

Dear Senators SIDDOWAY, Rice, Werk, and  
Representatives COLLINS, Wood, Burgoyne:

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

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No.  
35-0101-1303);

IDAPA 35.02.01 - Rules Pertaining To The Administration and Enforcement Rules (Docket No.  
35-0201-1303).

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 11/19/2013. 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 12/18/2013.

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 on the  
memorandum attached below.



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:** October 30, 2013

**SUBJECT:** State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No. 35-0101-1303)

IDAPA 35.02.01 - Rules Pertaining To The Administration and Enforcement Rules (Docket No. 35-0201-1303)

The State Tax Commission is proposing to promulgate two sets of temporary and proposed rules to implement the 2013 United States Supreme Court case of Windsor v. the United States. In that case the Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to heterosexual unions, by Section 3 of the Defense of Marriage Act (DOMA), is unconstitutional under the Due Process Clause of the Fifth Amendment. The Court through Justice Kennedy held that "...the federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment."

The facts of that case were as follows: Edith Windsor and Thea Spyer, a same-sex couple residing in New York, were lawfully married in Ontario, Canada in 2007. Spyer died in 2009, leaving her entire estate to Windsor. Windsor sought to claim the federal estate tax exemption for surviving spouses. She was barred from doing so by Section 3 of DOMA (codified at 1 U.S.C. § 7), which provided that the term "spouse" only applies to a marriage between a man and woman. The Internal Revenue Service found that the exemption did not apply to same-sex marriages, denied Windsor's claim, and compelled her to pay \$363,053 in estate taxes. Windsor sued and eventually prevailed in the U.S. Supreme Court.

The State Tax Commission in its notice of rulemaking for temporary and proposed rules states that a recent Revenue Ruling addressing the Windsor case regarding joint filing makes it necessary to amend the Income Tax Administrative Rules 010 and 805 and Administration and Enforcement Rule 010 to give specific guidance on the definition of marriage. The Commission states that because the filing deadlines for both federal and state income tax returns are April 15, 2014, for most taxpayers the rules need to be amended immediately to provide guidance to taxpayers and tax preparers so that they know how to prepare their tax returns for the impending filing seasons.

It appears to us that the temporary and proposed rules are consistent with Idaho's Constitution and statutes on the definition of marriage.

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

cc: State Tax Commission  
Cynthia Adrian

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.01 - INCOME TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0101-1303**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules is January 1, 2013.

**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 November 20, 2013.

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:

A recent Revenue Ruling addressing the U. S. Supreme Court ruling in *Windsor* regarding joint filing makes it necessary to amend Income Tax Administrative Rules 010 and 805 to give specific guidance on the definition of marriage. Because the filing deadlines for both federal and state income tax returns is April 15, 2014, for most taxpayers, the rules need to be amended immediately to provide guidance to taxpayers and tax preparers so that they know how to prepare their tax returns during the impending filing season.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rules 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: 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 November 27, 2013.

DATED this 2nd day of October, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission

P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT OF DOCKET 35-0101-1303**

**010. DEFINITIONS (RULE 010).**

Section 63-3003, Idaho Code. (3-20-97)

**01. Administration and Enforcement Rules.** The term Administration and Enforcement Rules refers to IDAPA 35.02.01, relating to the administration and enforcement of Idaho taxes. (3-20-97)

**02. Due Date.** As used in these rules, due date means the date prescribed for filing without regard to extensions. (3-20-97)

**03. Employee.** An employee is an individual who performs services for another individual or organization that controls what services are performed and how they are performed. (3-20-97)

**04. Employer.** An employer is any person or organization for whom an individual performs services as an employee. (3-20-97)

**05. Mathematical Error.** A mathematical error includes arithmetical errors, incorrect computations, omissions, defects in a return, and entries on the wrong line. (3-20-97)

**06. Sale.** A sale is defined as a transaction in which title passes from the seller to the buyer, or when possession and the burdens and benefits of ownership are transferred to the buyer. A sale may have occurred even if the buyer does not have the right to possession until he partially or fully satisfies the terms of the contract. (3-20-97)

**07. Tax Home.** For income tax purposes, the term tax home refers to the taxpayer's principal place of business, employment, station, or post of duty regardless of where he maintains his personal or family residence. Thus, a taxpayer domiciled or residing in Idaho with a permanent post of duty in another state is an Idaho resident for Idaho income tax purposes. However, he is not entitled to a deduction for travel expenses incurred in the other state since that is his tax home. (3-20-97)

**08. Terms.** Terms not otherwise defined in the Idaho Income Tax Act or these rules shall have the same meaning as is assigned to them by the Internal Revenue Code including Section 7701 relating to definitions of terms. (3-20-97)

**09. These Rules.** The term these rules refers to IDAPA 35.01.01, relating to Idaho income tax. (3-20-97)

**10. Wages.** The term wages relates to all compensation for services performed for an employer regardless of the form of payment. (3-20-97)

**11. Marriage.** For purposes of computing taxable income, including the computation of Idaho taxable income, any reference to marriage in federal or state law, including terms such as marriage, married, spouse, husband, wife, widow, or widower, shall be interpreted as referring to a marriage relationship defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code. For all purposes of the Idaho Income Tax Act, the marriage must be one which is considered valid or recognized under Article III, Section 28 of the Idaho Constitution. (1-1-13)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**805. JOINT RETURNS (RULE 805).**

Sections 63-3031, 32-201, and 32-209, Idaho Code.

~~(3-20-97)~~(1-1-13)T

**01. Effect of Filing Status Used on Federal Returns.** A ~~taxpayer~~ married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, shall use the same filing status with Idaho as used when filing returns with the Internal Revenue Service. ~~(3-20-97)~~(1-1-13)T

**02. In General.** (3-20-97)

**a.** A Only a married couple, as defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code, may file a joint return. Section 63-3024, Idaho Code, provides for joint return tax rates for individuals filing joint returns and for an individual qualifying as a surviving spouse or head of household. ~~(3-20-97)~~(1-1-13)T

**b.** If a married couple files a joint return and the due date for filing a separate return has expired for either spouse, separate returns may not be filed thereafter. For example, a married couple files a joint return before April 15 in the year due and desires to change their federal and state election to file separately. They may do so only if they file the separate returns on or before April 15. (3-20-97)

**03. Resident Aliens or United States Citizens Married to Nonresident Aliens.** A United States citizen or resident married to a nonresident alien may elect to treat the spouse as a resident alien allowing them to file a joint return. In this case they are taxed on their worldwide income. The individuals must be able to provide all records and information necessary to determine their tax liability. A statement declaring the election shall be attached to the return for the first taxable year for which the election is to apply. In addition, the statement shall include the name, address, and taxpayer identification number of each spouse, and shall be signed by both individuals making the election. (3-20-97)

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.02.01 - ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1303**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

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**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 November 20, 2013.

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:

A recent Revenue Ruling addressing the U. S. Supreme Court ruling in *Windsor* regarding joint filing makes it necessary to amend Administration and Enforcement Rule 010 to give specific guidance on the definition of marriage. Because the filing deadlines for both federal and state income tax returns is April 15, 2014, for most taxpayers, the rule needs to be amended immediately to provide guidance to taxpayers and tax preparers so that they know how to prepare their tax returns during the impending filing season.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), 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: 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 November 27, 2013.

DATED this 2nd day of October, 2013.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission

P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT OF DOCKET 35-0201-1303**

**010. DEFINITIONS (RULE 010).**

Section 63-3003, Idaho Code. (3-20-97)

**01. Date of Filing or Payment.** (4-6-05)

**a.** When returns or other documents or payments are delivered to the Tax Commission by United States mail, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code. (4-6-05)

**b.** When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices. (4-6-05)

**c.** Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission. (4-6-05)

**d.** Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code. (4-6-05)

**02. Pay, Paid, Payable or Payment.** When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. (4-11-06)

**a.** As used herein, lawful money of the United States means; (4-11-06)

**i.** Currency or coin of the United States at face value; and (4-11-06)

**ii.** Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. (4-11-06)

**b.** The words pay, paid, payable, or payment do not include: (4-11-06)

**i.** Submission to the Tax Commission of a check or draft that is subsequently dishonored by the institution on which it is drawn. (4-11-06)

**ii.** Submission to the Tax Commission of a check or draft drawn on a foreign bank or other financial institution in regard to which any processing fees may be incurred by the state of Idaho. (4-11-06)

**03. Return or Tax Return.** Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return. (3-20-97)

**04. Tax Commission.** Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code. (3-20-97)

**05. These Rules.** The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. (3-20-97)



06. **Marriage.** For purposes of any tax imposed or benefit granted under Title 63, Idaho Code, any reference to marriage in federal or state law, including terms such as marriage, married, spouse, husband, wife, widow, or widower, shall be interpreted as referring to a marriage relationship defined in Section 32-201, Idaho Code, or recognized by Section 32-209, Idaho Code. For all purposes of Title 63, Idaho Code, the marriage must be one which is considered valid or recognized under Article III, Section 28 of the Idaho Constitution. (1-1-13)T