

Dear Senators PATRICK, Martin, Schmidt, and
Representatives HARTGEN, Anderson, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Labor:

IDAPA 09.01.35 - Unemployment Insurance Tax Administration Rules - Proposed Rule (Docket
No. 09-0135-1601).

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 09/26/2016. 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 10/25/2016.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

FROM: Division Manager - Mike Nugent

DATE: September 09, 2016

SUBJECT: Department of Labor

IDAPA 09.01.35 - Unemployment Insurance Tax Administration Rules - Proposed Rule (Docket No. 09-0135-1601)

The Department of Labor conducted negotiated rule making and is proposing to amend its unemployment insurance rules to exclude as wages for unemployment insurance purposes payments by a partnership to its partner or payment by a sole proprietorship by its owner. It appears this proposed rule is promulgated within the scope of statutory authority granted to the Department of Labor.

cc: Department of Labor
Patricia Fitzpatrick

IDAPA 09 - IDAHO DEPARTMENT OF LABOR
09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES
DOCKET NO. 09-0135-1601
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 72-1333, 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 September 21, 2016.

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:

To clarify that payments by a partnership to its partner or by a sole proprietorship to its owner are excluded as wages for purposes of unemployment insurance tax.

The rule adds an additional exclusion to wages. It would exclude as wages payments by a partnership to its partner or payment by a sole proprietorship by its owner. This is currently how payments by a partnership to its partners or payments by a sole proprietorship to its owner should be handled. Providing this in a rule would help clarify this for partners, partnerships and owners of a sole proprietorship business.

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 Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 56](#).

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 Larry Ingram (208) 332-3570, ext. 3543.

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 September 28, 2016.

DATED this 29th Day of July, 2016.

Larry Ingram
Bureau Chief
Department of Labor
317 West Main Street
Boise, ID 83735
(208) 332-3570 ext. 3543
larry.ingram@labor.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0135-1601
(Only Those Sections With Amendments Are Shown.)

061. DEFINITIONS.

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau. (3-22-07)

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code. (3-19-99)

02. Wages. The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

c. Commissions for past services in covered employment; (3-19-99)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

e. Salary advances against commissions; (3-19-99)

f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

h. Vacation or "idle-time" pay, no matter when paid; (3-19-99)

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. (3-19-99)

k. Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Section 72-1328, Idaho Code. (3-15-02)

03. Exclusions From Wages. The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

b. Bonuses paid for signing a contract; (3-19-99)

- c.** Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)
- d.** Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)
- e.** Rental charge for personal equipment provided by the employee on the job: if (3-19-99)

 - i. There is a rental agreement; and (3-19-99)
 - ii. The worker has received a reasonable wage for services performed; and (3-19-99)
 - iii. The fees are held separately on the employer's records. (3-19-99)
- f.** Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)
- g.** Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)

 - i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)
 - ii. To account adequately to the employer for these expenses; and (3-19-99)
 - iii. To return any excess reimbursement or allowance. (3-19-99)
- h.** Payments for employee travel expenses, provided: (3-19-99)

 - i. Payments are job related expenses while performing services; and (3-19-99)
 - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)
 - iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)
- i.** Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)
- j.** Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. (3-15-02)

k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner. ()

04. Treatment of Limited Liability Companies. For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. (4-4-13)

05. Domestic Employment. Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter

- of a college fraternity or sorority” includes, but is not limited to, services rendered by: (3-15-02)
- a. Cooks; (3-15-02)
 - b. Waiters; (3-15-02)
 - c. Butlers; (3-15-02)
 - d. Maids; (3-15-02)
 - e. Janitors; (3-15-02)
 - f. Laundresses; (3-15-02)
 - g. Furnacemen; (3-15-02)
 - h. Handymen; (3-15-02)
 - i. Gardeners; (3-15-02)
 - j. Housekeepers; (3-15-02)
 - k. Housemothers; and (3-15-02)
 - l. In-home caregivers. Ref. Section 72-1315, Idaho Code. (3-15-02)

06. Casual Labor. Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars (\$50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Section 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, “services not in the course of the employer's trade or business,” refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (4-11-06)

07. Willfully. When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with “intentionally,” “designedly,” “without lawful excuse,” and therefore not accidental. Ref. Section 72-1372 and 72-1351A, Idaho Code. (3-22-07)