

Dear Senators JOHNSON, Bayer, Burgoyne, and  
Representatives COLLINS, Kauffman, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the State Tax Commission:

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1802).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/26/2018. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/27/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee

**FROM:** Division Manager - Kristin Ford

**DATE:** October 09, 2018

**SUBJECT:** State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1802)

#### Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to the Sales and Use Tax. The proposed amendment to Rule 003 adds additional law and rule citations to provide guidance to taxpayers regarding the administrative appeals process. The proposed amendment to Rule 107 makes some adjustments to the Tax Commission's forms for reporting tax exemption claims regarding motor vehicle gift transfers, sales to nonresidents and new residents, sales to family members, sales to Native Americans, bulk sale transfers, motor vehicles and trailers used in interstate commerce and transfers between related business parties. The proposed amendment to Rule 110 provides guidance to financial institutions regarding obtaining a permit when they are collecting sales tax for the sale of tangible personal property that they are financing.

#### Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 6, 2018 edition of the Idaho Administrative Bulletin, Vol. 18-6, pages 108-109. No fiscal impact to the General Fund exceeding \$10,000 is expected.

#### Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to sections 63-105(2) and 63-3624(a), Idaho Code.

cc: State Tax Commission  
Kimberlee Stratton

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
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## IDAPA 35 – STATE TAX COMMISSION

### 35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1802

#### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5220(1)&(2), 63-105(2), and Section 63-3624(a), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2018.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**Rule 003** – This rule provides guidance on where a taxpayer can find information about the administrative appeals process available to them. Currently the rule contains only one statutory reference. The proposed rulemaking will add references to additional areas within Idaho Code and Administrative Rules. Specifically, Sections 63-3626, 63-3621, 63-3633, and 63-3634, Idaho Code, a reference to Section 121 of these rules, and IDAPA 35.02.01, “The Tax Commission Administration and Enforcement Rules.”

**Rule 107** – This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. The proposed rulemaking is to update the rule to reflect changes in tax exemption claim form ST-133. Gift transfers were removed from the form ST-133 and a new form was created for gift transfers, (form ST-133GT). The form name will be updated in Subsection 107.02.d. of this rule. Under Sections 007 and 008, the name of the form to be used for sales to family members and sales to American Indians will be updated and statutory references to Sections 63-3621 and 63-3622K, Idaho Code will be added.

**Rule 110** – This rule provides guidance for financial institutions about their responsibility to pay over the tax when they are collecting sales tax for the sale of tangible personal property that they are financing, and when that sales tax should be reported. Section 110 does not provide guidance about how the financial institutions should report the tax. The proposed rulemaking adds guidance that directs financial institutions to obtain a permit if they are collecting sales tax so they can properly report the tax they collected.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin, **Vol. 18-6, pages 108–109**. Rules 011 and 043 were listed in the Notice of Intent for this docket, however, the Commission will not move forward with any changes to these rules at this time.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Leah Parsons, (208) 334-7531.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 3rd day of October, 2018.

Leah Parsons, Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise ID 83722-0410  
Phone (208)334-7531  
Fax (208) 334-7846

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1802  
(Only Those Sections With Amendments Are Shown.)**

**003. ADMINISTRATIVE APPEALS (RULE 003).**

This chapter *does* allow administrative relief ~~of the provisions outlined herein under~~ as provided in Sections 63-3626, 63-3631, 63-3633, 63-3634, and 63-3049, Idaho Code. ~~(7-1-93)~~( )

**02. Cross Reference.** ( )

**a. See Rule 121 of these rules, Notice of Deficiency Administrative Review Appeals and Judicial Review.** ( )

**b. See IDAPA 35.02.01. "Tax Commission Administration and Enforcement Rules."** ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).**

Sections 49-117, 49-121, 49-122, 63-3606B, 63-3621, 63-3622K, 63-3622R, ~~&~~ and 67-7101, Idaho Code

**01. In General.** This rule discusses specific topics relating to ~~motor~~ vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of ~~motor~~ vehicles. ~~(3-6-00)~~( )

**02. Gifts of ~~Motor~~ Vehicles.** When the following facts clearly establish that a ~~motor~~ vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: ~~(7-1-93)~~( )

**a.** No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

**b.** The recipient assumes no indebtedness. (7-1-93)

**c.** The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

**d.** The donor and recipient complete and sign a Sales Form ST-133GT, Use Tax Exemption Certificate -- Gift Transfer Affidavit, Form ST-133, and submit it to the county assessor ~~or the Idaho Transportation Department~~ along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit, the recipient can submit either: ~~(2-18-02)~~( )

**i.** A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county

assessor ~~or his representative~~ and attached to the affidavit; or (2-18-02)( )

ii. The title may be marked as a gift and signed by the donor. (3-4-10)

**03. Purchases Brought into Idaho by Nonresidents.** (3-30-07)( )

a. A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more ~~motor~~ vehicles or vessels is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)( )

b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)

c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

**04. New Residents.** A new resident of Idaho does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If an vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that ~~the vehicle~~ it was purchased primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the ~~Idaho Transportation Department~~ or county assessor when applying for a title transfer or registration certificate. (4-11-15)( )

a. If the vehicle, vessel, or aircraft was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)( )

b. A personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an individual or individuals. (4-11-15)

**05. Military Personnel.** (4-11-15)

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. (4-11-15)

b. Military personnel receive no special exemption from the Idaho sales and use tax regarding ~~motor~~ vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. (4-11-15)( )

**06. Tax Paid to Another State.** When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state

sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: 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 ~~an Idaho~~ 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 against the six hundred dollars (\$600) tax due Idaho. The county assessor will collect three hundred dollars (\$300) tax. (4-11-15)(    )

c. Example: 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. (4-2-08)

d. Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

e. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the ~~motor~~ vehicle from tax. (7-1-93)(    )

f. Example: 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 must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

g. Taxes paid to another ~~nation~~ country cannot be used to offset ~~against~~ the taxes owed to Idaho. (7-1-93)(    )

**07. Sales to Family Members.** The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Form ST-133, Sales Tax Exemption Certificate ~~- Transfer Affidavit~~ Family or American Indian Sales. A Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the motor vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor ~~or his representative~~ and attached to the affidavit. (2-18-02)(    )

b. This exemption does not apply if the seller did not pay tax when he acquired the motor vehicle. (7-1-93)(    )

c. Example: 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 ~~a~~ 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. (4-11-06)(    )

08. **Sales to American Indians.** An enrolled American Indian tribal member may buy a ~~motor~~ vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian ~~R~~reservation. ( )

a. ~~The Form ST-133, Sales Tax Exemption Certificate -- Transfer Affidavit~~ **Family or American Indian Sales.** A Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign ~~Sales Tax Exemption Certificate -- Transfer Affidavit~~ Form ST-133 ~~including~~ **and provide** the name of the tribe, the Tribal Identification Number, and the name of the ~~R~~reservation upon which the ~~sale and~~ delivery occurred. The affidavit is then given to the ~~Idaho Transportation Department or~~ county assessor along with the title to the vehicle being transferred. ~~See Rule 091 of these rules.~~ (2-18-02)( )

09. **Bulk Sale Transfers.** A transfer or sale of a ~~motor~~ vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign ~~Form ST-133CATS, Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit~~ **Form ST-133CATS** to present to the ~~Idaho Transportation Department or~~ county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)( )

10. ~~Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho~~ **Sales to Nonresidents.** (5-3-03)( )

a. Sales of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty off-highway vehicles (~~SOHVs~~), off-highway motorcycles, and snowmobiles to nonresidents for use out of this state, even though delivery is made within this state are exempt from tax when: (3-25-16)( )

i. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off-highway vehicles~~ **SOHVs**, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (3-25-16)( )

ii. The motor vehicles, vessels, ATVs, UTVs, ~~specialty off-highway vehicles~~ **SOHVs**, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than ninety (90) days in any twelve-month period. (3-28-18)( )

b. To claim the exemption, ~~the each~~ buyer must provide the seller ~~with~~ a completed and signed **Form ST-104NR, Sales Tax Exemption Certificate -- Nonresident Vehicle/Vessel, Form ST104-MV** ~~The seller must keep a copy for their records and send a copy of the completed form to the Tax Commission.~~ (5-3-03)( )

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, paddleboards, inflatable boats, or similar watercraft regardless of length when sold without a motor. (3-29-17)

d. For purposes of Subsection 107.10 of this rule, ATV, UTV, and ~~specialty off-highway vehicle~~ **SOHV** have the same meaning given to them in Section 67-7101, Idaho Code. (3-25-16)( )

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, paddleboards, inflatable boats, or similar watercraft unless such canoe, kayak, paddleboard, inflatable boat, or similar watercraft is sold together with attached motor. (3-29-17)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of a park model recreational vehicle, a trailer or utility trailer found in Sections 49-117, 49-121, and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The

term “trailer” includes the specific types of trailers or park model recreational vehicles defined in Sections 49-117, and 49-121(6), Idaho Code. (3-28-18)

**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 or vessels it is not a nonresident. The purchase or use of a ~~motor~~ vehicle or vessel 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 motor 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~~ buyer must complete and sign the Form ST-104IC, Sales Tax Exemption Certificate -- Interstate Commerce Vehicles ~~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 the Form ST-133CATS, Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form and ST-133CATS to submit the completed form to the ~~Idaho Transportation Department or~~ county assessor when applying for title transfer. (2-18-02)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).**  
Sections ~~63-3623 &~~ and 63-3638(9), Idaho Code

**01. Filing Returns.** Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (4-6-05)

**02. Reimbursement.** The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property; each Form ST-108, Transport Trailer, Office Trailer, and Untitled Boat Certificate; and each Form ST-108TR, Occasional Sale Exemption Claim -- Office Trailer and Transport Trailer, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (3-25-16)

**03. Financial Institutions.** Financial institutions collecting tax on sales of tangible personal property that they are financing, whether sold by the financial institution or another person, must posses an Idaho seller's permit and file returns to remit the tax as prescribed in Rule 105, of these rules. ~~to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property~~ If the tax collected is not from a sale made by the financial institution, it can be reported as an adjustment on the return. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (4-6-05)( )

**04. Cross Reference.**

**a. Permits.** See Rule 070 of these rules. ( )

**b. Time and Imposition of Tax. Returns, Payments and Partial Payments.** See Rule 105 of these rules. ( )