

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 22, 2013
TIME: 3:00 P.M.
PLACE: Room WW53
MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk, and Lacey
ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Siddoway** called the Local Government and Taxation Committee (Committee) meeting to order at 3:00 p.m.

MINUTES: **Senator Johnson** moved, seconded by **Senator Lacey**, to approve the minutes from the January 10, 2013 meeting. The motion carried by **voice vote**.

Senator Vick moved, seconded by **Senator Werk**, to approve the minutes from January 15, 2013 meeting. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Siddoway passed the gavel to Vice Chairman Rice for the consideration of Pending Rules.

DOCKET NO. 36-0101-1201 **Vice Chairman Rice** invited to the podium Steve Wallace, Director for the Idaho Board of Tax Appeals (Board), for further review of rules relating to the Idaho Board of Tax Appeals.

Mr. Wallace said that due to the requirements in rule promulgating, in order to retain struck language in a pending rule, the entire subsection must be rejected. Therefore, he proposed that in **Docket No. 36-0101-1201**, Rule 63, Rule 65 and Rule 140.06 be retained in the original language and addressed at a future time if necessary or prudent.

Rule 63 relates to Amendments to Pleadings. **Mr. Wallace** indicated that the rule has some meaty content about the liberal construction standard, and while it does not come up very often, when it does, this rule could be important to the parties and the Board, and even to the courts, in future proceedings.

Rule 65 relates to the Computation of Time. **Mr. Wallace** said it is a counting rule in which the language could cause some confusion or disagreement in how periods of time are counted, and the words "of the act, event or default" could be beneficial in the future.

Rule 140.06 (previously 140.07) relates to Decisions of the Board and the direction to require findings of fact and conclusions of law. **Mr. Wallace** said the Board had thought this would be extraneous or nonessential language because it is contained within the Administrative Procedures Act; however, it was decided that it could be beneficial to have this requirement in procedural rules, too.

Mr. Wallace expressed his appreciation to the Committee members for their efforts to improve the rules, noting that even with these few additions, the rules have been significantly simplified. **Senator Vick** asked for clarification on what was being removed from Rule 65. **Mr. Wallace** said that in order to retain even a part of the language, changes to the entire section must be rejected.

MOTION: **Senator Vick** moved, seconded by **Chairman Siddoway**, to approve **Docket No. 36-0101-1201**, with the exception of Rule 63, Rule 65 and Rule 140.06 to remain in the rules as written. Motion carried by **voice vote**.

DOCKET NO. 35-0101-1201 **Vice Chairman Rice** invited to the podium Cynthia Adrian, Income Tax Committee Chair for the Idaho State Tax Commission (Commission), to present information relating to IDAPA 35.

Ms. Adrian said this section of Income Tax Administrative Rules is the negotiated rulemaking docket. Rule 600 and Rule 700 were initially intended to undergo changes, but due to time constraints, they decided not to promulgate them and the rules will remain as codified.

Rule 130 is amended consistent with H 364 to clarify the treatment of pensions received by certain retired police officers and firefighters. The definition of disability is changed to a more clear definition as found in Idaho Code.

Rule 140 is amended consistent with H 485 to revise the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences. It was formerly called Insulation of an Idaho Residence. There is now a definition for what qualifies as an Energy Efficiency Upgrade Measure. **Ms. Adrian** said the big change is allowing more homes to qualify by changing the eligibility date from January 1, 1976 to January 1, 2002.

Rule 171 is changed to clarify what constitutes non-qualifying property for the Idaho capital gains deduction. She said the non-qualifying property items were scattered throughout the rule, so this change brings it all under Subsection 5.

Senator Hill asked about an additional item added to the list that was not crossed out elsewhere in the changes. He said it is titled "Interests in a Partnership, LLC or S Corporation" and asked why that was added. **Ms. Adrian** answered she believes what the Commission is trying to indicate is that interest in a partnership is not tangible property. The capital gains deduction defines tangible personal property, so this rule describes Interest in a Partnership, LLC or S Corporation as intangible.

Rule 290 and Rule 291 are amended consistent with H 582 to revise the options of pass-through entities. The pass-through entity may file a composite return for nonresidents and pay the tax due, or the entity can do backup withholding under Idaho Code § 63-3036B. **Ms. Adrian** said with passage of H 582, there is no longer an election to make because the option is no longer valid. Therefore, the language needed to be changed to take out the word "election." Rule 291 also needed to have the reference to "election" removed.

Rule 714 is changed to clarify the current practice of applying Idaho investment tax credit limitations first to mobile property then to used property. There are also examples in Subsection 4 to give further understanding of how this rule works.

Ms. Adrian said these changes came from a recommendation during negotiated rulemaking.

Rule 877 relates to backup withholding by pass-through entities. **Ms. Adrian** explained the rule removed the reference to making an election and added the "Idaho Nonresident Agreement," which was recommended in negotiated rulemaking. She said practitioners came in and looked at the legislation that offered two options: have backup withholding done or be part of a composite return. It did not give an option for those nonresidents who have been historically filing Idaho tax returns to go ahead and do that. The Commission researched legislation and asked the Attorney General's Office to look at it. The Attorney General's Office said the option would not be available unless prescribed in a rule. Therefore, the Commission is adding the Idaho Nonresident Agreement to this rule.

Ms. Adrian said Rule 877 provides that the nonresident would sign the Agreement and agree to file their return and give it to the pass-through entity. The pass-through entity would need to approve it as well before it is valid. If the pass through entity approves it, the nonresident can go ahead and file. If the pass-through entity does not approve it, the taxpayer would need to do backup withholding or be part of a composite return.

Vice Chairman Rice asked if anyone would like to testify on this docket. **John McGown** approached the podium and introduced himself as a tax attorney with Hawley-Troxell Law Firm and he is here representing himself as a concerned taxpayer. He shared that he taught the first graduate course on taxation in Idaho. He was the Idaho correspondent for the Tax News national publication for sixteen years, so he feels qualified to speak on Idaho Taxes. **Mr. McGown** said his main concern is the retroactivity of the rules being considered by the Committee.

He said the Tax Commission adopts rules in two circumstances: first, legislation recently enacted that needs to be interpreted or second, a statute that has been on the books for a number of years that needs to be interpreted. **Mr. McGown** said it is the latter that causes him concern. He offered this example: If I file a return for 2009, it is due April 15, 2010. I filed it based on the information I had of rules and statute in place. Then, the Tax Commission can then issue a rule in 2012 interpreting the statute that I relied on in filing my return in 2010. **Mr. McGown** continued that he understands the Tax Commission's view to be that he should know what rules would be enacted down the road. **Mr. McGown** said that is of concern to him: how is he supposed to know when he files a tax return that the rules are going to be issued later and then are retroactive to the tax return he already filed.

Mr. McGown shared a handout (See Attachment #1) with the Committee that posed this question in an email: "Am I correct that the Idaho State Tax Commission believes that taxpayers should know when they file their tax returns that the statutes they are relying on might be interpreted by the Idaho State Tax Commission in later years (via Rule) and that the taxpayer needs to anticipate what such interpretations might be because such interpretations are retroactive? If I am correct, do you agree that it could be reasonably viewed as overreaching?" **Mr. McGown** showed the Tax Commission's answer in the email, which he summarized by saying the Tax Commission says it 'can' go retroactively and it is 'not' overreaching. **Mr. McGown** said he has the utmost respect for Chelsea Kidney and Phil Skinner of the Attorney General's Office for doing their job and this presentation is not a criticism of them. Instead, it is an effort to point out to the community that when rules are adopted, the Tax Commission will view them as retroactive.

Senator Hill asked Mr. McGown if he is referring to the entire docket of rules or to something specific. **Mr. McGown** said he is referring conceptually to the whole docket. He said he's not picking out any particular rule, but his view as a concerned taxpayer is that anytime rules are adopted the Tax Commission will say they are retroactive. His concern is a statute that has already been in place is then interpreted some years later and the taxpayer is expected to know what that later interpretation might be. **Senator Hill** asked Mr. McGown if there is wording in the docket that automatically makes the rules retroactive or if he is saying once rules are established that they should not be fine tuned. **Mr. McGown** quoted from Idaho Income Tax Rule 35.01.01.001.03 relating to the Effective Date of Rules, which says, "Effective Date. To the extent allowed by statute, rules in this chapter will be applied on their effective date to all taxable years open for determining tax liability."

Mr. McGown repeated his example about filing a 2009 tax return in 2010 which will remain open until 2013, and how he believes the Tax Commission is saying the Commission might use a rule that is going to change the interpretation of the statute, when that return was prepared under a different understanding of the rule.

Mr. McGown stated his second concern is the method by which the Tax Commission accomplishes its view of retroactivity. He cited Idaho Code § 67-5244(5)(a): "A rule which is final and effective may be applied retroactively as provided in the rule."

Mr. McGown said the Tax Commission takes a different approach by adding a separate rule that says all their rules are retroactive. He said he questions whether that concept may be subject to legal attack and it may be important from a policy standpoint. He said he thinks each rule should be looked at individually to see if it should be retroactive, but instead the Tax Commission takes a blanket approach of making the entire rule book retroactive.

Chairman Siddoway asked Mr. McGown if Mr. McGown had ever been caught in that freefall. **Mr. McGown** replied he has had those issues.

Mr. McGown said he believes it is overreaching for the Tax Commission to ask taxpayers to guess what the Tax Commission is going to do in the future and he'd like to come up with a solution. He suggested the process of retroactivity should be done individually by rule, and not by blanket approach that everything is retroactive. His recommendation is that if these rules are adopted, it be done with the caveat that they are not to be applied retroactively.

Senator McKenzie asked if what Mr. McGown is suggesting could create unintended consequences. **Senator McKenzie** said looking at each rule individually to determine if it is retroactive could create a situation whereby two different tax applications could be applied to similar assets or income at the same time. **Senator McKenzie** said it seems there should be a uniform guiding principle for all the rules.

Mr. McGown said he has found the rule applies to essentially all open tax returns. There could be a situation where a taxpayer filed their 2008 return which then goes under audit and the Commission extended the statutes to the open return where someone else's returns are closed. Some taxpayers could be affected while others are not. **Mr. McGown** said he wants the rules to be effective post-actively and not retroactively, saying that would be more fair than the current situation.

Vice Chairman Rice invited Ms. Adrian back to the podium at the request of Senator Hill. **Senator Hill** asked her for clarification on the effective date of Rule 1.03. **Ms. Adrian** said it was approved February 2012 because there was one part of the rule that was not approved, so it was approved by concurrent resolution. That is why it does not have the effective date it would normally have.

Senator McKenzie said Mr. McGown's comments resonated with him, in that it seems a taxpayer should know what rules apply to their return when they apply them. He said he understands the need for uniformity and a standard application for the Commission people who review those returns. He asked Ms. Adrian to remind the Committee of the policy on using this particular definition of effective date, rather than having it in post-active only.

Ms. Adrian said she believes it is something she will have to look into. She said she would, of course, agree with the Tax Commission's treatment of this issue. She said one thing the Commission needs to think about is people who file amended returns.

MOTION:

Chairman Siddoway moved, seconded by **Senator Lacey** to approve **Docket No. 35-0101-1201**. During discussion, **Senator McKenzie** stated he will support the motion, but he is concerned about the issue of the Effective Date. He said it seems the issue deals with a particular rule approved last year and it would be prudent to clarify the issue for anyone who is looking to the rules for guidance. He requested the Tax Commission consider the definition of Effective Date and make it clear for both their staff and taxpayers. Upon no further discussion, the motion carried by **voice vote**.

Vice Chairman Rice invited Ms. Adrian back to the podium. **Ms. Adrian** said this docket includes non-negotiated Income Tax Administrative Rules of simple nature that comply with statutory changes. She went on to describe each rule below:

Rule 75 is amended to conform to Idaho Code § 63-3024 and adds tax brackets for calendar year 2012 and removes the information for calendar year 2007 so only five years of historical data is retained in the rule.

Rule 105 makes adjustments for taxable income pursuant to the passage of H 363. It conforms to Idaho Code § 63-3022(i) to provide that passive losses incurred in years during which a taxpayer had no activity in Idaho are not deductible. This change treats passive losses in a manner identical to the treatment of net operating losses and capital losses.

Rule 108 relates to teacher expenses pursuant to the passage of H 517. It conforms to Idaho Code § 63-3022O which removes the prohibition allowing the deduction of classroom supplies and other expenses not to exceed \$250 of elementary and secondary teachers otherwise allowable under Section 62(a)(2)(D).

Rule 121 relates to energy upgrade measures consistent with the passage of H 485. It conforms to Idaho Code § 63-3022B by revising the eligibility criteria for taking a state income tax deduction for installing energy efficiency upgrade measures within existing residences.

Rule 253 also deals with educator expenses and adds the date and leaves the rest in place for historical purposes.

Rule 285 conforms to Idaho Code § 63-3022L and § 63-3036B pursuant to the passage of H 582. It revises the provisions relating to the taxation of income of owners with an interest in a pass-through entity and regarding backup withholding for pass-through entities. It takes out the words "election under" and adds "requirement of."

Rule 286 is amended to clarify the allocation and apportionment procedures used when an S Corporation and its Qualified Subchapter S Subsidiaries (QSSS) are carrying on more than one unitary business. This rule clarifies the current practice.

Chairman Siddoway asked if a Sub S can own Sub S stock in Idaho. **Ms. Adrian** replied that she believes it can, but she'd have to look into that. **Senator Hill** said he'd have to check, as it would not be state law but rather Internal Revenue Service law. **Senator Hill** said S Corporations are very restrictive on who their stockholders can be and he said he does not believe an S Corporation can own an S Corporation.

Rule 710 relates to the Idaho investment tax credit. During negotiated rulemaking, one of the practitioners suggested moving the rule from Rule 719 into Rule 710. The amendment clarifies the order of limitations for the Idaho investment tax credit. When a taxpayer has both mobile and used property that qualifies for the Idaho investment tax credit, the eligible amount is first determined under the mobile property rules and then the used property limitation is applied.

Senator Hill clarified his statement to Chairman Siddoway that no corporation can own stock in an S Corporation.

Rules 745, 746, 747 and 748 conform to Idaho Code § 63-3029E and § 63-3029EE which corrects an oversight from the Hire One Act of 2011 by allowing companies to receive the new jobs tax credit up until the start of the Hire One Act and has a sunset date of January 1, 2017.

It was written that employers could receive the credit for employees hired as of April 15, 2011. When these rules and the legislation that surrounded these rules went away with the Hire One Act, employers were left without the credit from January 1 through April 15. This new rule fixes that oversight.

Rule 711 relates to Grocery Credits. Every year, the Tax Commission adds \$10 to the credit until it reaches \$100 for each section. The rule conforms to Idaho Code § 63-3024A which sets the amounts of the grocery credit for 2008 and provides for an increase in the amounts for subsequent years. These increases are automatic unless certain actions as provided in Idaho Code are taken by the Legislature or the Governor.

Rule 810 is amended pursuant to H 653 which relates to filing dates for the Idaho State Tax Commission. It conforms to Idaho Code § 63-217 by providing that if the date for filing any report, claim, tax return, statement or other document or making any such payment falls upon Saturday, Sunday, legal holiday or other holiday recognized by the Internal Revenue Service, such acts shall be considered timely if performed on the next day. **Ms. Adrian** said if the IRS recognizes a day as a holiday, the Idaho State Tax Commission will, too.

Senator Johnson asked about calculations used in the tax brackets. He said **Ms. Adrian** noted the tax brackets are adjusted for inflation and he'd like to know which index is used to do that. **Ms. Adrian** replied the Commission uses the Consumer Price Index, and it says in statute exactly which one to use. **Senator Johnson** said he'd like to receive a copy of that because he has not been able to find it as there are thousands of indices out there.

Senator Johnson referred to a table and gave an example. He said in Table E for taxable year beginning 2012, if one makes at least \$1 but less than \$1380, there is a tax amount. Then looking back at Table D for 2011 on the same line, the figure is \$1338. **Senator Johnson** asked if he were to take \$1380 and subtract \$1338 and divide by that lower number, that would give the percentage of inflation. **Ms. Adrian** said she believes that is correct. **Senator Johnson** followed up by asking if he took that percentage, he should be able to go to an index table referenced in statute and those numbers should match, except for maybe some rounding to hundredths or thousandths of points. **Ms. Adrian** said she believes that is correct.

Senator Johnson said when looking at the tables for each year where it says "Tax and bracket amounts were calculated using consumer price index amounts published on" such and such date, the tables all have different dates. One has May 17, another March 12, and another April 28, then May 4, and May 24 and April 13. **Senator Johnson** said it is his understanding that the indices change from month to month depending on which index being used and may or may not be a lot of change. He asked why does that date vary from year to year and why isn't there a typical date as in a contract, from where to pull those numbers. **Ms. Adrian** said she believes it goes back to the fact that the Commission has a specific index they have to use and it may not be published on the same date every year, so they have to wait until that index is published before they can use it.

Senator Johnson commented that he has had experience using a "chain index" that accounts for substitutions and has been considered by the Federal Government as an index to tally social security and other benefits. **Senator Johnson** said the chain index is a more stable index, so it works for long-term considerations. He said he thinks it is a more stable index and he has used it in contracts and saved a lot of money.

He said if an index is chosen to change the tax brackets and it's not known what is trying to be measured or captured, that potentially a lot of money could be given away by raising the brackets too high. If one is truly trying to measure the cost of living index and how prices are moving, it may vary by the price of a loaf of bread or a gallon of milk. **Senator Johnson** said he has asked the Tax Commission before and is asking again for a clear identifier on which index the Tax Commission uses so he can go back through the tables and check the numbers for himself to see if there is some validity to pursuing something such as a chain index.

He said in effect that could leave more dollars in the State bank account, though he said some people may see it as taking money away from them. He said when trying to measure the cost of living, a chain index may be more appropriate, and there is a precedent on the national level for it. **Senator Johnson** said he is interested in an identifying number since he has not found in the statute and would also like a response on the information being pulled on different dates. **Ms. Adrian** replied she would be happy to get that information to Senator Johnson.

Senator Hill said Idaho Code § 63-3024 is the statute Senator Johnson may reference regarding the Consumer Price Index and adjusting the brackets for the calendar year. He said the Tax Commission is stuck with the consumer price index, though he's not sure why they have different dates a few weeks off from one year to the next.

MOTION: **Senator Hill** moved, seconded by **Chairman Siddoway** to approve **Docket No. 35-0101-1202**. Motion carried by **voice vote**.

DOCKET NO. 35-0201-1201 **Ms. Adrian** said this docket has the Tax Commission Administrative and Enforcement Rules.

Rule 225 is amended to be consistent with Rule 140, which relates to when taxpayers make payments, the amount will go toward interest first, then the tax, and then the penalty.

Rule 310 is amended to add the interest rate for calendar year 2013 and the Revenue Ruling where the federal rate for the calculation can be found. There is a formula in statute that tells the Commission how to do this calculation.

Rule 500 is modified to conform to Idaho Code § 63-3047 which outlines the order to be "taxes, penalties or interest."

Rule 704 relates to Disclosure Rules and is amended to conform to statute allowing the exchange of information to Treasurers Office and Idaho Transportation Department (IDT), pursuant to H 687. The unclaimed property program is run by the Treasurers Office and can get taxpayer identifying numbers and addresses from the Tax Commission. A second change relates to the tax declaration for blindness. IDT requires the Tax Commission disclose to them anyone who receives a benefit or exemption for blindness.

MOTION: **Chairman Siddoway**, seconded by **Senator McKenzie**, to approve **Docket No. 35-0201-1201**. Motion carried by **voice vote**.

Vice Chairman Rice invited to the podium McLean Russell, Sales Tax Committee Chair for the Idaho State Tax Commission, to present information relating to IDAPA 35.

DOCKET NO. 35-0102-1201 **Mr. Russell** outlined the Sales Tax Administrative Rules. Rule 24 is amended to clarify that a rental of tangible personal property with an operator provided by the equipment owner will be treated as a fully operated rental regardless of whether the hired operator is an employee of the equipment owner. **Mr. Russell** said many years ago the Commission drew a bright line between a rental and a service for what the buyer is receiving. If the rental is just a piece of equipment, it was tangible. If the buyer received an operator and equipment, it was a nontaxable service. When the rule was written, most of the time the operator was an employee of the equipment owner. These days, that is not always the case. This rule allows that if an operator is provided with the equipment, it will be treated as a nontaxable service, regardless of where the operator came from.

Rule 37 is amended to clarify the exemption for the sale, lease, purchase and use of aircraft primarily utilized in transporting freight or passengers, including the definition of important terms such as "common carrier" and "public." This rule is also amended to reflect statutory changes enacted by the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident. **Mr. Russell** said under the sales and use tax, the purchase and use of anything is almost always all taxable or all not taxable, usually not anything in between. The Commission considered the use of the words "primarily used" that gives some leeway. The aircraft can be used for a nonexempt purpose some of the time as long as the primary use is for the exemption.

Mr. Russell said the most effective method to track how an aircraft is used is by looking at flight hours to see who is actually hiring the aircraft. This rule addresses who is really a member of the "public" and when is the aircraft being used as a "common carrier" as defined in Subsection h. **Mr. Russell** said this was necessary because sometimes people purchase an aircraft and hire a management company to operate, store and take care of the aircraft, such that when the owner of the aircraft is not using it, it is hired out. If that aircraft is hired out by the management company 75 percent of the time, the exemption is allowed. However, if aircraft owners, their family or employees or other nonpublic entities are using the aircraft 75 percent of the time, the exemption is not allowed and the aircraft would be subject to sales and use tax. Subsection 3 gives a new exemption for when an aircraft is repaired in Idaho, the sales of those repair parts will not be subject to sales and use tax, as long as the aircraft is owned by a nonresident. This Subsection defines nonresident.

Mr. Russell described Rule 43, which is amended to clarify whether certain fees or charges added onto the sale of tangible personal property, such as fuel surcharges or environmental fees, should be included in the taxable sales price.

Rule 44 is amended to define the term "trade down," which occurs when merchandise is traded in on the purchase of other merchandise. **Mr. Russell** explained the most common occasion is with a new car, where the value of the used car reduces how much sales tax is paid on the new vehicle. This rule provides that if a new car is worth less than the car being traded in, there will be zero sales tax owed.

Rule 72 is amended to clarify the taxability of tangible personal property removed from inventory held for resale. **Mr. Russell** said commonly a retailer will acquire inventory for resale, and they do not have to pay sales tax when they acquire it because they will resale it and charge sales tax at that time. In some cases, if they use their inventory for another purpose, they will have to pay use tax on it. For example, Jerry's Cleaning Supplies might pull some cleaning supplies off the shelf to clean their store, they will owe Use Tax on those cleaning supplies.

Rule 95 relates to the exemption for the purchase of "money operated dispensing equipment." **Mr. Russell** said when purchasing any machine used to dispense a product, such as an arcade game, the machine itself is not taxable, as long as it is operated by money. These days, there are more machines operated by credit or debit cards, which are considered cash equivalents. This rule makes sure those pieces of equipment are treated in the same manner as cash operated machines.

Rule 101 relates to trucks used for interstate commerce. This rule is amended to reflect statutory changes enacted in the last legislative session that changed the period for reviewing ongoing International Registration Plan (IRP) use tax exemptions. That period of review is now set for July 1 to June 30.

Mr. Russell explained when a truck purchased for interstate commerce is used outside of Idaho at least ten percent of the time during that period, the owner will not have to pay sales and use tax, and can continue to qualify for that exemption as long as every year, ten percent of the mileage is outside of Idaho.

Rule 109 relates to amusement devices like arcade machines or coin machines at stores that do not dispense a product. **Mr. Russell** described the system for paying sales tax on the quarters people put in those machines. Instead of calculating all the machine's sales for the year, the operator applies for a yearly sticker to put on the machine and the fee they pay covers the sales tax on that machine for the year. Subsection 1 adds that amusement devices now include not only coin, currency and token operated machines but also debit or credit card operated machines, as well as "arcade cards" that are the modern version of arcade tokens. The money on an arcade card is only for that establishment.

Rule 128 relates to what a seller's permit number looks like. The rule is amended to make minor technical corrections to bring the rule in line with current policy and procedure regarding exemption certificates. **Mr. Russell** explained anyone who makes sales has to collect sales tax and needs a permit. It was a nine digit number, but that system has changed over the years and now sellers have to have several different types of numbers for different purposes. To clarify policies, the rule describes what is needed to get a current and valid Idaho seller's permit number, including providing a federally issued Employer Identification Number (EIN) if they have one. If the permit purchaser does not have an EIN, they must provide the purchaser's driver's license number and state of issue.

Senator Hill asked for clarification in Rule 72 on how the Tax Commission defines "value" when it comes to a retailer pulling an inventory product from the shelf for personal use. He asked if it is the price an item sells for or the price paid for it. **Mr. Russell** said it is set by statute, that the value of property is presumed to be the recent sales price as available, and if it's not available, then use the fair market value as an estimate. **Senator Hill** asked why is it recent sales price and not recent purchase price. **Mr. Russell** said sales price is what is written in statute as a defined term. In the rule, there is a statement that says sales price and purchase price are interchangeable, but in statute, sales price is a defined term for sales tax purposes. **Senator Hill** asked what is in the statute, value or sales price. **Mr. Russell** answered Use Tax is on the value of the property, which is presumed to be a recent sales price, so they are both in statute.

Senator Hill gave an example of going to Krispy Kreme and getting a free donut. It says on the board the price is 96 cents. It didn't cost them 96 cents to make the donut, but that's what they sell it for. So for the free donut he got, they have to pay Use Tax on 96 cents. **Senator Hill** asked Mr. Russell if that was his understanding. **Mr. Russell** said he does not know specifically how Krispy Kreme works, so he went back to the example of the generic cleaning supply store. **Mr. Russell** said "they would look at their own cost, what they paid for it, that was the sales price for them, their purchase price, their sales price." **Mr. Russell** said the sales price to the store is their purchase price and that is what they will pay tax on.

Senator Hill said he agrees with Mr. Russell, but he's not sure all the agents at the Tax Commission understand that. **Senator Hill** said he thinks the statute needs to be clarified, because if it just says value, that would be the price the wholesaler paid for it. It's their cost, not what they sell it to customers for. **Mr. Russell** said that is correct.

MOTION: **Senator Werk** moved, seconded by **Senator Bayer**, to approve **Docket No. 35-0102-1201**. Motion carried by **voice vote**.

**DOCKET NO.
35-0109-1201**

Mr. Russell outlined the Table and Kitchen Wine Tax Administrative Rules. He noted the substance of the changes of this Wine Tax docket and the changes in the Cigarette and Tobacco Tax and Beer Tax dockets are identical. **Mr. Russell** said those who need to pay Wine Tax (or Cigarette and Tobacco Products Tax or Beer Tax) almost always have to have a bond, some sort of security with the Idaho State Tax Commission that sets forth how much they'll pay if they default in the payment of that tax. The change in this rule is to bring conformity with what is already being done regarding the types of security the Tax Commission will accept. The rule has a thorough list of what is acceptable.

Mr. Russell also described that the Tax Commission used to require reports from out-of-state distributors, but that has not been in practice for a long time, so that requirement is removed from the rule.

MOTION: **Senator Lacey** moved, seconded by **Senator Vick**, to approve **Docket No. 35-0109-1201**. Motion carried by **voice vote**.

**DOCKET NO.
35-0110-1201**

Mr. Russell outlined the Idaho Cigarette and Tobacco Products Administrative Rules, which provide a list of what is acceptable security for tax required from wholesalers of cigarette and tobacco products.

MOTION: **Senator Lacey** moved, seconded by **Senator Werk**, to approve **Docket No. 35-0110-1201**. Motion carried by **voice vote**.

**DOCKET NO.
35-0112-1201**

Mr. Russell outlined the Idaho Beer Tax Administrative Rules, which provide a list of what is acceptable security for tax required from wholesalers of beer sales.

MOTION: **Senator Lacey** moved, seconded by **Chairman Siddoway**, to approve **Docket No. 35-0112-1201**. Motion carried by **voice vote**.

**PASSED THE
GAVEL:** Vice Chairman Rice passed the gavel back to Chairman Siddoway.

ADJOURNED: There being no further business, **Chairman Siddoway** adjourned the meeting at 4:29 p.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary