

Dear Senators BRACKETT, Crabtree, Buckner-Webb, and
Representatives PALMER, Shepherd, Wintrow:

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

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No.
35-0105-1902).

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 10/16/2019. 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 11/14/2019.

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 Transportation Committee and the House Transportation & Defense Committee

FROM: Division Manager - Kristin Ford

DATE: September 26, 2019

SUBJECT: State Tax Commission

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No. 35-0105-1902)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to the Motor Fuels Tax Administrative Rules. The proposed rule amends Rule 010 by revising the definition of "Bond" and deleting the definition of "These Rules" and allowing all forms of financial security listed in the Tax Commission Administration and Enforcement Rule 600. The docket also proposes to amend Rules 141 and 180 by combining the handling of credit and refund claims for fuel distributors.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was not conducted because the rules are simple in nature. No negative fiscal impact on the state General Fund greater than \$10,000 is expected.

Statutory Authority

This rulemaking docket appears to be within the agency's statutory authority as to the amendments to Rules 141 and 180, pursuant to sections 63-105(2) and 63-2427, Idaho Code.

However, the proposed adoption of acceptable financial security as a "bond" does not align with the statutory definition set forth in section 63-2401, Idaho Code. This discrepancy is not new; it exists in existing administrative rule also, and appears to have done so since at least 2001. Rule 010 allows forms of financial security (in particular, time certificates of deposit and investment certificates or share accounts from savings and loan associations) that are not authorized under section 63-2401, Idaho Code. The proposed rule adoption by reference to Rule 600 would further allow the Tax Commission the latitude to additionally accept other forms of security. While section 63-2428, Idaho Code, does authorize the State Tax Commission to waive the bond in certain circumstances, there is no statutory authority for the Tax Commission to accept other forms of financial security in place of the bond defined in section 63-2401, Idaho Code.

I contacted the Tax Commission with the above concerns and was informed that they are vacating this particular rule docket. However, they intend to roll the same changes into the Omnibus Rulemaking Docket

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

35-0000-1900 (changes from the June 2019 edition to be outlined in the November 2019 Administrative Bulletin), so it is worthwhile proceeding with this analysis. The Tax Commission, after noting the long amount of time the discrepancy between statute and administrative rule has existed, notes: "You are correct, time certificates of deposit (CDs) and Joint Savings Accounts aren't specifically mentioned as allowable bond types in the definition of a bond. However, I believe the Legislature has granted the Commission some latitude in determining bond types. By allowing time certificates of deposit (CDs) when approving the amendment to Motor Fuel Tax Regulation 1 in 1984, the Legislature agreed with the Commission that a "deposit with the Commission" may be held by a financial institution in Idaho under the name of the Commission. This interpretation was validated when the regulations were recodified in 1994. The definition of "Bonds" was changed to Motor Fuel Tax Rule 010 (IDAPA 35.01.05). Rule 010 was later reviewed in 2001 and 2006. In all instances, CDs weren't removed. Joint Savings Accounts were added in 2001 and left in the rule after a review in 2006."

It remains this drafting attorney's recommendation that either the amendment to Rule 010 be revised to match the types of bonds acceptable per statute, or else that the statutes be amended to either add the types of security referenced in the Tax Commission's rules or to grant them authority to accept additional forms of financial security.

cc: State Tax Commission
Kimberlee Stratton

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may 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.

IDAPA 35 – STATE TAX COMMISSION
35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-1902
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, 63-2427, 63-2410, and 63-2423, 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 August 21, 2019.

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 010 – This rule is being simplified. The definition of a bond will now reference our Administration and Enforcement Rule 600 (IDAPA 35.02.01). Two definitions have been removed.

Rules 141 and 180 – Combines these two rules that explain how distributors claim credits and refunds and that most credits or refunds can be claimed on the distributor return. One refund is allowed on the Form 75.

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 not conducted because the rules are simple in nature.

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 Don Williams, (208) 334-7855. 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 August 28, 2019.

Dated this 7th day of August, 2019.

Don Williams, Product Taxes Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
Phone: (208) 334-7855
Fax: (208) 334-7690
don.williams@tax.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1902
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS (RULE 010).

Section 63-2401, Idaho Code

The definitions provided by statute, including the definitions in Section 63-2401, Idaho Code, apply to these rules. Additionally, the following definitions apply. (6-23-94)

01. Bond. ~~A person required to post a bond may, instead of posting a surety bond, deposit with the State Tax Commission any of the following amounts equivalent to the amount of the bond required:~~ Bond in these rules refers to financial security required to ensure payment of taxes, fees, penalty, and interest. These rules allow all forms of security listed in Tax Commission Administration and Enforcement Rule 600. (3-30-01)()

~~**a.** Lawful money. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order or other certified funds that are payable to the Idaho State Tax Commission. A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a distributor license.~~ (3-30-01)

~~**b.** Letters of credit. Irrevocable standby letters of credit, not exceeding the federally insured amount, issued by a bank doing business in Idaho, and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Idaho State Tax Commission. The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. The letter must include the following items:~~ (3-30-01)

- ~~i. Issuing institution;~~ (3-30-01)
- ~~ii. Taxpayer's name;~~ (3-30-01)
- ~~iii. Effective date;~~ (3-30-01)
- ~~iv. Expiration date and place;~~ (3-30-01)
- ~~v. Idaho State Tax Commission as the payee;~~ (3-30-01)
- ~~vi. Dollar amount covered;~~ (3-30-01)
- ~~vii. Terms of letter;~~ (3-30-01)
- ~~viii. Letter number; and~~ (3-30-01)
- ~~ix. Authorized signatures.~~ (3-30-01)

~~**c.** Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission" and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission.~~ (3-30-01)

~~**d.** Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the~~

~~name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following:~~ (3-30-01)

- ~~i. No Automatic Teller Machine (ATM) card may be issued to the account; and~~ (3-30-01)
- ~~ii. Withdrawals require both signatures of the parties of the joint account or by the Idaho State Tax Commission alone.~~ (3-30-01)

02. Commercial Motor Boat. A commercial motor boat, as defined in Section 63-2401, Idaho Code, includes a motor boat used in a business that rents boats to others who use the boats for pleasure. (6-23-94)

03. IFTA. Means the International Fuel Tax Agreement referred to in the Intermodal Surface Transportation Act of 1991, Public Law 102-240 section 4008, 105 Stat. 1414, codified as 49 USC Sections 31701 through 31708, and in Section 63-2442A, Idaho Code. (3-30-01)

04. Indian-Owned Retail Outlet. An Indian-owned retail outlet is: (4-11-06)

- a. Located within the boundaries of a federally recognized Indian reservation; and (4-11-06)
- b. Owned and operated by: (4-11-06)
 - i. The Coeur d'Alene, Kootenai, Nez Perce, Shoshone/Bannock, or Shoshone/Paiute tribe; or (4-11-06)
 - ii. An enterprise owned by one (1) of the tribes listed above; or (4-11-06)
 - iii. An enrolled member of one (1) of the listed tribes on whose reservation the retail outlet is located. (4-11-06)

05. Pay, Paid, Payable or Payment. When used in reference to any amount of tax, penalty, interest, fee or other amount of money due to the ~~State Tax~~ Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the ~~Idaho State Tax~~ Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States; provided however, acceptance by the ~~State Tax~~ Commission of any check that is subsequently dishonored by the bank upon which it is drawn shall not constitute payment. Additionally, nothing herein shall limit the authority of the ~~State Tax~~ Commission to refuse to accept any check drawn upon the account of a taxpayer who has previously tendered any check that was dishonored by the bank upon which it was drawn. All amounts due the state must be paid by electronic funds transfer whenever the total amount of tax due plus any related fee, interest, penalty or other additional amount is one hundred thousand dollars (\$100,000) or more, according to rules promulgated by the Idaho State Board of Examiners. (3-30-01)()

~~06. These Rules.~~ The term "these rules" refers to this chapter, IDAPA 35.01.05, of rules relating to the Idaho Motor Fuels Tax and the Idaho Petroleum Transfer Fee. (6-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

141. ~~REPORTING AND CALCULATION OF LINE FLUSH ALLOWANCE~~ FUEL DISTRIBUTOR CREDIT AND REFUND CLAIMS (RULE 141).
Sections ~~63-2410 and~~ 63-2423, Idaho Code

01. ~~Eligibility~~ Fuel Distributor Credit and Refund Claims. ~~Any licensed or unlicensed fuel credit and refund claims must be made on a distributor's fuel tax return unless authorized otherwise by this chapter. A~~

licensed distributor can claim credits or refunds by filing original or amended returns. Any distributor may use the Line Flush Allowance worksheet to calculate a refund of special fuels tax if the distributor delivers both dyed and undyed diesel fuel to customers from the same fuel delivery truck. These “mixed” deliveries may cause undyed, tax-paid, diesel fuel to be contaminated with red dye. This fuel must then be put into the truck’s dyed diesel fuel tank. This situation occurs when All claims must provide records establishing both of the following: (3-15-02)()

a. Dyed diesel fuel is used to flush undyed diesel fuel from the truck’s pressurized line; or The basis for the credit or refund claim, and (3-15-02)()

b. Undyed diesel fuel is used to flush dyed diesel fuel from the truck’s pressurized line The amount of credit or refund. (3-15-02)()

02. Calculation Methods—Line Flush Allowance. Two (2) methods are available to calculate the total nontaxable gallons used to flush lines for the filing period. Both methods may be used throughout the filing period, but only one (1) method may be used to account for each separate flush. Check the box on the worksheet to indicate the methodology used to calculate nontaxable gallons. The two (2) methods are: Undyed, tax-paid diesel is contaminated with red dye when a distributor delivers dyed diesel then flushes the line with undyed diesel. The contaminated undyed diesel will be put into the delivery truck’s dyed diesel fuel tank and sold as untaxed, dyed diesel. A distributor will claim a fuel tax refund using the Line Flush Allowance Worksheet. (4-5-00)()

~~a.~~ A standard allowance of five (5) gallons multiplied by the number of flushes; or (4-5-00)

~~b.~~ The actual gallons used to flush the lines. (4-5-00)

03. Records Required—Methods to Determine the Line Flush Allowance. Records supporting this claim should not be submitted with this claim, but must be retained by the claimant. All fuels tax refund claims are subject to review and/or audit by the Idaho State Tax Commission. The fuel distributor must keep records in accordance with one (1) or both of the methodologies that follow The distributor can claim a refund based on the actual gallons used to flush the line or a standard allowance. Indicate the method used to calculate nontaxable gallons on the form. Use the following procedure for the method chosen: (4-5-00)()

a. Standard allowance. Multiply five (5) gallons by the number of flushes using logs prepared by the delivery truck driver indicating including the truck number, date, and number of flushes, and the type of each flush; and/or (4-5-00)()

b. Actual gallons. The actual gallons used to flush the lines. Delivery tickets or totalizer log readings for each flush including the truck number, date, and gallons used to flush the line. (4-5-00)()

04. Calculation of Line Flush Allowance. The line flush allowance worksheet contains the following elements: (4-5-00)

~~a.~~ Total number of times the pressurized line was flushed during the filing period. (4-5-00)

~~b.~~ Number of times the line was flushed using the standard allowance. (4-5-00)

~~c.~~ Number of gallons to be claimed using the standard allowance (Subsection 141.04.b. multiplied by five (5) gallons per flush). (4-5-00)

~~d.~~ Number of times the line was flushed using actual gallons. (4-5-00)

~~e.~~ Number of gallons to be claimed using actual gallons (Delivery tickets/totalizer log readings). (4-5-00)

~~f.~~ Nontaxable gallons to be reported on Form 75. (Add Subsections 141.04.c. and 141.04.e. Enter the total nontaxable gallons in the Refund Section under Undyed Diesel Fuel on the Form 75). (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

~~172.—179.~~ (RESERVED)

~~180. REFUNDS TO LICENSED FUEL DISTRIBUTORS (RULE 180).~~

~~Section 63-2410, Idaho Code~~

~~01. Requirements of a Valid Refund Claim. Before the State Tax Commission can credit or refund motor fuels taxes or transfer fee, the licensed fuel distributor making the claim must establish both of the following: (4-2-08)~~

~~a. The basis for the credit or refund claim, and (4-2-08)~~

~~b. The amount of the credit or refund. (4-2-08)~~

~~02. Refund Claim. Any licensed fuel distributor believing that he has paid motor fuels taxes or transfer fees in any amount more than properly imposed may file a claim with the State Tax Commission for a refund of such excess motor fuels taxes or transfer fee on forms prescribed by the State Tax Commission. The claim for refund must conform with the requirements of this rule. (3-15-02)~~

~~03. Refund Claim Documentation. The claim must be filed on a distributor's fuel tax report and must include the full name and address of the claimant and his fuel distributor's license number. If the claim is for a casualty loss, the claim must include a detailed statement of the reason the claimant believes a refund is due. The statement should include a description of the transactions, if any, to which the motor fuel tax relates and must be filed on a distributor's fuel tax report for the period for which the claimed excess motor fuel tax or transfer fee amount was paid. (4-11-06)~~

~~04. Refund as a Credit. A licensed fuel distributor may claim a refund for motor fuels taxes or transfer fee as a credit against motor fuels taxes or transfer fee due on his distributor's fuel tax report. (4-2-08)~~

~~05. Statute of Limitation. No claim for refund will be allowed by the State Tax Commission if it is filed more than three (3) years from the time the payment of the claimed excess motor fuels taxes or transfer fee was made. The time the payment was made is the date upon which the distributor's fuel tax report relating to the payment was filed or was required to be filed, whichever occurred first. (3-15-02)~~

~~06. Appeal Procedures. No claim for refund may be filed relating to any motor fuels taxes or transfer fees that have been asserted by a Notice of Deficiency Determination. A taxpayer contending that motor fuels taxes or transfer fee have been erroneously or illegally collected by the State Tax Commission pursuant to a Notice of Deficiency Determination must seek a redetermination by using the appeal procedures required by law. (3-15-02)~~

~~07. Notice of Denial. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or any part of the claim should not be allowed to the claimant, notice of denial of the claim shall be mailed to the claimant by certified mail. The notice shall include a statement of the reasons for the denial. When seeking an appeal or redetermination of a denial of a claimed refund or credit, the notice of denial shall be the equivalent of a Notice of Deficiency Determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must do so by filing a petition for redetermination in the manner prescribed in Tax Commission Administration and Enforcement Rules, IDAPA 35.02.01, Rule 300, as incorporated herein by Rule 004 of these rules. Such a petition for redetermination must be filed no later than sixty three (63) days from the date upon which the notice of denial is mailed to, or served upon, the claimant. (7-1-98)~~

~~181. -- 184.~~ (RESERVED)