

Dear Senators MCGEE, Hammond & Langhorst, and
Representatives WOOD (35) Hart & Mary Lou Shepherd:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho State Tax Commission: 35.01.05 - Motor Fuels Tax Administrative Rules.

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 10-13-08. 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 11-10-08.

_____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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate
Transportation Committee and the House of Representatives Transportation and
Defense Committee

FROM: Mike Nugent, Principal Legislative Research Analyst

DATE: September 24, 2008

SUBJECT: Proposed Rules Regarding Motor Fuels Tax of the State Tax Commission
Docket No. 35-0105-0801

The State Tax Commission is proposing to promulgate proposed rule changes to their rules on the Motor Fuels Tax. In 2007, the Legislature passed House Bill No. 249, As Amended, which placed the legal incidence of the motor fuels tax on distributors and the proposed rules require that all Idaho fuel distributor license applications be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant. The proposed rule provides that the application constitutes an irrevocable submission to the jurisdiction of Idaho state courts and the waiver of any sovereign immunity that may otherwise be asserted as to all disputes related to the state law on the taxation of motor fuels.

The proposed rules also add ethanol blended fuels, biodiesel, biodiesel blends or other special fuels to be subject to the state fuels tax and transfer fee.

The proposed rules also provide that motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks.

It appears the proposed rules have been promulgated within the scope of statutory authority granted to the State Tax Commission.

cc: Randy Nilson, Tax Policy Specialist
State Tax Commission

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-0801
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, 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 15, 2008.

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 130: Add annual gaseous fuels permit fees to Paragraph 130.02. Add biodiesel and biodiesel blends to the fuels in Paragraph 130.06. Paragraph 130.02 is being amended to show that the payment of annual gaseous fuels permit fees is also required on the fuel distributor report. Paragraph 130.06 is being amended to show that biodiesel and biodiesel blends are also received by a distributor subject to the fuels tax and transfer fee.

Rule 135: Add biodiesel producer to the appropriate sections of this rule. Rule 135 is being amended to add to the definition of a "qualified consumer" a person who produces biodiesel for his own use. The change would allow this type of biodiesel producer to file his report annually instead of monthly.

Rule 185: Add new rule that requires the signature of an authorized person on the distributor's application. This is a new rule to implement the requirements in Idaho Code section 63-2427A(4) found in House Bill 249a passed during the 2007 legislative session. This requires that all Idaho Fuel Distributor License Applications be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant.

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 changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson at (208) 334-7544.

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 22, 2008.

DATED this 20th day of August, 2008.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0801

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

- a.** The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b.** The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c.** The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)
 - i.** Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)
 - ii.** Exported; (4-11-06)
 - iii.** Delivered to the Idaho National Guard tax exempt; or (4-11-06)
 - iv.** Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)
- d.** The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e.** The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f.** The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h.** The tax-paid purchases; (7-1-98)
- i.** The net taxable gallons; (7-1-98)
- j.** The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions; (4-2-08)
- k.** The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule

140 of these rules; (4-2-08)

l. The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)

m. The tax computation; (7-1-98)

n. The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)

o. The gaseous fuels permit fees; and (4-11-06)

p. The net tax due. (4-11-06)

02. Report Due and Payment Required. The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (~~7-1-99~~)(____)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

04. Supplemental Reports. In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

06. Motor Fuels Receipts. All gasoline, ~~gasohol~~ ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (~~3-30-01~~)(____)

131. -- 134. (RESERVED).

135. ALTERNATE REPORTING FOR PERSONS WHO PRODUCE MOTOR FUELS OR IMPORT MOTOR FUELS INTO IDAHO ONLY FOR USE IN THEIR OWN AIRCRAFT, MOTOR VEHICLES, AND EQUIPMENT. (RULE 135-),

01. In General. The state of Idaho imposes an excise tax on all motor fuel and transfer fee on all petroleum and petroleum products, received in Idaho. See Rule 510 of these rules for the definition of petroleum and

petroleum products. Motor fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the motor fuel when the fuel arrives in Idaho. Motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks. For example: 55 gallon barrels, above ground tanks, stilt tanks, underground tanks, tank wagons, old delivery trucks, old tanker trucks, slip tanks in pickups, and any other storage tank used to store the motor fuel. The excise tax and transfer fee due on the motor fuel received in Idaho during a month are normally reported on an Idaho Motor Fuels Distributor Report on a monthly basis. (3-30-01)(____)

02. Alternative to Monthly Reporting for Qualified Consumers. As an alternative to obtaining an Idaho motor fuel distributor license and filing monthly reports, a qualified consumer may file an annual report to remit the motor fuel tax and transfer fee due to the state of Idaho or to receive a refund of excess tax or transfer fee paid. (7-1-99)

03. Qualifications. To be a qualified consumer under this rule, a person must: (7-1-99)

a. Use the produced or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and (7-1-99)(____)

b. Produce in or import into Idaho less than one-hundred thousand (100,000) gallons of motor fuel ~~into Idaho~~ in a calendar year. (7-1-99)(____)

04. Documentation of Export. To claim an export of motor fuel or other petroleum products a qualified consumer must have tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the jurisdiction into which the fuel was claimed to have been exported. (3-30-01)

05. Limitations. (7-1-99)

a. A qualified consumer may not claim an export from Idaho for fuel in the supply tank of a motor vehicle or aircraft. (7-1-99)

b. A licensed Idaho fuel distributor may not file this report. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

181. -- ~~229~~184. (RESERVED).

185. AUTHORITY TO GIVE THE CONSENT TO JURISDICTION OF IDAHO COURTS (RULE 185).

01. Authorized Signature on Application. All Idaho Fuel Distributor License Applications must be signed by an individual with the authority to give the consent to jurisdiction of Idaho courts on behalf of the applicant. (____)

02. Authority to Waive Sovereign Immunity. If the applicant is a state, local or tribal governmental entity, the application must be accompanied by a separate authorization by the governing authority of the entity waiving sovereign immunity that the entity may otherwise assert against any action to enforce Idaho motor fuels tax laws in state court and setting forth the authority of the individual who signs the application to bind the applicant. (____)

03. Irrevocable Submission and Waiver of Sovereign Immunity. The application constitutes an irrevocable submission to the jurisdiction of Idaho state courts, and the waiver of any sovereign immunity that may otherwise be asserted, as to all disputes related to the enforcement of Title 63, Chapter 24 of the Idaho Code. (____)

186. -- 229. (RESERVED).