

## Sales and Use Tax Examples

### IDAPA 35.01.02

#### **011. MIXED TRANSACTIONS**

**a.** An attorney is retained by a client to prepare the client's will. The attorney prepares the will, sees that it is properly executed and bills the client. The physical document, the will, is then transferred from the attorney to the client. This is a sale of services because the client's object is not to obtain the will itself, but to ensure that their estate is disposed of in a certain way when they die. Since, the transaction between the attorney and the client is not a retail sale of tangible personal property, no sales or use tax applies. However, the attorney pays sales or use tax when the attorney buys stationery and other equipment to prepare the will.

**b.** The attorney in Example "a" prepares a form book of wills which he intends to sell to other attorneys. The will the attorney prepared in Example "a" is included in the form book. The sale of the form book to other attorneys is a taxable retail sale of tangible personal property. From the buyer's point of view, the object of the sale is to obtain the book, which is tangible personal property. The fact that special skill or knowledge went into the preparation of the book and is reflected in the purchase price does not make the sale of the form book a service transaction.

**c.** An architect is hired to prepare construction plans for a house. He prepares the plans and delivers them to his client. As in the example of the attorney preparing the will, this is a sale of services and the transfer of the tangible personal property, the plans, is inconsequential the transaction. No sales or use tax is due on the sale of the plans.

**d.** The architect in Example "c" is asked to provide additional copies of the same plans to his original client or to a third party. The architect copies the plans on a duplicating machine and sells them to the requesting party. This is a taxable retail sale of tangible personal property, since the buyer's object is to obtain the property, the plans.

**e.** An artist is commissioned to paint an oil portrait. When the portrait is completed, ownership is transferred to the client who pays the artist a lump-sum amount for the portrait. This is a taxable retail sale of tangible personal property because the buyer's object is to obtain the portrait. If the artist otherwise qualifies as a retailer, he is required to collect and remit sales tax on the sale of the portrait.

**f.** An automobile repair shop does repair work for a customer. To do the work, the shop replaces certain parts on the automobile. The repair shop bills its customer an amount for the repair parts and a separate amount for labor. This is a mixed transaction. As long as the sale of the tangible personal property, the parts, and the sale of services, the labor, are separately stated, sales tax is due only on the sale of the parts and not on the charge for labor. However, allocation of the total charge between parts and labor must be reasonable. If part of the charge for parts is unreasonably attributed to the cost of labor, the allocation may be adjusted by the Commission.

**g.** A retail clothing store provides needed alterations to items purchased by customers. Even though the sale depends on the alterations being done, the service is incidental to the sale of the property. The entire transaction is taxable, even if the charge for the alteration labor is separately stated.

#### **012. CONTRACTORS IMPROVING REAL PROPERTY**

##### **06. Materials Provided by Project Owner.**

**a.** If a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property.

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#### **013. ROAD, PAVING, AND EARTHWORK CONTRACTORS**

**a.** A contractor is hired to pave or chip seal a road for a city. The materials the contractor uses are taxable, regardless of ownership, and include rock, sand, asphalt oil, chemicals, bonding agents, or any other like materials which become the aggregate pavement.

**b.** A contractor is hired to perform landscaping for the barrow pits and shoulders of a new highway. The highway district provides grass seed and bushes for the project. The contractor provides labor to sow the seed, plant the bushes, and labor and materials to provide erosion control, land leveling, contouring, etc. The contractor owes tax on all materials consumed, including those provided by the highway district.

**c.** A contractor is hired to install a new bridge and provide drainage for a new freeway interchange. The highway district provides bridge components and culverts needed for the project, and the contractor provides the remaining materials and labor for the project. The contractor owes tax on the value of the bridge components and culverts provided by the highway district as well as the materials purchased and consumed by the contractor.

**d.** A contractor is hired to install traffic control lights, signage, and roadway illumination for a rebuilt section of roadway. The highway district provides traffic control signals and the permanent signage for the highway so that all signage will be consistent throughout the district. The contractor owes tax on the value of the traffic signals and signage provided by the highway district as well as on the cost of electrical wiring, signal wiring, and the lights and light poles, etc., purchased and consumed by the contractor.

#### **014. CONTRACTORS/RETAILERS.**

##### Examples of Contractor/Retailers

- Plumbers
- Electricians
- Cabinet Builders
- Flooring Companies
- Mechanical Contractors

**a.** Plumbers, electricians, carpet layers, cabinet builders, and mechanical contractors can be both contractors and retailers. They are contractors when they install materials in the course of a residential or commercial service call or contract; but when they sell items or materials they don't install; they are retailers and need to collect sales tax from their customers.

**b.** A cabinet builder contracts to build and install kitchen cabinets and build a portable, freestanding china hutch. In the case of the cabinets, the cabinet builder is a contractor improving real property and pays tax on the material costs. In the case of the china hutch, the cabinet builder is a retailer and charges his customer sales tax on the sales price of the hutch, including labor.

**c.** A cabinet builder is hired to fabricate and deliver cabinets to a job site but the buyer will do the installation. The cabinet builder is a retailer and charges sales tax to the buyer on the full sales price, including labor.

#### **015. WELL DRILLERS/PUMP INSTALLERS**

**a.** A well driller contracts to drill a water well and install a pump for a homeowner. The contractor bills the homeowner separately for materials, drill bits used, and labor. The contractor pays tax on the

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purchase of the materials and drill bits. The contractor should not charge sales tax to the customer since this is a contract to improve real property.

b. A well driller contracts to drill a well for an Idaho city. The contractor pays tax on the materials and pumps used to complete the well, even though the owner is a governmental entity.

c. Pumps used directly in food processing; booster pumps and chlorine pumps used directly in manufacturing; and dairy waste pumps.

#### **022. DROP SHIPMENTS**

a. A Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate buyer and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer may or may not be required to have an Idaho seller's permit. If the Manufacturer sells directly to the Customer without the presence of a retailer, the Manufacturer is acting as a retailer and the transaction is not a drop shipment.

#### **024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY**

##### **02. Fully Operated Equipment Rentals.**

a. A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the operator, so the leasing company is not required to charge sales tax on the lease of the crane.

b. Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a taxable lease.

#### **027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES**

##### **04. Reports Compiled by a Computer.**

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

b. A company sells mailing lists which are transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is taxable.

c. An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, taxable.

#### **029. PRODUCING, FABRICATING, AND PROCESSING**

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**a.** An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price.

**b.** An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker.

**c.** An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving is taxable.

**d.** A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge.

#### **036. SIGNS**

##### **04. ROAD SIGNS.**

**a.** A contractor installs a stop sign on behalf of a public transportation department to adjust traffic flow during a period of road construction. The contractor removes the stop sign upon completion of the construction and returns the stop sign to the public transportation department. The stop sign remains tangible personal property while installed. Therefore, the contractor does not owe use tax.

**b.** A contractor purchases signs used to warn approaching vehicles of a construction project that affects traffic flow such as "Be Prepared to Stop." The contractor maintains an inventory of such signs for use on a variety of projects. The signs only ever serve a temporary purpose for the duration of a project. The contractor does not resell the signs or install the signs on a permanent basis. The purchase of these signs is taxable to the contractor.

#### **037. AIRCRAFT AND FLYING SERVICES**

**a.** Recreational Flights. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities.

**b.** An aircraft is flown for the following activities: the aircraft owner's personal vacations, flight instruction, and charter operations for hire as a common carrier. The flight hours for each activity are forty-five (45), sixty-five (65) and seventy-five (75) hours respectively in a consecutive twelve (12) month period. The combined flight hours for the taxable uses of the aircraft, owner and flight instruction, (45 + 65 = 110 hours) are more than the hours operating as a common carrier (75 hours). Since the greater use of the aircraft is performing activities that do not qualify for an exemption, the use of the aircraft will be taxable at fair market value as of that point in time.

**c.** A charter aircraft service uses an aircraft for three purposes: flight instruction, air ambulance service, and charter flights operated as a common carrier. The flight hours for each activity are one hundred (100), sixty (60) and fifty (50) respectively in a consecutive twelve (12) month period. The combined flight hours

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for the exempt uses of the aircraft, as an air ambulance and as a common carrier ( $60 + 50 = 110$  hours), are more than the hours used for flight instruction one hundred (100) hours. Since the greater use of the aircraft is performing activities that qualify for an exemption, the use of the aircraft will be exempt.

### **041. FOOD, MEALS, OR DRINKS**

#### **02. CLUBS AND ORGANIZATIONS.**

a. An organization holds a dinner dance in its own building. It charges twenty dollars (\$20) for dinner and dancing and twelve dollars (\$12) for registration and speakers. Since the two (2) amounts are stated separately, tax is only imposed on twenty dollars (\$20). Sales of meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable.

### **044. TRADE-IN AND TRADE-DOWN**

#### **03. Trade Allowance.**

a. A customer buys a car from a dealer for four thousand dollars (\$4,000). A trade-in of one thousand five hundred dollars (\$1,500) is allowed for the customer's used car. Tax is charged on two thousand five hundred dollars (\$2,500).

#### **04. Disallowed Trade Allowance.**

a. Two (2) individuals exchange cars of equal value. No money, property, service, or consideration other than the cars are exchanged. Both parties pay tax on the fair market value of the vehicle received in the barter.

b. Two (2) individuals, neither of whom are car dealers, exchange cars of different values. Tom's vehicle, which is worth ten thousand dollars (\$10,000), is transferred to Bill. Bill's car, which is worth eight thousand dollars (\$8,000), is transferred to Tom. Bill pays Tom two thousand dollars (\$2,000). The trade-in allowance is not applicable because neither car is merchandise. Tom pays use tax on eight thousand dollars (\$8,000); Bill pays use tax on ten thousand dollars (\$10,000).

#### **06. Trade-In for Rental/Lease Property.**

a. A lessor leases a car for thirty-six (36) months at two hundred fifty dollars (\$250) per month. The value on which the lease payments are based is ten thousand dollars (\$10,000). The customer trades in a car worth two thousand dollars (\$2,000).

i. Alternative 1: The customer and lessor agree to reduce the value on which the lease is based by two thousand dollars (\$2,000) and reduce the payments to only two hundred dollars (\$200) per month for thirty-six (36) months. Sales tax is due on each two hundred dollar (\$200) payment.

ii. Alternative 2: The customer and lessor agree to apply the two thousand dollar (\$2,000) trade-in allowance against the two hundred fifty dollar (\$250) per month payments for the first eight (8) months of the lease. Sales tax is not due until the trade-in value is used up and the lessee is required to begin making monthly payments.

iii. Alternative 3: The customer and lessor agree to combine the two methods and apply one thousand dollars (\$1,000) against the value on which the lease is based and use the remaining one thousand dollars (\$1,000) against the monthly payments, reducing the sales tax liability accordingly.

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#### **07. Rental/Lease Property Traded-In.**

**a.** A person is the lessee of an automobile. Near the end of the lease term, the lessee enters into an agreement to purchase a new vehicle from an automobile dealer. The residual buyout amount for the leased vehicle is ten thousand dollars (\$10,000). The retailer would allow nine thousand dollars (\$9,000) as a trade-in amount if the lessee owned the vehicle. Since the amount the automobile dealer is willing to allow as a trade-in is not greater than the residual buyout amount, there is no reduction in the taxable sales price.

**b.** A lessee trades in his leased automobile for a new vehicle. The residual amount is ten thousand dollars (\$10,000). The automobile dealer allows twelve thousand dollars (\$12,000) as a trade. In this case, the sales price of the new vehicle is reduced by the difference between the residual amount and the total trade-in, or two thousand dollars (\$2,000).

#### **046. COATINGS ON TANGIBLE PERSONAL PROPERTY**

##### **04. Nontaxable Labor Charges.**

**a..** A vendor applies a spray-on bedliner to an individual's truck bed. The truck bed surface is already coated with automotive paint. The materials charge is taxable, but the labor is not taxable.

##### **07. Used Tangible Personal Property.**

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

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

**c.** A company buys equipment from a supplier. Before the equipment is ever put to the use for which it was intended, the company takes the equipment to be coated by a different supplier. Since the equipment has not yet been put to the use for which it was intended, it is new tangible personal property. Regardless of whether the equipment already has a coating, both the materials and labor to apply the new coating are taxable.

##### **08. Tangible Personal Property Held for Resale.**

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

#### **047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS**

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#### 04. Prepaid Travel Expense.

a. An outfitter's bill to a client for a seven (7) day hunt and prepaid travel expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	\$500	\$0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	\$50	\$0.00 (none)
7 Day Hunt	\$1,500	\$75.00 (on 100%)

#### 051. DISCOUNTS, COUPONS, REBATES, AND GIFT CERTIFICATES

##### 01. Adjustments That Apply After Tax Calculation.

a. A food stamp recipient purchases fifteen dollars (\$15) worth of eligible food, surrenders manufacturer's discount coupons valued at two dollars (\$2), and pays with thirteen dollars (\$13) in food stamps. Sales tax is due on the two dollar (\$2) discounted amount. The buyer may not use food stamps or WIC checks to pay sales tax due.

##### 07. Complimentary Gift with Purchase of an Item.

a. A retailer advertises that every buyer of a refrigerator will receive a bike at no additional charge. Since both the bike and the refrigerator were purchased for resale, the retailer would not owe tax when it purchases either. When it sells the bike together with the refrigerator, the taxable amount is the sales price of the refrigerator.

b. A retailer offers to give a free coffee mug to anyone who purchases fifteen (15) gallons of gas. Since the sale of the gasoline is exempt pursuant to Section 63-3622C, Idaho Code, the retailer would not charge any tax to the buyer. The retailer must pay use tax on its purchase price of the coffee mug.

#### 052. PURCHASE AND SALE OF TANGIBLE PERSONAL PROPERTY RELATING TO FUNERAL SERVICES

a. A casket sold by a licensed funeral director as part of a funeral service is exempt. The funeral director's purchase of the casket is a purchase for resale and, therefore, excluded from the tax. The purchase of a memorial marker is not an integral part of the funeral service. Accordingly, it is not included within the exemption for tangible personal property related to a funeral service. The purchase of a memorial marker, therefore, is a taxable transaction regardless of whether it is sold by a licensed funeral director or by another. Sales of tombstones and grave markers, which are embedded in the sod or set on foundations, are taxable. The retail selling price includes the charge for cutting, shaping, polishing and lettering.

#### 055. PERSONS ENGAGED IN ADVERTISING

##### 05. Sales of Design Services.

a. A graphic artist is commissioned to design a business logo for a client. The artist completes the design and delivers it to the client. The transaction is a service transaction. The transfer of the tangible personal property is inconsequential to the services rendered. No sales tax is due on the transaction.

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**b.** An advertising agency is commissioned by a client to design a trademark for its business and provide stationery with the trademark printed on it. On the charges billed to the client, the design fee is separately stated from the charges for printing the stationery and the paper stock. The advertising agency charges sales tax on the entire amount charged. The object of the transaction is to obtain tangible personal property, the stationery. The services agreed to be rendered, the design, are inconsequential to the transaction.

**c.** An advertising agency is commissioned by a client to design a logo for its business and provide stationery printed with the logo. The advertising agency commissions a graphic artist to design the logo. The sale of the design by the graphic artist to the advertising agency is a sale of services and is not taxable. The object sought by the advertising agency is the services of the graphic artist. The advertising agency then prints the stationery and bills the client. As the object sought by the client is tangible personal property, the stationery, the advertising agency charges the client sales tax on the entire fee billed, including the design fee.

**d.** An agency is commissioned to design, produce, and provide one thousand (1,000) copies of a corporation's annual report. As the object sought by the client is the tangible personal property, annual reports, the entire fee to the client is taxable.

**e.** NOTE: This subsection assumes an agent relationship. Example 5: An advertising agency is commissioned to design an annual report. As agent for its client, the agency orders one thousand (1,000) copies from a printer. The charge for the design is a nontaxable service. The charge for the printed reports is taxable.

#### 058. SALES THROUGH VENDING MACHINES

**Calculation of Tax.** The following examples show how vending machine operators calculate the amount of sales tax due:

**a.** Corporation A's business activity consists only of sales through vending machines in various locations in the state of Idaho. All of the items sold in the vending machines are sold for a unit price of twelve cents (\$0.12) or more but none are sold for a price greater than one dollar (\$1). During the month of July, Corporation A's total sales from the vending machine sales were ten thousand dollars (\$10,000). Corporation A purchased the items sold during that one (1) month period for eight thousand dollars (\$8,000). The company made no nontaxable or exempt sales. Corporation A should file a sales and use tax return for the month of July, computing and reporting its taxable sales as follows. Numbers correspond to line numbers on the return.

Line 1.	Total sales	\$9,360
Line 2.	Less nontaxable sales	\$0
Line 3.	Net taxable sales	\$9,360
Line 1 computed as follows:		
$8,000 \times 117\%$		= \$9,360

**b.** During the month of July, Corporation B had total Idaho sales in the amount of ten thousand dollars (\$10,000). In addition to sales through vending machines, the corporation made over-the-counter sales, all of which were taxable, in the amount of two thousand dollars (\$2,000). The remaining eight thousand

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dollars (\$8,000) constituted sales through vending machines, of which one thousand dollars (\$1,000) was for items with a unit retail price of over one dollar (\$1). The other seven thousand dollars (\$7,000) were sales of items through vending machines with a unit retail price of fifty cents (\$.50) each. The items sold during the month for fifty cents (\$.50) each were purchased by Corporation B for five thousand dollars (\$5,000). The amount to report as taxable sales is: Taxable Sales = \$2,000 (over the counter items) + \$5,850 (\$5,000 of purchases of items selling for \$.50 x 117%) + (\$1,000 ÷ (1 + tax rate expressed as a decimal) (items sold through vending machines for more than one dollar (\$1)). Assuming a 6% tax rate this amount would be \$1,000 divided by 1.06 or \$943.40. Note that if a vendor sells some items for more than one dollar (\$1) the sales tax is included in the total sales. This amount is divided by one (1) plus the current tax rate expressed as a decimal, to determine the sales before sales tax.

#### **062. REPAIRS TO TANGIBLE PERSONAL PROPERTY**

##### **04. Incidental Materials**

a. Incidental amounts of material are sometimes used in repairs made to tires, clothing, watches, and shoes. If materials such as buttons, thread, watch parts, tire valve cores and stems are incidental to the repair they will be taxed when purchased by the repairman. Other examples of materials which are incidental to repairs are touch-up paint and soldering materials used in car repairs. Materials are incidental if they have a value which is insignificant and for which a reasonable retail sales price cannot be readily determined.

#### **065. TIRE BALANCING, STUDDING, AND SIPPING**

##### **03. Materials Used in Performing a Service.**

a. The allocation of materials may be determined using a percentage basis. The seller determined through some reasonable basis that sixty percent (60%) of the studs purchased for resale are used in tires that are purchased from him. The remaining forty percent (40%) are used in tires owned by customers and brought in for studding. Use tax will apply to the forty percent (40%) used in studding customer owned tires. As sales tax applies to the entire fee charged for studding a tire sold to a customer, the remaining sixty percent (60%) of the studs will not be subject to use tax, but are included in the amount subject to sales tax imposed on the buyer.

b. The allocation may be determined based on the value of the material used in performing both taxable and nontaxable services.

c. The allocation may be determined using any other method that will allow a reasonable allocation of materials used in both a taxable and nontaxable service.

#### **067. REAL PROPERTY**

a. The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention is determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose.

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b. The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property.

### **068. COLLECTION OF TAX**

#### **03. Reimbursement of Tax From the Buyer to the Seller.**

a. The Commission determines that certain nontaxed sales by a seller are subject to sales tax and that the seller did not collect the tax and did not have documentation supporting exemption from the sales tax. The Commission issued a Notice of Deficiency Determination to the seller imposing the tax and interest. The assessment then paid by the seller entitles the seller to reimbursement from the buyer.

### **070. SELLER'S PERMITS**

#### **02. Obtaining a Permit.**

a. Corporation A operates the businesses named B, C, and D. Three (3) permit numbers are required, regardless of how many locations operate using the business names B, C, and D.

b. Corporation E operates three locations, using the business name F. Only one permit number is needed, since all locations have the same business name.

### **072. APPLICATION AND PAYMENT OF USE TAX**

#### **08. Tangible Personal Property Removed From Inventory.**

a. A sawmill withdraws lumber from its resale inventory and uses it to construct a building. The lumber was not identified for this use until it was taken from inventory held for resale. Use tax is due on the manufactured value of the lumber taken from inventory.

b. A sawmill cuts specific trees from its own land. The sawmill then cuts these trees to specific dimensions and uses the beams and lumber to construct a building. The trees and lumber are identified for use in constructing the building from the time the trees are cut. Use tax is due on the stumpage value of the trees.

c. A retailer buys shirts without paying tax for resale inventory. The shirts cost the retailer ten dollars (\$10) each. The retailer withdraws ten (10) of the shirts from inventory and donates them to a sports team they are sponsoring. The retailer owes use tax on one hundred dollars (\$100).

### **073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO**

a. A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, assuming a rate of six percent (6%), totals nine hundred dollars (\$900). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due.

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**b.** The same contractor in the previous example returns to Idaho within the same twelve (12) months with the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000). As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's six percent (6%) use tax on its present value of ninety-five thousand dollars (\$95,000) x six percent (6%) = five thousand seven hundred dollars (\$5,700). Credit of two thousand six hundred dollars (\$2,600) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the nine hundred dollar (\$900) credit already used on rentals. The contractor owes three thousand one hundred dollars (\$3,100) of use tax to Idaho.

### **084. CONTAINERS RETURNABLE/NONRETURNABLE**

#### **01. Container.**

**a.** Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container.

#### **03. Supplies.**

**a.** Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a taxable shipping supply subject to the tax.

### **099. OCCASIONAL SALES**

#### **02. Sales by a Business**

**a.** A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it collects sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit.

### **102. LOGGING**

#### **03. Property Used in Logging Operations.**

**a.** A contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity.

### **107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENTS, NEW RESIDENTS, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, AND OTHER EXEMPTIONS**

#### **05. Tax Paid to Another State.**

**a.** A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to the county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed

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against the six hundred dollars (\$600) tax due Idaho. The county assessor will collect three hundred dollars (\$300) tax.

**b.** A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho.

**c.** A resident of Alaska buys a vehicle immediately prior to moving to Idaho. The buyer paid a three percent (3%) city sales tax in Alaska. When the buyer moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due.

**d.** A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax is due on the fair market value of the vehicle when it is titled in Idaho.

#### **06. Sales to Family Members.**

**a.** An Oregon resident buys a motor vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the motor vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay sales or use tax when he acquired the motor vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the motor vehicle.

#### **109. AMUSEMENT DEVICES**

##### **01. Requirement to Obtain Permit.**

**a.** Owners and operators of amusement devices pay a permit fee for every amusement device in operation. Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate. The formula to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For example, at a tax rate of five percent (5%) the amount of the permit fee is seven hundred dollars (\$700) x five percent (5%) = thirty-five dollars (\$35). If the tax rate is six percent (6%), the permit fee will be forty-two dollars (\$42). If any change in the tax rate becomes effective on July 1 of a given year, the charge for the permit fee will change proportionately on that date also. If a change in the tax rate occurs on a day other than July 1, the permit fee will be changed on the next July 1 following the change in the tax rate.

#### **128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS**

**Description and Proper Execution of Approved Forms.** In order to be valid, all forms are to be legible and include a date, the buyer's name, signature, and address. If the buyer has a federally issued Employer Identification Number (EIN), the buyer will include that EIN on the form. If the buyer does not have an EIN, the buyer will provide the buyer's driver's license number and the state of issue. The seller's name and address are to be completed on the form when requested. The buyer will comply with any additional requirements provided in these rules.

**Form ST-101, Sales Tax Resale or Exemption Certificate -- Buying for Resale.** To claim a resale exemption, Form ST-101, or a Uniform Sales and Use Tax Certificate -- Multi-jurisdiction, is completed. The resale certificates approved by this rule may only be taken from a buyer described in Subsection 128.04.b. The reason for the claimed exemption is included on the form as well as the primary nature of business and the type of products sold, leased or rented by the buyer. An Idaho registered retailer includes its Idaho seller's permit number. A buyer need not identify every type of product it sells but indicates the general character of the property it sells, rents or leases.

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**a.** Information on the resale certificate. The resale certificate bears the name and address of the buyer, the name and address of the seller, is signed and dated by the buyer or his agent, indicates the Idaho seller's permit number issued to the buyer, or that the buyer is an out-of-state retailer, and indicates the general character of the tangible personal property sold by the buyer in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property is being purchased for resale.

**b.** Qualified Buyers. The resale exemption may be claimed by the following buyers when buying goods for resale:

i. A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number.

ii. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number.

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

**c.** Seller's Responsibility. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the buyer and the buyer provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility.

**d.** Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its Idaho seller's permit number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries.

**e.** Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale.

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

**g.** Example: A restaurant operator completes a Form ST-101 for his supplier. He indicates

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the general character of the products he sells as food and beverages. The restaurant operator buys sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law.

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

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

**02. Form ST-101, Sales Tax Resale and Exemption Certificate -- Claiming Exemptions.** A Form ST-101 is completed to claim the sales tax exemptions for the following categories. The buyer identifies the exempt category and specific area within the category for the exemption being claimed. If claiming to be production exempt, the taxpayer identifies the type of business and list the product produced. When claiming a contractor exemption, the invoice, purchase order or job number will be identified along with the city and state of the job location, project owner name, and the reason the project is exempt.

- a. Form ST-101 Exemption Categories;**
  - i. Production Exemptions;**
  - ii. Exempt Buyers;**
  - iii. Contractor Exemptions; and**
  - iv. Other Exempt Goods and Buyers**

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

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**a.** Seller's Responsibility. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Form ST-101, has been received if the nature of the exemption claimed is available to the buyer as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate.

i. A retailer collects tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a buyer claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: maintenance and janitorial equipment and supplies, office equipment and supplies, selling and distribution equipment and supplies, property used in transportation activities, equipment or other property used to make repairs, tangible personal property that becomes a fixture, improvement, or component of real property, licensed motor vehicles, aircraft; and recreation-related vehicles as described in Section 63-3622HH, Idaho Code.

ii. A retailer cannot rely on an exemption certificate obtained from a buyer when the law does not provide an exemption from the tax for the buyer, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state.

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

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

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

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**d.** Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty against the restaurant.

**e.** Example: A farmer completes an ST-101 claiming a production exemption on the purchase of toothpaste and a case of motor oil. The retailer collects the sales tax on the sale of the toothpaste, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the toothpaste because, as a matter of law, the sale of personal hygiene products is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck).

#### **Tax Exemption Statements.**

**01. Form ST-102, Use Tax Exemption Certificate -- New Resident.** To claim exemption for vehicles, vessels, and aircraft that were personally owned and acquired while residing in another state and used primarily outside Idaho, new residents and nonresident military individuals need to complete Form ST-102.

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

**03. Form ST-104HM, Sales Tax Exemption Certificate – Lodging Accommodations.** Form ST-104HM is used to claim exemption for lodging accommodations paid for using a credit card company who will directly bill to and be paid by federal or, Idaho state, and local government agencies or other qualifying organizations granted exemption under Section 63-3622O, Idaho Code. This form should not be used for credit card payments that are paid by the employee who is later reimbursed by the employer. Each lodging transaction requires a newly executed form signed by the employee/buyer.

**10. Form ST-104IC, Sales Tax Exemption Certificate – Interstate Commerce Vehicles.** Form ST-104IC is to be completed by a buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle, trailer, or glider kit.

**11. Form ST-104NR, Sales Tax Exemption Certificate – Vehicle/Vessel.** Form ST-104NR is completed by each buyer claiming an exemption from tax under Section 63-3622R, Idaho Code, when a nonresident buyer is purchasing a qualifying vehicle, vessel, or trailer.

**12. Form ST-108TR, Occasional Sale Exemption Claim – Office Trailer and Transport Trailer.** Form ST-108TR is completed by any person claiming the occasional sale exemption on the purchase

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of a transport trailer or an office trailer. The seller completes the seller's statement section in order for the buyer to claim the occasional sale exemption.

**13. Form ST-111, Sales Tax Exemption Claim Form – Grocer.** Retailers of food products who have been granted record reduction authority by the Commission may accept the Form ST-111 from a buyer if the retailer has a properly executed Form ST-101 on file from the buyer. Form ST-111 includes the buyer's Idaho seller's permit number (if applicable), the signature of the individual claiming the exemption, and the total purchase price and general nature of the nontaxable products sold.

**14. Form ST-133, Sales Tax Exemption Certificate – Family or American Indian Sales.**

**a. Family Sale.** Form ST-133 is completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code.

**b. American Indian Sales.** Form ST-133 is completed when claiming an exemption from tax when selling a vehicle, vessel, or RV to a member of an American Indian tribe within the boundaries of an American Indian reservation.

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

**16. Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit.** Form ST-133GT is completed to claim an exemption from tax when a vehicle, vessel, camper, trailer, or recreational vehicle is being transferred or received as a gift.

**17. The Diplomatic Tax Exemption Program.** This United States government program grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules.

**Timely Acceptance of Certificates.**

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

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