

g. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

11. **Motor Vehicles and Trailers Used in Interstate Commerce.** The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. **Related Party Transfers and Sales.** Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

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

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

02. **Burden of Proof.** All sales made within Idaho are presumed to be subject to sales tax unless ~~an exemption is established. The seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the~~ burden of proving that a sale is not subject to tax ~~is upon the seller.~~ The seller may overcome the presumption by ~~obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When establishing the facts giving rise to the exemption. If the seller obtains a valid certificate is obtained~~ from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-6-00)( )

03. **Qualified Buyers for Purposes Other Than Resale.** Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622A~~UUU~~, Idaho Code, completing, and providing the required form to the seller. (3-6-00)( )

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

a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. An Idaho seller's permit number has nine (9) digits followed by an "S." Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. (3-6-00)

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

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

**05. Description and Proper Execution of Approved Forms.** In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in ~~this~~ these rules ~~or on the form in question.~~ (3-6-00)()

a. To claim a resale exemption ~~on or after July 1, 2000~~, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. ~~Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions.~~ The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (3-6-00)()

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

ii. Example. A lawn and garden store occasionally sells bar-b-que 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. ()

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

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

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

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

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

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption

from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-6-00)

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

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

~~**j.** Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax-free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-6-00)~~

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

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

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

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NATURE OF BUSINESS

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BUYER'S SIGNATURE

~~The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (3-6-00)~~

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

**06. Seller's Responsibility -- Purchases for Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000, if the customer intends to resell the items in the regular course of business. ~~The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer.~~ The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the

narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-6-00)( )

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

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-6-00)( )

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

07. **Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale.** A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received, ~~or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000,~~ if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-6-00)( )

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

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

x. Recreational vehicles. (3-6-00)

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

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

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

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

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

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

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

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

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NATURE OF BUSINESS

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BUYER'S SIGNATURE

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

g. Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify

