Horse's borrowers in State A and this state would be included in the sales factor denominator, and Factoring's gross receipts from selling securitized instruments originating from Iron Horse's borrowers in this state would be assigned to the sales factor numerator in this state.

(ii) Same facts as above, but IH Factoring retains its ownership in the installment agreements and receives principal, interest, and related fees from Iron Horse's customers (borrowers). The principal, interest and related fees received by Factoring from borrowers in State A and this state would be included in Factoring's sales factor denominator, and Factoring's receipts received from Iron Horse's customers (borrowers) in this state would be assigned to the sales factor numerator in this state.

e. The net amount, but not less than zero, of gross receipts not otherwise assigned under this subsection 03. arising from investment activities, including the holding, maturity, redemption, sale, exchange, or other disposition of marketable securities or cash are assigned to the sales factor numerator in this state if the gross receipts would be assigned to this state under Subsections (3)(n) or (3)(p) of the MTC's Financial Institutions Apportionment Model; all other gross receipts from investment activities not otherwise assigned under this subsection 03. are assigned to the sales factor numerator in this state if the investments are managed in this state.

04. Sales Factor: Other Gross Receipts. Gross receipts, other than those included and assigned under subsection 03., are included in the sales factor denominator, and are assigned to the sales factor numerator in this state in a proportion equal to the average of the taxpayer's other non-*de minimis* apportionment factors (property and/or payroll) in this state as determined pursuant to 63-3027(16), Idaho Code.

EXAMPLES:
(i) Taxpayer Windfall, Inc. (Windfall) is a wholly-owned subsidiary of ABC Manufacturing Corp. (ABC). During the tax year, Windfall has 10% of its property and 20% of its payroll in this state, and neither its property nor its payroll factor is *de minimis*. Windfall's only gross receipt during the year is $1 billion received in settlement of ABC's patent infringement suit against a business competitor that has been ongoing for several years. Because this settlement amount is not assigned to the sales factor in this state under paragraph (3), Windfall is to assign the gross receipts to its sales factor numerator in a proportion equal to the average of its property and payroll factors. Therefore, Windfall would include $1 billion in its sales factor denominator and would include 15% of that amount ($150 million) in the sales factor numerator in this state, under this state's apportionment formula.

(ii) Same facts as above, except that Windfall's property and payroll factors are *de minimis.* Windfall would accordingly include the $1 billion settlement amount in the sales factor denominator and would include a portion of that amount to the sales factor numerator in this state in accordance with paragraphs (5) or (6) of this regulation, as appropriate.

05. Sales Factor: Other Gross Receipts for Members of a Combined Report. Except for gross receipts included and assigned under subsection 03. or 04., gross receipts of a taxpayer whose income and factors are included in a combined report in this state are included in the sales factor denominator and are assigned to the sales factor numerator in this state in the same proportion as the ratio of: (A) the total of the sales factor numerators of all members of the combined group in this state, whether taxable or nontaxable, to (B) the denominator of the combined group.

EXAMPLE:
Taxpayer Windfall, Inc. (Windfall) is a wholly-owned subsidiary of ABC Manufacturing Company (ABC). Windfall's only gross receipt during the year is $1 billion received in settlement of ABC's patent infringement suit against a business competitor that has been ongoing for several years. Windfall is included on a combined report filed by ABC on behalf of ABC, Windfall and other direct and indirect control subsidiaries of ABC (collectively, the Combined Subsidiaries). The ratio of the total numerators of ABC and Combined Subsidiaries in this state, as reported on the combined report, to the denominator of the combined group is 25 percent. Windfall would include $1 billion in its sales factor denominator and would include $250 million in the sales factor numerator in this state.

.06 Sales Factor: Other Gross Receipts for Members of a Federal Consolidated Return. Except for those gross receipts included and assigned under subsection 03., 04., or 05., gross receipts of a taxpayer that files as part of a federal consolidated return are included in the sales factor denominator and are assigned to the sales factor numerator in this state in a proportion equal to a percentage (but not greater than 100%), the numerator of which is the total of the consolidated group members' income allocated to or apportioned to this state pursuant to 63-3027, Idaho Code, and the denominator of which is the total federal consolidated taxable income.

EXAMPLE:

Taxpayer Windfall, Inc. (Windfall) is a wholly-owned subsidiary of ABC Manufacturing Corp. (ABC). Windfall's only gross receipt is $1 billion received in settlement of ABC's patent infringement suit against a business competitor that has been ongoing for several years. Windfall is not included on a combined report filed in this state, but is included on a consolidated federal return filed by ABC on behalf of Windfall and other affiliated corporations that are included in such consolidated return. The total federal taxable income of that consolidated group is $5 billion, and the total amount of that income that is apportioned to this state by members of the consolidated group other than Windfall is $500 million. Because the percentage the consolidated group's income that would be apportioned to this state is 10%, Windfall would include $1 billion in its sales factor denominator and would assign 10% of that amount ($100 million) to the sales factor numerator in this state.

07. Alternative Apportionment. Nothing in this Rule 571 shall prohibit the taxpayer from petitioning for, or the Tax Commission from applying an alternative method to calculate the taxpayer's sales factor in order to fairly represent the extent of the taxpayer's business activity in this state as provided for in 63-3027(17), Idaho Code, including the application of this rule in situations that do not meet the threshold of subsection 02. of this Rule. Such alternative method may be appropriate, for example, in situations otherwise addressed under subsection 03.a. where dividends were paid from earnings that were generated by the activities of a related party of the dividend payor, in which case the dividends may be more appropriately assigned to the sales factor numerator in this state using the related party's average apportionment factors in this state.

571. -- 579. (RESERVED)

580. SPECIAL RULES: SPECIAL INDUSTRIES (RULE 580).
Section 63-3027(s), Idaho Code

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 003.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries are to apportion income in accordance with the applicable MTC regulation: (3-31-22)

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor is to be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-31-22)

b. Airlines. The apportionment of income derived by an airline is to be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-31-22)

c. Railroads. The apportionment of income derived by a railroad is to be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-31-22)

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others is to be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. (3-31-22)

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting is to be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-31-22)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material is to be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-31-22)

g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. (3-31-22)

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. (3-31-22)

581. SPECIAL RULES: REFERENCES USED IN MTC SPECIAL INDUSTRY REGULATIONS (RULE 581).

Section 63-3027(s), Idaho Code. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references in the MTC special industry regulations means the following: (3-31-22)

01. Article IV. Of The Multistate Tax Compact. (3-31-22)

a. Article IV. means Section 63-3027, Idaho Code. (3-31-22)

b. Article IV.1 means Section 63-3027(~~a~~1), Idaho Code. (3-31-22)

c. Article IV.2 means Section 63-3027(~~b~~2), Idaho Code. (3-31-22)

d. Article IV.3 means Section 63-3027(~~c~~4), Idaho Code. (3-31-22)

e. Article IV.4 means Section 63-3027(~~d~~5), Idaho Code. (3-31-22)

f. Article IV.5 means Section 63-3027(~~e~~6), Idaho Code. (3-31-22)

g. Article IV.6 means Section 63-3027(~~f~~7), Idaho Code. (3-31-22)

h. Article IV.7 means Section 63-3027(~~g~~8), Idaho Code. (3-31-22)

i. Article IV.8 means Section 63-3027(~~h~~9), Idaho Code. (3-31-22)

j. Article IV.9 means Section 63-3027(~~i~~10)(a), Idaho Code. (3-31-22)

k. Article IV.10 means Section 63-3027(~~k~~16)(a), Idaho Code. (3-31-22)

l. Article IV.11 means Section 63-3027(~~l~~16)(b), Idaho Code. (3-31-22)

m. Article IV.12 means Section 63-3027(~~m~~16)(c), Idaho Code. (3-31-22)

n. Article IV.13 means Section 63-3027(~~n~~16)(d), Idaho Code. (3-31-22)

o. Article IV.14 means Section 63-3027(~~o~~16)(e), Idaho Code. (3-31-22)

p. Article IV.15 means Section 63-3027(~~p~~10)(a), Idaho Code. (3-31-22)

q. Article IV.16 means Section 63-3027(~~q~~12), Idaho Code. (3-31-22)

r. Article IV.17 means Section 63-3027(~~r~~13), Idaho Code. (3-31-22)

s. Article IV.18 means Section 63-3027(~~s~~17), Idaho Code. (3-31-22)

02. MTC Regulations. (3-31-22)

a. Regulation IV.1 means Rules 330 through 354 of these rules. (3-31-22)

b. Regulation IV.2 means Rule 325 and Rules 355 through 384 of these rules. (3-31-22)

c. Regulation IV.3 means Rules 385 through 399 of these rules. (3-31-22)

d. Regulation IV.9 means Rules 450 through 459 of these rules. (3-31-22)

e. Regulation IV.10 means Rules 460 through 479 of these rules. (3-31-22)

f. Regulation IV.11 means Rules 480 through 489 of these rules. (3-31-22)

g. Regulation IV.12 means Rules 490 through 499 of these rules. (3-31-22)

h. Regulation IV.13 means Rules 500 through 514 of these rules. (3-31-22)

i. Regulation IV.14 means Rules 515 through 524 of these rules. (3-31-22)

j. Regulation IV.15 means Rules 525 through 539 of these rules. (3-31-22)

k. Regulation IV.16 means Rules 540 through 54~~9~~5 of these rules. (3-31-22)

l. Regulation IV.17 means Rules 5~~50~~46 through 559 of these rules. (3-31-22)

m. Regulation IV.18.(a) means Rules 560 through 564 of these rules. (3-31-22)

n. Regulation IV.18.(b) means Rules 565 through 569 of these rules. (3-31-22)

o. Regulation IV.18.(c) means Rules 570 through 574 of these rules. (3-31-22)

03. Tax Administrator. Tax Administrator means Tax Commission. (3-31-22)

04. This State. This state means Idaho. (3-31-22)

05. The Apportionment Percentage. (3-31-22)

a. ~~References in MTC Regulation IV.18.(d) to the computation of the apportionment percentage being the total of the property, payroll and sales percentages divided by three (3), is to be replaced with the total of property, payroll, and two (2) times the sales percentages divided by four (4) as required by Section 63-3027(i), Idaho Code.~~ The default apportionment method in Idaho is sales factor only. If any MTC special industry regulation adopted by Idaho includes a property and payroll factor, by default, those provisions will be ignored, and the taxpayer will only use the sales factor provisions to calculate an apportionment percentage. However, pursuant to section 63-3027(10)(b), Idaho Code, taxpayers subject to special industry regulations may elect to use the property, payroll, and sales factors, if the special industry regulation applicable to them provides for a property and/or payroll factor. See Rule 310 for instructions on making the election.

(3-31-22)

~~**b.** Examples. Since the Idaho sales factor is double-weighted, examples using a single-weighted sales factor is to be adjusted accordingly. (3-31-22)~~

582. SPECIAL RULES: FINANCIAL INSTITUTIONS (RULE 582).
Section 63-3027(s), Idaho Code

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted in Subsection 003.02 of these rules. A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. (3-31-22)

02. Definition of Financial Institution. "Financial institution" means: (3-31-22)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (3-31-22)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (3-31-22)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (3-31-22)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (3-31-22)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (3-31-22)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (3-31-22)

g. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired; (3-31-22)

h. Any corporation or other business entity that is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Paragraphs 582.02.a. through 582.02.g. (3-31-22)

i. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. This includes any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (3-31-22)

j. Any corporation or business entity that derives more than fifty percent (50%) of its gross income from activities that a person described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. of this rule is authorized to transact. For purposes of this subsection, the computation of gross income does not include income from non-recurring, extraordinary items. (3-31-22)

03. Exclusion from Paragraph 582.02.j. The Tax Commission is authorized to exclude any person from the application of Paragraph 582.02.j. upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. (3-31-22)

04. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. (3-31-22)

~~**05. The Apportionment Percentage**. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts actor, property factor, and payroll factor together and dividing the sum by three (3) are replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. (3-31-22)~~

583. -- 584. (RESERVED)

585. EXCEPTIONS TO APPORTIONMENT FORMULA: SEPARATE ACCOUNTING (RULE 585). Section 63-3027(~~s~~17), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. This determination is be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income. (3-31-22)

586. -- 5~~89~~94. (RESERVED)

~~**590. EXCEPTIONS TO APPORTIONMENT FORMULA: EXCLUSION OF A FACTOR (RULE 590).** Section 63-3027(s), Idaho Code. The apportionment of income provided in Section 63-3027, Idaho Code, requires the use of the three (3) factor apportionment formula described in Section 63-3027(i), Idaho Code. However, if one (1) of the prescribed three (3) factors is inapplicable, the remaining two (2) factors are to be included as numerators of the~~

~~fraction and the denominator of the fraction are two (2) or three (3) if necessary to maintain double weighting of the sales factor. (3-31-22)~~

~~**591. -- 594. (RESERVED)**~~

595. EXCEPTIONS TO APPORTIONMENT FORMULA: ADDITIONAL OR SUBSTITUTE FACTORS (RULE 595).
Section 63-3027(~~s~~17), Idaho Code. A factor other than the ~~property, payroll, or~~ sales factor may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission is to notify the taxpayer whether the request has been approved or denied. The taxpayer must establish that the use of the additional factor or substitute factor more accurately reflects the taxpayer's income. (3-31-22)

596. -- 599. (RESERVED)

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).
Section 63-3027(~~t~~22), Idaho Code

01. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho is to allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (3-31-22)

02. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (3-31-22)

03. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (3-31-22)

04. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions are to be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-31-22)

a. Dividends received from a real estate investment trust or a regulated investment company and not included in the pre-apportionment tax base as a result of the federal deduction for dividends paid allowed to the dividend payor are not eliminated as intercompany transactions in computing combined income. (3-31-22)

b. Internal Revenue Code Section 1248 Dividends. (3-31-22)

i. Taxpayers Using the Worldwide Filing Method. A corporation included in a worldwide combined group is to treat Section 1248 dividends as dividends for Idaho income tax purposes. An intercompany dividend elimination is allowed to the extent dividends received are paid from current or prior year earnings previously included in income subject to apportionment. (3-31-22)

ii. Taxpayers Using the Water's Edge Filing Method. A corporation included in a water's edge combined group is to treat Section 1248 dividends as dividends that qualify for the dividend exclusion allowed by Section 63-3027C(c)(1), Idaho Code. (3-31-22)

c. Dividends received from a stock insurance subsidiary and deducted by a mutual insurance holding company or an intermediate holding company pursuant to Section 41-3821, Idaho Code, are not eliminated as intercompany transactions in computing combined income. (3-31-22)

05. Insurance Companies. Pursuant to Section 41-405, Idaho Code, payment of an Idaho tax upon an insurance company's premiums will be in lieu of an income tax. (3-31-22)

a. If an insurance company is a member of a unitary business and pays the Idaho premium tax, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The income tax attributable to the insurance company is to be deducted from the total tax computed in the combined report. Income tax credits that the insurance company may have earned may not be shared with other members of the unitary group. (3-31-22)

b. If an insurance company is a member of a unitary business and pays a premium tax to a state other than Idaho, or does not pay a premium tax to any state, the insurance company is to be included in the combined group and its income and factor attributes included in the combined report. The insurance company is liable for the Idaho income tax computed on its activity in Idaho and is not exempt from the income tax as a result of Section 41- 405, Idaho Code. (3-31-22)

601. -- 604. (RESERVED)

605. ELEMENTS OF A WORLDWIDE COMBINED REPORT (RULE 605).
Section 63-3027(~~t~~22), Idaho Code

01. Income: In General. Income for the worldwide combined group is to be computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. (3-31-22)

02. Income: Foreign Corporations Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are included in a federal consolidated return is to include in the combined report the taxable income reported on the federal consolidated return. (3-31-22)

03. Income: Foreign Corporations Not Included in a Federal Consolidated Return. Corporations incorporated outside the United States that are not included in a federal consolidated return, is to include in the combined report either the amount in Subsection 605.03.a. or 605.03.b. as the equivalent of taxable income. The option chosen must be used for all unitary foreign corporations not included in a federal consolidated return. (3-31-22)

a. The taxpayer may use the financial net income before income taxes as reported to the United States Securities and Exchange Commission (SEC) if required to file with the SEC. If not required to file with the SEC, the taxpayer may use the financial net income before income taxes as reported to shareholders and subject to review by an independent auditor. (3-31-22)

b. The taxpayer may use the financial net income of each foreign corporation adjusted to conform to tax accounting standards as would be required by the Internal Revenue Code if the corporation were a domestic corporation required to file a federal income tax return. (3-31-22)

04. Consistent Application of Book to Tax Adjustments. If adjustments are made to conform financial net income to tax accounting standards, all book to tax adjustments as required by the Internal Revenue Code for domestic corporations is to be made for each unitary foreign corporation included in the combined report and is to be consistently applied in each year for which the worldwide method applies. These adjustments are subject to the record-keeping requirements of the Internal Revenue Code and Treasury Regulations for domestic corporations. (3-31-22)

05. Apportionment Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the worldwide combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Only the apportionment factor attributes of those corporations included in the worldwide combined group may be used. (3-31-22)

606. -- 619. (RESERVED)

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).
Section 63-3027, Idaho Code

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating

partnership, the corporation is to report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. (3-31-22)

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. (3-31-22)

03. Multistate Partnerships. If a partnership operates in more than one state, its income is to be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. (3-31-22)

04. Partnership Income as ~~Business~~ Apportionable Income of the Partner. (3-31-22)

a. Income. If the income or loss of a partnership is ~~business~~ apportionable income or loss to a corporate partner, its share of this net ~~business~~ apportionable income or loss is to be apportioned together with all other net ~~business~~ apportionable income or loss of the corporation. ~~business~~ apportionable income or loss is defined by Section 63-3027(~~a~~1)(~~1~~a), Idaho Code, and Rules 330 through 336 of these rules. (3-31-22)

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, is to be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(~~a~~12) and (13), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation. (3-31-22)

05. Partnership Income as ~~Nonbusiness~~ Nonapportionable Income of Partner. (3-31-22)

a. Income. If the partnership income or loss is not ~~business~~ apportionable income to a corporate partner, the income is ~~nonbusiness~~ nonapportionable income as defined in Section 63-3027(~~a~~1)(4h), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner is to allocate the ~~nonbusiness~~ nonapportionable income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, is to specifically allocate to Idaho its share of the ~~nonbusiness~~ nonapportionable income attributable to Idaho. (3-31-22)

b. Factors. If the partnership income or loss is ~~nonbusiness~~ nonapportionable income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation.

(3-31-22)

621. -- 639. (RESERVED)

640. WATER'S EDGE: MAKING THE ELECTION (RULE 640).
Section 63-3027B, Idaho Code

01. In General. Rules 640 through 649 of these rules apply to taxpayers electing to use the water's edge filing method. To the extent that these rules conflict with any other rules pursuant to this Act, Rules 640 through 649 of these rules control. (3-31-22)

02. The Election. The water's edge election is made for purposes of determining which corporations are included in a combined group for Idaho income tax purposes. If a corporation is not part of a unitary group for which a combined report is required, the corporation cannot make the water's edge election. The election must be made in accordance with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-31-22)

a. The election may be made for a year beginning on or after January 1, 1993. The election must be filed with the original tax return for the first year of the election. If the water's edge group changes in a subsequent

year through the acquisition or disposition of a corporation with an Idaho filing requirement, a copy of the election is to be attached to the tax return for such taxable year and the changes to the water's edge group is to be noted on the form. See Rule 643 of these rules for Change of Election. (3-31-22)

b. Any corporation included in the unitary group that files with Idaho a consent to the reasonable production of documents may make the election on behalf of the group. An election made by any member of a unitary group binds all other members regardless of any changes in the unitary group in later taxable years. (3-31-22)

c. The election must be made on a form provided by the Tax Commission and include a list of each corporation required to file an Idaho income tax return. The election must be signed by an individual authorized to bind all companies to the election. (3-31-22)

d. Idaho taxpayers having a valid water's edge election is to compute Idaho taxable income in accordance with Sections 63-3027 and 63-3022, Idaho Code, except as modified by Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules. (3-31-22)

03. Failure to Include Election. Failure to include the election with the first return to which the election applies results in Idaho taxable income being determined in accordance with Sections 63-3027 and 63-3022, Idaho Code. (3-31-22)

641. WATER'S EDGE: ELEMENTS OF A COMBINED REPORT (RULE 641).
Section 63-3027B, Idaho Code

01. Income. Income for the water's edge combined group is computed on the same basis as taxable income subject to modifications contained in Sections 63-3022 and 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the water's edge combined group is to be eliminated to the extent necessary to properly reflect combined income. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation will be included in the computation of the income of the water's edge combined group. (3-31-22)

02. Factors. The rules for inclusion, value, and attribution of apportionment factors by location for the water's edge combined group is to be determined pursuant to Section 63-3027, Idaho Code, and related rules. Intercompany transactions between members of the group is to be eliminated to the extent necessary to properly compute the apportionment factors of the water's edge combined group. Transactions between a member of the water's edge combined group and a nonincluded affiliated corporation is to be included, if appropriate, when determining apportionment factors. Dividends, to the extent included in apportionable income, is to be included in the sales factor computation. (3-31-22)

03. Foreign Corporations Filing Protective Returns. A foreign corporation filing a protective Form 1120-F return will not be deemed to be filing a federal income tax return for purposes of taking into account the income and apportionment factors of affiliated corporations in a unitary relationship with the taxpayer solely on the basis of filing this federal return. If subsequent to the filing of the protective 1120-F return it is determined that the foreign corporation had income effectively connected with the United States and was required to file a federal income tax return, the income and apportionment factors of the foreign corporation is required to be included in the combined report of the unitary group for such taxable year and an Idaho return or amended return may be required. (3-31-22)

642. WATER'S EDGE: LEGAL AND PROCEDURAL REQUIREMENTS (RULE 642).
Section 63-3027B, Idaho Code

01. Required Form. Proper filing of the water's edge election and consent for production of records must be made on the form provided by the Tax Commission and included in the original income tax return for the first tax year to which the election applies. (3-31-22)

02. Required Information. The following information must be included with each year's tax return for which a water's edge election applies: (3-31-22)

a. A complete list of all affiliated corporations, foreign and domestic, of which more than twenty percent (20%) of the voting stock is, directly or indirectly, owned or controlled by a common owner; (3-31-22)

b. Identifying information for each member of the water's edge combined group, including: federal

identification number, primary business activities, percent of ownership by members of the combined group, and dates of acquisition or disposition of interest; (3-31-22)

c. A copy of the federal consolidated return, if applicable; and (3-31-22)

d. A schedule of taxable income for each possession corporation excluded from the water's edge group pursuant to Section 63-3027B(a), Idaho Code. (3-31-22)

643. WATER'S EDGE: CHANGE OF ELECTION (RULE 643).
Section 63-3027C, Idaho Code

01. In General. Except as provided in Section 63-3027C(a) (1), Idaho Code, the taxpayer must submit a written petition to the Tax Commission and be granted written permission to change its reporting method from water's edge for any subsequent tax year. (3-31-22)

a. A change in the reporting method includes conversion from the water's edge filing method to the worldwide filing method as well as the addition of companies previously omitted or the exclusion of companies previously included in the water's edge combined group, except in the case of companies acquired or disposed of during the taxable year. (3-31-22)

b. The Tax Commission may determine that one or more affiliated corporations should be included or excluded from the water's edge combined group. Income and apportionment factors is to be modified accordingly. (3-31-22)

02. Written Petition. A written petition must include the following: (3-31-22)

a. An explanation of the legal or factual basis for requesting the change of reporting method; and (3-31-22)

b. A computation of the taxpayer's Idaho taxable income and tax liability computed using both the prior reporting method and the method the taxpayer is petitioning to use for the year of change. (3-31-22)

03. Due Date for Filing the Written Petition. The written petition requesting the change of reporting method must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the tax return. (3-31-22)

04. Failure to Provide Required Information. Failure to provide complete and accurate information necessary for the Tax Commission's review of the petition constitutes grounds for denial of the taxpayer's petition or disregard of the taxpayer's election. (3-31-22)

05. Approval Attached to Original Return. A copy of the Tax Commission's written approval of the change in reporting method must be attached to the original return for the year in which the change is first made. (3-31-22)

06. Appeal Rights. A taxpayer may appeal the Tax Commission's denial of a request to change the method of filing, by submitting a written letter of protest within sixty-three (63) days from date of the denial. If permission to change its filing method is denied, the taxpayer is to continue to file its income tax return with the method used in the previous year. If the appeal is resolved in the taxpayer's favor, the taxpayer may file an amended return for the year of change. (3-31-22)

644. WATER'S EDGE: DISREGARDING THE ELECTION (RULE 644).
Sections 63-3027B and 63-3027C, Idaho Code. If a taxpayer fails to comply with Sections 63-3027B through 63-3027E, Idaho Code, and Rules 640 through 649 of these rules, the Tax Commission may disregard the water's edge election or recompute the water's edge combined income and apportionment factors, and assert penalties pursuant to Section 63-3046, Idaho Code, and Rules 400 through 419 of the Administration and Enforcement Rules. (3-31-22)

645. WATER'S EDGE: TREATMENT OF DIVIDENDS (RULE 645).
Section 63-3027C, Idaho Code

01. Dividends Received from Payors Incorporated Outside the United States. (3-31-22)

a. Dividends received from payors who are incorporated outside the fifty (50) states and District of Columbia but are not included in the combined report are treated as ~~business~~ apportionable income. (3-31-22)

b. As provided in Section 63-3027C(e)(1), Idaho Code, amounts included in income under sections 951 and 951A of the Internal Revenue Code are treated as dividends from payors outside the fifty (50) states and District of Columbia. (3-31-22)

c. In order to avoid taxing income that had previously been included in Idaho apportionable income in a prior tax year, the remaining portion of the dividend that was not excluded from Idaho apportionable income under Section 63-3027C(c)(3), Idaho Code, is excluded from Idaho apportionable income if the taxpayer can prove that the income was previously included in Idaho apportionable income in a prior tax year. (3-31-22)

02. Dividends Received from Payors Incorporated in the United States. Dividends received from payors who are incorporated within the fifty (50) states and District of Columbia but not included in the combined return are presumed to be ~~business~~ apportionable income of the water's edge combined group. (3-31-22)

03. Deemed Dividends from Possession Corporations. The income of a possession corporation, excluded in Section 63-3027B(a), Idaho Code, shall be included in ~~business~~ apportionable income as a deemed dividend received from a payor incorporated outside the fifty (50) states and District of Columbia. The income of a possession corporation means taxable income greater than zero (0). Losses from possession corporations may not offset income of other possession corporations in determining the amount of deemed dividends. (3-31-22)

04. Dividends from Foreign Sales Corporations. (3-31-22)

a. As provided in Section 63-3027C(d)(1), Idaho Code, dividends received from a Foreign Sales Corporation (FSC) shall be eliminated in the proportion that FSC federal taxable income for the year during which the dividend was paid bears to the total FSC income before taxes for that year. For purposes of computing the dividend elimination, total FSC income before taxes means book income before the deduction of federal income taxes. (3-31-22)

b. For example, a FSC paid one million dollars ($1,000,000) in dividends during the taxable year. For that same taxable year, the FSC had federal taxable income totaling ten million dollars ($10,000,000) and total FSC income before taxes of twenty million dollars ($20,000,000). The dividends eliminated would be five hundred thousand dollars ($500,000) computed as follows: (($10,000,000 federal taxable income / $20,000,000 total FSC income before taxes) X $1,000,000 FSC dividend paid = $500,000 dividend elimination). (3-31-22)

05. Interest Expense Offset. The interest expense offset provided in Section 63-3022M, Idaho Code, does not apply to any dividends subject to the eighty-five percent (85%) or eighty percent (80%) exclusion provided in Section 63-3027C or 63-3027E, Idaho Code. (3-31-22)

646. WATER'S EDGE: DOMESTIC DISCLOSURE SPREADSHEET (RULE 646).
Section 63-3027E, Idaho Code

01. Filing Requirements. The domestic disclosure spreadsheet required by Section 63-3027E(b), Idaho Code, must be filed no later than six (6) months after filing the original return unless the taxpayer makes a declaration to forego the filing of the spreadsheet. The declaration is made on a year by year basis. (3-31-22)

02. Spreadsheet Information. The spreadsheet information must be submitted using the forms contained in the Tax Commission's "Idaho Water's Edge Election Pamphlet" or on identically formatted forms that disclose the same information. (3-31-22)

647. -- 699. (RESERVED)