

Dear Senators McGEE, Hammond & Werk, and  
Representatives JoANN WOOD, Hart & Mary Lou Shepherd:

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

**IDAPA 35.01.05 – Motor Fuels Tax Administrative Rules (Docket #35-0105-1003).**

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen 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 11-5-10. 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 12-7-10.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

**Jeff Youtz**  
Director

### MEMORANDUM

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

**FROM:** Research and Legislation Staff, Nugent **MPN**

**DATE:** November 5, 2010

**SUBJECT:** Proposed Rules of the State Tax Commission Regarding Taxation of Motor Fuels  
IDAPA 35.01.05 – Motor Fuels Tax Administrative Rules (Docket #35-0105-1003)

In 2010, the Legislature enacted House Bill No. 384 which amended the definition of the term “motor fuel” to include ethanol, ethanol blended fuel, gasoline blend stocks and natural gasolines to clarify they were subject to the tax. The Tax Commission is proposing to promulgate four rules to implement HB384. A rule is being added to require an instate pipeline terminal operator to report ethanol that was placed into storage at its Idaho pipeline terminal. The Commission indicates that this information will help the Tax Commission account for all ethanol that was imported into the state by tanker truck or railcar.

A second rule is proposed to be amended to provide that records for all types of motor fuels not just those for gasoline and special fuels must be kept for three years. A third rule is proposed to be amended to provide that motor vehicles powered by gaseous fuels shall display a gaseous fuel permit because those motor vehicles do not prejudice the collection of the special fuels tax and do not render wholly or partially ineffective the procedures for the collection of that tax.

Finally, the Commission is requiring that fuel distributors include ethanol and natural gasoline be included in the definition of petroleum and petroleum products in order to impose the transfer fee on those fuels when they are imported into Idaho or removed from a production plant in Idaho.

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

cc: State Tax Commission

**Mike Nugent, Manager**  
Research & Legislation

**Cathy Holland-Smith, Manager**  
Budget & Policy Analysis

**Don H. Berg, Manager**  
Legislative Audits

**Glenn Harris, Manager**  
Information Technology

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-1003**  
**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 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 20, 2010.

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 137 is being added due to the passage of House Bill 384 by the 2010 Legislature. This rule will require an in-state pipeline terminal operator to report ethanol that was placed into storage at its Idaho pipeline terminal. This information will help the Tax Commission to account for all ethanol that was imported into the state by tanker truck or railcar.

Rule 320 is being amended due to the passage of House Bill 384 by the 2010 Legislature to show that records for all types of motor fuels not just those for gasoline and special fuels must be kept for three years.

Rule 400 Subsection 05 is being amended to include motor vehicles powered by gaseous fuels that display a gaseous fuel permit because these motor vehicles do not prejudice the collection of the special fuels tax and do not render wholly or partially ineffective the procedures for the collection of that tax.

Rule 510, Subsection 05, is being amended due to the passage of House Bill 384 by the 2010 Legislature. This legislation imposed the motor fuels tax on ethanol and natural gasoline. The Tax Commission's current reporting system for fuel distributors requires that the motor fuels tax and transfer both be paid when a load of fuel is received. Ethanol and natural gasoline must be included in the definition of petroleum and petroleum products in order to impose the transfer fee on these fuels when they are imported into Idaho or removed from a production plant in Idaho.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple 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 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 27, 2010.

DATED this 27th day of August, 2010.

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

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0105-1003

136. ~~139.~~ (RESERVED).

**137. INSTATE PIPELINE TERMINAL, PRODUCTION TERMINAL, AND STORAGE REPORTS (RULE 137).**

**01. Monthly Reports.** Every instate pipeline terminal operator and production terminal operator shall file with the state tax commission a monthly tax report and supporting detailed schedules on forms prescribed by the state tax commission. The pipeline terminal operator and production terminal operator must keep detailed inventory records. The number of gallons of motor fuels and other petroleum products shall be stated in gross gallons on all reports. The pipeline terminal operator and production terminal operator shall report the quantity of motor fuels and other petroleum products received during the month including a listing of each person from inside and/or outside Idaho supplying motor fuels and other petroleum products to the pipeline terminal or production terminal. 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: ( )

**a.** The beginning inventory of motor fuels and other petroleum products on the first day of the month; ( )

**b.** The total quantity of motor fuels or other petroleum products received or produced during the month including gasoline blend stocks and ethanol; ( )

**c.** The total quantity of motor fuels and other petroleum products disbursed during the month on a load-by-load basis; ( )

**d.** The ending inventory of motor fuels and other petroleum products on the last day of the month; ( )

**02. 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. ( )

138. -- 139. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

320. RECORDS RETENTION REQUIREMENTS (RULE 320).

**01. Records Required.** Any person importing, manufacturing, refining, dealing in, transporting, storing or selling any motor fuels in this state shall keep such records, receipts and invoices as will show all purchases, sales, receipts, or deliveries of motor fuels in this state. Such records shall be maintained for at least three (3) years. (6-23-94)

**02. Motor Fuels Subject to Use Tax.** Any person who has purchased tax-exempt motor fuel and subsequently uses the fuel in a manner that is subject to a motor fuel use tax, shall maintain records sufficient to establish the quantity of motor fuel subject to tax. (7-1-98)

**03. Original Invoice Retention.** The original invoices required by Rule 270 of these rules, relating to refunds of ~~gasoline and special~~ motor fuels tax paid on certain fuel used off-road, shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (~~7-1-98~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT (RULE 400).**

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. (7-1-98)

**01. In General.** It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels as defined in Section 63-2401, Idaho Code, on the highways of this state without having obtained one (1) of the following: (3-30-07)

**a.** A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)

**b.** A temporary permit from the Idaho Transportation Department. (3-15-02)

**c.** An IFTA license. (7-1-98)

**d.** In the case of vehicles powered by gaseous fuels, a gaseous fuels permit as provided by Section 63-2424, Idaho Code. (~~7-1-98~~)(      )

**02. Federal or In-State Governmental Vehicles.** Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (3-15-02)

**03. Out-of-State Governmental Vehicles.** Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

**04. Temporary Permits.** Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a temporary permit from the Idaho Transportation Department in the manner provided and required by that department. (3-30-07)

**05. Failure to Obtain an IFTA License, ~~or a~~ Temporary Permit, or a Gaseous Fuels Permit.** Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license,

~~or~~ an Idaho temporary permit, or a gaseous fuels permit for motor vehicles powered by gaseous fuels as provided by Section 63-2424, Idaho Code, is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a temporary permit. ~~(3-30-07)~~(\_\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).**

**01. Application.** (6-23-94)

**a.** The Petroleum Transfer Fee applies to the receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. (7-1-99)

**b.** The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

**02. Receipt of Petroleum Products.** Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. (7-1-99)

**03. Exemption to Application of the Transfer Fee.** The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

**a.** Returned to the refinery or pipeline terminal. (6-23-94)

**b.** Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

**c.** Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

**d.** Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

**04. Casualty Loss and Shrinkage Not Deductible.** All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. The deductions allowed to motor fuel distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (4-2-08)

**05. Petroleum and Petroleum Products.** The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to

motor gasoline, alcohol blended fuels, such as E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), ~~biodiesel~~, biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. Ethanol (E00), natural gasoline, and biodiesel (B00) are also defined as petroleum and petroleum products that are subject to the Petroleum Transfer Fee. ~~(4-2-08)( )~~

**06. Licensed Distributors and Limited Licenses.** Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

**07. Reporting Requirements.** (6-23-94)

**a.** Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (5-3-03)

**b.** Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

**c.** The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

**08. Payment.** (6-23-94)

**a.** Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

**b.** Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

**09. Incorporation of Other Relevant Rules.** Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full.(4-6-05)