

Dear Senators HAMMOND, Brackett, Werk, and  
Representatives PALMER, Ellsworth, Ringo:

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

IDAPA 35.01.05 - Rules Pertaining To The Idaho Motor Fuels Tax Administrative Rules (Docket  
No. 35-0105-1101).

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 10/12/2011. 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 11/09/2011.

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

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## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Transportation Committee and the House Transportation & Defense Committee

**FROM:** Principal Legislative Research Analyst - Eric Milstead

**DATE:** September 22, 2011

**SUBJECT:** State Tax Commission - Motor Fuels Tax

IDAPA 35.01.05 - Rules Pertaining To The Idaho Motor Fuels Tax Administrative Rules (Docket No. 35-0105-1101)

The State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.05 - Motor Fuels Tax Administrative Rules. The proposed change is straightforward and revises a provision relating to conditions for termination of an exemption from a bonding requirement for a licensed distributor. (Section 310.02.b.).

The proposed rule appears to be authorized pursuant to section 63-105, Idaho Code.

cc: State Tax Commission - Motor Fuels Tax  
Randy Nilson

**IDAPA 35 - IDAHO STATE TAX COMMISSION**  
**35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-1101**  
**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(s) 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 19, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 310 is being amended in Subsection 310.02.b. to provide the Tax Commission with adequate time to determine that a fuel distributor is delinquent and to notify the fuel distributor that its bond exemption will be terminated if the delinquency is not paid. The fuel distributor will need time to obtain a bond if it is not able to pay the delinquency. A fuel distributor's license is revoked if it does not have a bond or a bond exemption.

**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 IDAPA 04.11.01.811, 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 26, 2011.

DATED this 31<sup>st</sup> day of August 2011.

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

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0105-1101**

**310. EXEMPTION FROM REQUIREMENT FOR BONDS, DETERMINATION OF FINANCIAL RESPONSIBILITY (RULE 310).**

**01. Exemption to Bond Requirements for Licensed Distributors.** Bonds, as referred to in Rule 010 of these rules are required of all licensed distributors unless the distributor is found to be financially responsible. A licensed distributor seeking exemption from the bonding requirement must apply for the exemption by filing a written petition with the State Tax Commission. The petition must contain information relating to the requirements of Section 63-2428, Idaho Code, for establishing financial solvency and responsibility. Together with the petition, the distributor must submit any information required in the following Subsections 310.01.a. through 310.01.e. (3-30-01)

**a.** If all or any part of the unencumbered property offered to show financial solvency is real property, the petition must include both a title report from an independent title company reporting on the state of the title of the real property as of a time not more than fifteen (15) days before the filing of the petition and a copy of the most recent valuation notice issued by the county assessor for ad valorem property tax purposes. (6-23-94)

**b.** If all or any part of the unencumbered property is licensed motor vehicles, the petition must include copies of the titles of the vehicles and evidence of the value of the vehicles from a source independent from the distributor. (6-23-94)

**c.** If all or any part of the unencumbered property is personal property other than motor vehicles, the petition must include a description of the property, evidence of ownership of the property, an independent appraisal of the property, and evidence that the property is unencumbered. Copies of all documents relating to all of the distributor's current and long-term liabilities, including contingent liabilities, lawsuits or potential lawsuits to which the distributor is or may become a party, are required to establish that no security interests or other encumbrances exist. (6-23-94)

**d.** The petitioner must arrange, at the petitioner's expense, for an established, independent commercial credit rating company to submit directly to the State Tax Commission a current and complete credit report about the licensed distributor; or, the distributor must include with the petition its most recent financial statements, including a current income statement, balance sheet, and statement of cash flows. If the petitioner is a publicly held company, the financial statements must be accompanied by an opinion issued by an independent certified public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. If the petitioner is a privately held company, the financial statements must be reviewed by a certified public accountant or licensed public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. (3-30-01)

**e.** The State Tax Commission may require the distributor to supplement its petition with such further information as the State Tax Commission, in its discretion, finds necessary to determine financial responsibility. If incomplete or substitute submissions are received by the State Tax Commission, the information submitted will be reviewed on a case-by-case basis to determine whether an exemption from the bonding requirement will be granted. (3-30-01)

**02. Conditions for Termination of Exemption.** If granted, the exemption from the bonding requirement shall terminate: (6-23-94)

**a.** One (1) year after the date on which it was granted. (6-23-94)

**b.** ~~Upon Ninety (90) days after~~ the occurrence of any delinquency in motor fuels tax ~~unless the delinquency has been paid within that time period.~~ ~~(6-23-94)~~ ( )

**c.** Upon the occurrence of any encumbrance of any of the property upon which the finding of financial responsibility was based. (6-23-94)

**d.** Upon the occurrence of any change in the business activity of the distributor that would cause the amount of bond required to be increased to an amount greater than the value of the distributor's unencumbered assets. (6-23-94)

**e.** Upon the occurrence of any event prejudicing the distributor's solvency or financial responsibility.

(6-23-94)

**03. Bond Requirement upon Termination of Exemption.** Immediately upon any termination of the exemption from the requirement for a bond the distributor must supply the required bond according to Section 63-2428, Idaho Code. (3-30-01)

**04. Pending Application Does Not Excuse the Bond Requirement.** Having an application pending for exemption from the requirement for a bond does not excuse the bond. If a bond exemption is due to expire, the distributor must submit a new petition applying for a continuation of the exemption no later than ninety (90) days before the day the exemption is due to expire to prevent a lapse in the exemption. The petition must meet all of the requirements of this rule. (6-23-94)

**05. Conditions for Renewal of Bond Exemption.** The following must be submitted to renew a bond exemption: (7-1-97)

- a.** A written request for renewal of waiver; (7-1-97)
- b.** The information required in Subsections 310.01.a. through 310.01.e. of this rule. (7-1-97)