

Dear Senators JOHNSON, Bayer, Burgoyne, and
Representatives COLLINS, Trujillo, 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.
35-0102-1703);

IDAPA 35.01.06 - Hotel/Motel Room and Campground Sales Tax Administrative Rules - Proposed
Rule (Docket No. 35-0106-1701).

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 10/10/2017. 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 11/07/2017.

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 334-4834, 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: Senior Legislative Research Analyst - Kristin Ford

DATE: September 20, 2017

SUBJECT: State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1703)

IDAPA 35.01.06 - Hotel/Motel Room and Campground Sales Tax Administrative Rules - Proposed Rule (Docket No. 35-0106-1701)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1703). The State Tax Commission submits notice of proposed rulemaking relating to the Idaho Sales and Use Tax. The proposed rule updates Rule 28 to include short-term rentals, vacation rentals and lodging operators with the hotels, motels and campgrounds already covered by the rule, in conformance with 2017 House Bill 216, the "Short-term Rental and Vacation Rental Act." The proposed rule also deletes an obsolete provision regarding sales tax on certain hand tools, which was repealed by the Idaho Legislature in 2016. The Commission states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-7, pages 84-85. The proposed rule changes are within the State Tax Commission's authority, pursuant to Idaho Code 63-105(2), 63-3624(a) and 63-3635.

IDAPA 35.01.06 - Hotel/Motel Room and Campground Sales Tax Administrative Rules - Proposed Rule (Docket No. 35-0106-1701). The State Tax Commission submits notice of proposed rulemaking relating to the Idaho Sales and Use Tax. The proposed rule updates Rules 001, 018 and 019 to add terms relating to short-term or vacation rentals, following the passage of 2017 House Bill 216, the "Short-term Rental and Vacation Rental Act." The proposed rule also deletes a provision relating to the reporting requirements relating to the allocation of revenue. A phone call to the Commission revealed that the deleted language will be replaced by a new reporting provision in the forthcoming October dockets. The Commission states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-7, pages 94-95. The proposed rule changes are within the State Tax Commission's authority, pursuant to Idaho Code 63-105(2) and 63-3624(a).

cc: State Tax Commission
Sherry Briscoe

Mike Nugent, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1703

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 63-105(2), 63-3624(a), 63-3635, and 63-3039, 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 September 20, 2017.

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:

Sales Tax Rule 028 – Hotels, Motels And Campgrounds. We are proposing changing this rule to include the terms introduced by 2017, HB 216, the Short-term or Vacation Rental Act. Some technical and grammar changes are also proposed.

Sales Tax Rule 103 – Hand Tool, Component, And Unit Price. We are proposing deleting this rule because of statute changes that have made this obsolete. The \$100 exemption to the production exemption has been repealed.

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(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 84-85](#).

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 Tom Shaner at (208) 334-7518 or tom.shaner@tax.idaho.gov. 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 September 27, 2017.

DATED this 8th day of August, 2017.

Tom Shaner
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. 35-0102-1703
(Only Those Sections With Amendments Are Shown.)

028. HOTELS, MOTELS AND CAMPGROUNDS (RULE 028).
Section 63-3612(2), Idaho Code

01. Fees. Fees charged for providing hotel, motel, and campground accommodations are subject to the state sales tax, the Idaho Travel and Convention taxes and may be subject to the Greater Boise Auditorium District sales tax. This includes fees collected for short-term rentals and vacation rentals even when the sale is facilitated by a short-term rental marketplace. These taxes are explained in IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." (7-1-93)()

02. Purchases by Hotels, Motels, Lodging Operators, Short-Term Rentals, Vacation Rentals, and Campgrounds. ~~Effective July 1, 1988, h~~Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds may purchase tangible personal property for consumption by their customers without paying tax if the tangible personal property is included in the fee charged to the customer and is directly consumed by the customer in such a way that it cannot be reused. Hotels, motels, lodging operators, short-term rentals, vacation rentals, and campgrounds must provide a resale certificate to their vendor when purchasing such items for resale. Examples include: (7-1-93)()

- a. Facial tissue, toilet tissue, toilet sanitation tissues, disposable laundry pickup bags, and paper napkins. (7-1-93)
- b. Soaps, hair shampoo, hair conditioners, and lotions. (7-1-93)
- c. Disposable plastic drinking glasses, disposable plastic utensils, disposable shoe shine cloths, and disposable shower caps. (7-1-93)
- d. Candies, beverages, meals, and newspapers furnished with the room. (7-1-93)
- e. Room stationery, envelopes, notepads, and matches. (7-1-93)

03. Tangible Personal Property Subject to Tax. Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. Tangible personal property subject to tax includes property which is ~~NOT~~ not directly consumed by the customer, property that is nondisposable in nature, or property that is depreciated in the books and records of the hotel, motel, lodging operator, short-term rental, vacation rental, or campground. The hotel, motel, lodging operator, short-term rental, vacation rental, or campground is the user and consumer of such supplies and equipment and will pay sales tax on the purchase of such items. Examples include: (7-1-93)()

- a. Bath towels, bath mats, linens, and bedding. (7-1-93)
- b. Glassware, silverware, and china. (7-1-93)
- c. Furniture and fixtures. (7-1-93)
- d. Bibles, room service menus, and directories. (7-1-93)
- e. Toilet sanitary rings and garbage can liners. (7-1-93)
- f. Any tangible personal property available to the general public. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

~~103. **HAND TOOL, COMPONENT, AND UNIT PRICE (RULE 103).**
Sections 63-3622S, 63-3622T, 63-3622W, & 63-3622JJ, Idaho Code~~

~~01. **Exempt Hand Tools.** The Idaho sales tax law exempts hand tools with a unit price of over one hundred dollars (\$100) if the hand tools are used directly and primarily in any of the following operations: (7-1-93)~~

- ~~a. Broadcasting, Section 63-3622S, Idaho Code; (7-1-93)~~
- ~~b. Certain newspaper publishing, Section 63-3622T, Idaho Code; (7-1-93)~~
- ~~c. Agricultural irrigation, Section 63-3622W, Idaho Code; (7-1-93)~~
- ~~d. Logging, Section 63-3622JJ, Idaho Code. (7-1-93)~~

~~02. **Unit.** A unit, as applied to hand tools, means a single, distinct part or object which can be used by itself to perform a specific function. For example, a screwdriver can be used by itself to tighten or loosen a screw. When units, such as screwdrivers, are sold in sets to a manufacturer who will use the tools primarily and directly in the production process, i.e., to assemble product, a per unit price must be computed to determine if the purchase qualifies for the over one hundred dollars (\$100) per unit exemption. When a manufacturer purchases a set of twenty (20) wrenches for one hundred twenty five dollars (\$125) to be used in product assembly, the purchase is taxable because the per unit price of the hand tools is less than one hundred dollars (\$100). (7-1-93)~~

~~03. **Component.** A unit may be composed of two (2) or more components. A component is a distinct part which must be physically attached to another part to perform a specific function. A component alone has no utility. For example, a drill bit must be physically attached to a drill in order for the bit or the drill to have utility. Together they become a unit which can perform a specific function. Single components or sets of components, sockets, drill bits, etc., are taxable unless they will be physically joined to another component, ratchet, drill, etc., to form a unit which exceeds one hundred dollars (\$100) in cost. For example, drill bits which are physically attached to a five hundred dollar (\$500) drill press to perform a specific function in a production process are exempt from the tax. (7-1-93)~~

~~04. **Unit Price.** The total amount extended on a purchase invoice for multiple units is not the unit price. The unit price must be computed to determine whether the hand tool exceeds one hundred dollars (\$100) and qualifies for a given exemption. (7-1-93)~~

IDAPA 35 – STATE TAX COMMISSION

35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0106-1701

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 63-105(2), 63-3624(a), 63-3612(2)(g), 67-4718, and 67-4917C, 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 September 20, 2017.

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 001 – Title And Scope. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 011 – No change will be made to Rule 011. It was determined in the negotiated rule process that it is not necessary to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act to this rule.

Rule 018 – Returns. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

Rule 019 – Penalties, Collections And Enforcement. We are proposing this rule to be changed to include the terms introduced by 2017, HB 216, the Short-Term or Vacation Rental Act.

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(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017, Idaho Administrative Bulletin, [Vol. 17-7, pages 94-95](#).

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 Tom Shaner at (208) 334-7518 or tom.shaner@tax.idaho.gov. 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 September 27, 2017.

DATED this 8th day of August, 2017.

Tom Shaner
Tax Policy Specialist
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0106-1701
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE (RULE 001).

~~These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds. These rules shall also impose a retail sales tax upon the user or occupant of a hotel or motel room which is located in the Greater Boise Auditorium District~~ (7-1-93)
Sections 67-4711, 67-4718, 67-4917B & 63-1801 through 63-1804, Idaho Code

01. Title. These rules shall be cited as IDAPA 35.01.06, "Hotel/Motel Room and Campground Sales Tax Administrative Rules." ()

02. Scope. These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority for: ()

a. Accommodations. The imposition of a gross receipts type tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, campgrounds, lodging providers, and short-term rental marketplaces. ()

b. Greater Boise Auditorium Tax. The imposition of a retail sales tax upon the user or occupant of a hotel/motel room, short-term rental, or vacation rental located in the Greater Boise Auditorium District. ()

c. Short-Term Rental Marketplaces. The imposition of a registration requirement for short-term rental marketplaces for the collection, reporting, and payment of taxes due from a lodging operator on any lodging transaction facilitated by the short-term rental marketplace. ()

d. Sales Tax. These rules explain the application of the state sales tax to hotel/motel room charges but do not undertake a comprehensive explanation of state sales and use taxes as they may apply to such businesses. See the Tax Commission's rules relating to the Idaho Sales Tax Act for detailed statutory and regulatory provisions. See specifically, Sales Tax Rule, IDAPA 35.01.02.028. ()

(BREAK IN CONTINUITY OF SECTIONS)

018. RETURNS (RULE 018).

01. Filing Returns. Each hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace providing accommodations subject to the room sales tax shall file with the State Tax Commission on forms prescribed by the State Tax Commission monthly or quarterly returns showing the amount of tax required to be paid by the hotel, motel, or campground to the State Tax Commission and such other information as the State Tax Commission shall require. The return, together with the remittance shown to be due thereon, must be received by the State Tax Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All charges subject to tax actually charged to the user or occupant shall be reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. (7-1-93)()

~~02. Allocation of Revenue. Because revenue from the statewide Travel and Convention tax must be allocated to the area of the state from which it is collected, taxpayers who operate more than one (1) hotel, motel or campground within the state must report the tax relating to each hotel, motel or campground on a separate return.~~ (7-1-93)

019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (RULE 019).
Sections 63-3629, & 63-3634, Idaho Code

01. Remittance of Taxes. In the event that taxes required to be collected and remitted by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace are not remitted to the State Tax Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the State Tax Commission, the State Tax Commission shall issue a Notice of Deficiency Determination pursuant to the provisions of the Idaho Sales Tax Act and IDAPA 35.01.02 ~~the Tax Commission's rules relating thereto~~. A hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace to which such a Notice of Deficiency Determination ~~may be~~ has been issued may file a written protest ~~the notice and seek~~ requesting a redetermination ~~thereof~~ of the deficiency pursuant to the provisions of IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 121. (7-1-93)()

02. Penalties. In the event that any deficiency in reporting or remitting taxes by a hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, ~~or~~ campground, lodging operator, and short-term rental marketplace required to file a return with the State Tax Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act shall apply to the room sales tax. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule ~~410~~ 410. (7-1-93)()