

Dear Senators RICE, Grow, Burgoyne, and  
Representatives COLLINS, Stevenson, 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.  
35-0102-1901);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.  
35-0102-1902).

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 10/08/2019. 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 11/06/2019.

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.



# Legislative Services Office Idaho State Legislature

Eric Milstead  
Director

*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:** September 18, 2019  
**SUBJECT:** State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1901)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1902)

### **1. IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1901)**

#### **Summary and Stated Reasons for the Rule**

The State Tax Commission submits notice of proposed rulemaking relating to the Sales and Use Tax Administrative Rules. The proposed rule amends Rule 018 to use the statutory definition of a retailer and a retailer engaged in business in this state.

#### **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 5, 2019 edition of the Idaho Administrative Bulletin. No negative fiscal impact on the state General Fund greater than \$10,000 is expected.

#### **Statutory Authority**

The proposed rule is within the agency's statutory authority pursuant to sections 63-105(2), 63-3624(a), 63-3610 and 63-3611, Idaho Code.

### **2. IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1902)**

#### **Summary and Stated Reasons for the Rule**

The State Tax Commission submits notice of proposed rulemaking relating to the Sales and Use Tax Administrative Rules. The proposed rule amends Rule 028 to remove reference to the Greater Boise Auditorium District tax and instead references any auditorium or community center district tax.

#### **Negotiated Rulemaking / Fiscal Impact**

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2019 edition of the Idaho Administrative Bulletin. No negative fiscal impact on the state General Fund greater than \$10,000 is expected.

**Statutory Authority**

The proposed rule is within the agency's statutory authority pursuant to sections 63-105(2), 63-3624(a), 67-4917(A) and 67-4917(C), Idaho Code.

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

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

DOCKET NO. 35-0102-1901

#### 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), 63-3610 – 63-3611, 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 018 - This rule is being updated to reflect changes made by House Bill (HB) 259a effective June 1, 2019, that creates a requirement for retailers without a physical presence in Idaho to collect and remit Idaho sales tax on sales delivered into Idaho if in the current or previous calendar year those sales exceed \$100,000.

**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 5, 2019 Idaho Administrative Bulletin, [Vol. 19-6, page 82](#).

**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 August 28, 2019.

Dated this 7th day of August, 2019.

Leah Parsons, Sales Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690  
[leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1901  
(Only Those Sections With Amendments Are Shown.)

**018. RETAILER DEFINED (RULE 018).**

Sections 63-3610, ~~and~~ 63-3611, 63-3614, 63-3620, 63-3620F and 63-1804, Idaho Code

**01.** **Retailer.** The term retailer ~~includes a person doing a regularly organized retail business in tangible personal property and defined services and selling to the user or consumer, not for resale. Retailer includes commission salesmen, sales at auctions, out of state sellers that must overcome the presumption defined in Section 63-3611, Idaho Code, assignees for the benefit of creditors, receivers and any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers~~ is defined in Section 63-3610, Idaho Code. A retailer includes a seller as defined in Section 63-3614, Idaho Code as every person making retail sales to a buyer or consumer, whether as agent, broker, or principal. (3-26-19)(    )

**02.** **Retailer Engaged in Business in this State.** A retailer engaged in business in this state is defined in Section 63-3611, Idaho Code. A retailer engaged in business in this state is anyone required to collect and remit Idaho sales and use tax pursuant to Section 63-3611(2), Idaho Code. (    )

**023.** **Retailers Selling Incidental Tangible Personal Property.** A person may be a retailer within the meaning of the act although the sale of tangible personal property is incidental to his general business. For example, a plumbing contractor may sell some plumbing supplies as a sideline and thereby become a retailer within the meaning of this act. (7-1-93)

**034.** **Farmers.** Farmers who ordinarily sell their grain, livestock and other horticultural products for resale or processing are not subject to tax. However, when they sell to ultimate consumers or users, they must obtain a seller's permit and report sales tax on their taxable sales. (7-1-93)

**045.** **An Agent as a Retailer.** Where there is a written agreement between a principal and his agent, dealer or other third party, and such agreement stipulates that the agent, dealer or other third party will be responsible for collection, reporting and payment of sales tax generated by sales, the Tax Commission will treat the position of the agent, dealer or third party as that of a retailer and impose on him the burden of collecting, accounting for, and paying the sales tax to the State Tax Commission. (7-1-93)

**a.** However, if for example, a milk route salesman, without such an agreement, makes regular deliveries, collects for the products, and sales tax is included in the total proceeds collected and remitted to the principal for proper crediting, accounting, discounts, etc., then it is the responsibility of the principal to relay the sales tax with proper reporting forms as prescribed by law. (7-1-93)

**b.** In some instances, such as the above, and the example of a newspaper delivery boy, the sales are actually made on behalf of the dairy and the newspaper company respectively. In the absence of any such written agreement, the Tax Commission will look to the principal as being responsible for the reporting and payment of the sales tax. (7-1-93)

## IDAPA 35 – STATE TAX COMMISSION

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

#### DOCKET NO. 35-0102-1902

#### 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 67-5220(1) & (2), 63-105(2), 63-3624(a), 63-3612(2), 67-4917(A)(B) & (C), 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 028 - The State Tax Commission will be administering the collection of taxes for additional auditorium districts. This rule currently references only the Greater Boise Auditorium District. Changing the reference to “Auditorium or Community Center Districts” make the reference more generic. We also removed two obsolete terms.

**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 5, 2019 Idaho Administrative Bulletin, [Vol. 19-6, page 83](#).

**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 August 28, 2019.

Dated this 7th day of August, 2019.

Leah Parsons, Sales Tax Policy Specialist  
State Tax Commission  
800 Park Blvd., Plaza IV  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7531  
Fax: (208) 334-7690  
[leah.parsons@tax.idaho.gov](mailto:leah.parsons@tax.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1902  
(Only Those Sections With Amendments Are Shown.)

**028. HOTELS, MOTELS AND CAMPGROUNDS (RULE 028).**

Sections ~~63-1801 through 63-1804~~, 63-3612(2), ~~67-4718, 67-4917B and 67-4917C~~, 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~~ or Community Center 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." ~~(3-28-18)~~ ( )

**02. Purchases by Hotels, Motels, Lodging Operators, Short-Term Rentals, Vacation Rentals, and Campgrounds.** 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: (3-28-18)

- 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 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: (3-28-18)

- 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 g~~ Garbage can liners. ~~(7-1-93)~~ ( )
- f. Any tangible personal property available to the general public. (7-1-93)