

Dear Senators STEGNER, Siddoway and Werk, and
Representatives LAKE, Collins and Killen:

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

IDAPA 35.01.01 - Income Tax Administrative Rules (Docket #35-0101-1101);

IDAPA 35.01.03 - Property Tax Administrative Rules (Docket #35-0103-1101).

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 07/20/2011. 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 08/17/2011.

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 enclosed.



Jeff Youtz
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: Division Manager - Mike Nugent

DATE: June 30, 2011

SUBJECT: State Tax Commission

35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No. 35-0101-1101)

35.01.03 - Rules Pertaining To The Property Tax Administrative Rules (Docket No. 35-0103-1101)

The State Tax Commission is proposing to promulgate two sets of temporary and proposed rules with one relating to property tax and the other relating to income taxation. The rule relating to property taxation implements the provisions of House Bill No. 13 which was a State Tax Commission sponsored bill. The Statement of Purpose to HB13 reads "This proposal clarifies the exemption for new capital investment. Qualifying property is clarified. "Project period" is amended to be 84 months rather than 7 years. "Project site" is more clearly defined. The election to claim this exemption will void all prior exemptions."

In its notice of rulemaking the Tax Commission states: "House Bill 13 did not specify when the exemption for new capital investment would be effective and clarification of the amount of the investment to be included in the county's new construction roll under Section 63-802, Idaho Code, is needed. This new rule provides that the exemption may be granted after a notification containing the description of the project and the project qualifying period is received by the county. The rule also clarifies that property eligible for taxation may be included on the new construction roll."

House Bill 13 was obviously an agency bill and had a retroactive effective date of January 1, 2010, so the agency discerned it needed to go back in time before the normal retroactive effective date for property tax which would have been January 1, 2011. It seems to us that the Tax Commission should have included the necessary "clean-up" language in the agency bill rather than coming after the fact with a temporary and proposed rule. Normally an agency bill will come into our office in October or November prior to a legislative session and, if there were problems with the bill as the notice of rulemaking suggests, there was plenty of time to add language to the bill to fix it. The bill passed the House on January 26 and the Senate on February 15.

The second rule of the State Tax Commission related to House Bill No. 297 or the "Hire One Act" of 2011. The Statement of Purpose to HB297 provides: "The Hire One Act is aimed at advancing the goals of the Project 60 Initiative. It reflects the priorities of taxpayers and reinforces the reputation and reality of Idaho's jobs-friendly environment by encouraging Idaho businesses to reinvest in personnel and recruiting new enterprises with rewards for creating more career opportunities in Idaho communities. It sets three levels of qualification for refundable income tax credits based on how each employer is rated by the Department of Labor for payment of unemployment insurance taxes. Positive-rated employers adding an employee would get a refundable tax credit equal to six percent (6%) of that new employee's gross annual wages. Standard-rated

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employers would get a refundable tax credit equal to four percent (4%) of the new employee's gross annual wages. Deficit-rated employers would get a refundable tax credit equal to two percent (2%) of the new employee's gross annual wages. The Hire One Act also focuses its encouragement on the hardest-hit areas by setting a \$15.00/hour minimum qualifying wage in counties with less than ten percent (10%) unemployment, and a \$12.00/hour minimum qualifying wage in counties with ten percent (10%) or greater unemployment."

In its notice of rulemaking, the Commission states that "Rule 756 is being promulgated to inform employers of the requirements to qualify for the income tax credit since it applies to new employees hired on or after April 15, 2011. The rule defines employer provided health care benefits using as the definition of major medical expense coverage found in IDAPA 18.01.30 "Individual Disability and Group Supplemental Disability Insurance Minimum Standard Rule," Section 018 and basing the definition of "employer-provided" on the national averages of the employer share of premium costs.

It appears to us that both sets of proposed rules have been promulgated within the scope of statutory authority granted to the State Tax Commission. The criticism we have of the property tax rule is that the Tax Commission should have expanded its legislation last fall so that the expense of rulemaking would not have been necessary.

cc: State Tax Commission
Janice Boyd
Alan Dornfest

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 63-105 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 June 15, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Hire One Act, passed in 2011 HB 297, repealed Section 63-3029E, Idaho Code, and amended Section 63-3029F, Idaho Code, to revise the income tax credit allowed for qualifying new employees. The new provisions provide that the State Tax Commission will determine what "qualifying employer-provided health care benefits" means. Rule 756 is being promulgated to inform employers of the requirements to qualify for the income tax credit since it applies to new employees hired on or after April 15, 2011. The rule defines employer-provided health care benefits, using as the definition of health care benefits the definition of major medical expense coverage found in IDAPA 18.01.30, "Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule," Section 018, and basing the definition of "employer-provided" on the national averages of the employer share of premium costs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit.

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: 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.

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 temporary and proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 13th day of May 2011.

Janice Boyd, 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 THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 35-0101-1101

754. -- ~~750~~. (RESERVED).

756. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- EMPLOYER-PROVIDED HEALTH CARE BENEFITS (RULE 756).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. (1-1-11)T

01. Employer-Provided. An individual's employer must pay the following percentages of the cost of an employee's premium for health care benefits as defined in Subsection 756.02 of this rule: (1-1-11)T

a. At least eighty percent (80%) of the cost of the employee's premium if such employee had single coverage. (1-1-11)T

b. At least seventy percent (70%) of the cost of the employee's premium if such employee had family coverage. (1-1-11)T

02. Health Care Benefits. Coverage offered through a group health plan for employees that includes hospital, medical and surgical expense coverage set forth as follows: (1-1-11)T

a. An accident and sickness insurance policy that provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than five hundred thousand dollars (\$500,000); (1-1-11)T

b. Coinsurance percentage per year per covered person not to exceed fifty percent (50%) of covered charges, provided that the coinsurance out-of-pocket maximum combined with any deductibles does not exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person; (1-1-11)T

c. A deductible stated on a per person, per family, per illness, per benefit period, or per year basis, or a combination of these bases not to exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person for at least: (1-1-11)T

i. Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides; (1-1-11)T

ii. Miscellaneous hospital services; (1-1-11)T

iii. Surgical services; (1-1-11)T

iv. Anesthesia services; (1-1-11)T

v. In-hospital medical services; and (1-1-11)T

vi. Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray,

laboratory services, radiation therapy, and hemodialysis ordered by a physician. (1-1-11)T

d. Additional benefits. Health care benefits must also provide not fewer than three (3) of the following additional benefits: (1-1-11)T

i. In-hospital private duty registered nurse services; (1-1-11)T

ii. Convalescent nursing home care; (1-1-11)T

iii. Diagnosis and treatment by a radiologist or physiotherapist; (1-1-11)T

iv. Rental of special medical equipment, as defined by the insurer in the policy; (1-1-11)T

v. Artificial limbs or eyes, casts, splints, trusses or braces; (1-1-11)T

vi. Treatment for functional nervous disorders, and mental and emotional disorders; or (1-1-11)T

vii. Out-of-hospital prescription drugs and medications. (1-1-11)T

03. **Non-Qualifying Health Care Benefits.** Health care benefits do not include limited benefit policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less. (1-1-11)T

757. -- 759. **(RESERVED).**

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105A, Idaho Code, and Section 63-802, 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 January 15, 2011.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

House Bill 13 did not specify when the exemption for new capital investment would be effective, and clarification of the amount of the investment to be included in the county's new construction roll under Section 63-802, Idaho Code, is needed. This new rule provides that the exemption may be granted after a notification containing the description of the project and the project qualifying period is received by the county. The rule also clarifies that the property eligible for taxation may be included on the new construction roll.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(2)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law or federal programs.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of 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 temporary and proposed rule, contact Alan Dornfest at (208) 334-7544.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 13th day of May 2011.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 35-0103-1101

- 630. ~~(RESERVED)~~ TAX EXEMPTION FOR NEW CAPITAL INVESTMENTS (RULE 630).** (1-1-11)T
Section 63-4502, Idaho Code.
- 01. Notification of New Capital Investment.** (1-1-11)T
- a.** Prior to receiving the benefit of the tax exemption, the taxpayer shall notify the county in which the project site is located that the taxpayer expects to meet the criteria of the New Capital Investments Tax exemption. Notification shall be accomplished by submitting a written declaration or notification with the county assessor and the board of county commissioners containing the following information: (1-1-11)T
- i.** The name and address of the taxpayer; (1-1-11)T
- ii.** A description of the new capital investment project; (1-1-11)T
- iii.** The assessor's parcel number(s) identifying the location of the project site; (1-1-11)T
- iv.** The date that the qualifying period began; (1-1-11)T
- v.** A statement that the taxpayer will make a qualified new capital investment of at least one billion dollars (\$1,000,000,000) within the qualifying period, which shall be specified. (1-1-11)T
- b.** The notification required hereunder may be submitted by the taxpayer to the county assessor and the board of county commissioners at any time after the qualifying period begins. However, if the notification is submitted after May 15 in a given year a taxpayer may receive the benefit of the exemption only for tax years following the year in which the notification is filed. (1-1-11)T
- 02. Property of the Taxpayer.** Property of a taxpayer includes all real or personal property that is owned by or leased to the taxpayer under an agreement that makes the taxpayer responsible for the payment of any property taxes on the property. (1-1-11)T
- 03. New Construction.** Property taxable under Section 63-4502, Idaho Code and that qualifies for listing on the new construction roll as described by Section 63-301(A)3, Idaho Code, should be listed on the new construction roll. (1-1-11)T
- 04. Failure to Make the Qualifying New Capital Investment.** If the taxpayer fails to make the qualifying new capital investment during the qualifying period, the property shall lose the exemption granted by this section beginning with the tax year immediately following the conclusion of the qualifying period. (1-1-11)T
- 05. Cross Reference.** For an explanation of the treatment of new construction relating to Sections 63-802 and 63-301A, Idaho Code, see Rule 802 of these rules. (1-1-11)T