

Dear Senators BRACKETT, Hagedorn, Buckner-Webb, and
Representatives PALMER, Shepherd, King:

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

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No.
35-0105-1601).

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 05/25/2016. 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 06/23/2016.

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 Transportation Committee and the House Transportation & Defense Committee

FROM: Legislative Research Analyst - Kristin Ford

DATE: May 06, 2016

SUBJECT: State Tax Commission

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No. 35-0105-1601)

The Idaho State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules. According to the commission, the purpose of the proposed changes to IDAPA 35.01.05 is to add statutory cross-references to administrative appeal rights, to update references to International Fuel Tax and International Registration Plan agreements and documents which are incorporated by reference, to remove a rule which will reappear in part in a separate, negotiated rule docket, to specify the Idaho Code section governing the appeal of a denial of a bond waiver request, to remove reference to a gaseous fuels permit program repealed by the Idaho Legislature in 2015 House Bill 132, and to add clarifying language.

The commission notes that negotiated rulemaking was not conducted because the changes were to eliminate dated material, update external references, and make changes to add clarity.

The proposed rule changes by the Idaho State Tax Commission appear to be within their statutory authority pursuant to Sections 63-2434, 63-2470, and 67-5229, Idaho Code.

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-1601

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 Sections 63-105 and 63-2427, 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 May 18, 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:

Motor Fuels Tax Rule 003, Administrative Appeals. This rule will be changed to add additional references to appeal rights and make changes to add clarity.

Motor Fuels Tax Rule 004, Incorporation by Reference. This rule will be changed to update the incorporated references.

Motor Fuels Tax Rule 140, Deductions. This rule will be deleted. Subsections 140.01 and 140.04 will be added to Motor Fuels Tax Rule 130. Motor Fuel Tax Rule 130 will be a negotiated rule.

Motor Fuels Tax Rule 311, IFTA License Bond. The reference in Subsection 311.05 will be updated to reference section 63-2470, Idaho Code.

Motor Fuels Tax Rule 400, IFTA Licensing and Special Fuel Permitting Requirements for Motor Vehicles over Twenty-Six Thousand Pounds Maximum Gross Weight. When HB 132 passed in the 2015 legislative session, it eliminated the gaseous fuels permit program. References to the gaseous fuel decal will be eliminated. The rule will also be changed to add clarity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were to eliminate dated material, update external references, and make changes to add clarity.

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:

The International Fuel Tax Agreement is being incorporated by reference because it is adopted by Section 63-2442A(1), Idaho Code.

The International Registration Plan is being incorporated by reference because it is adopted by Section 49-435(1), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don W. Williams, (208) 334-7855. 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 May 25, 2016.

DATED this 4th Day of May 2016.

Don W. Williams
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
Phone (208) 334-7855
Fax (208) 334-7844
Don.williams@tax.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1601
(Only Those Sections With Amendments Are Shown.)**

003. ADMINISTRATIVE APPEALS (RULE 003).

~~Sections 63-2434, 63-2442A, 63-2470, 41-4909, 49-439, and 63-3045 through 63-3049, Idaho Code~~

This chapter ~~does~~ allows administrative relief ~~in the provisions outlined as provided~~ under Sections 63-2434, ~~63-2442A, 63-2470,~~ 41-4909, ~~49-439,~~ and 63-3045 through 63-3049, Idaho Code and pursuant to Rules ~~promulgated adopted~~ by the Commission found in the Commission's administration and enforcement rules relating to income taxation, IDAPA 35.02.01. ~~(4-6-05)~~()

004. INCORPORATION BY REFERENCE (RULE 004).

Sections 63-2434, 63-2442A, 41-4909, and 49-439, Idaho Code. ~~The following documents are incorporated by reference:~~ ~~(3-25-16)~~()

01. Income Tax Administration and Enforcement Rules. These rules incorporate the sections of IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," relating to the statutes authorized by Section 63-2434, Idaho Code. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (3-25-16)

02. International Fuel Tax Agreement. These rules incorporate the International Fuel Tax Agreement (IFTA) governing documents: the IFTA Articles of Agreement (revised ~~July 1, 2013~~ January 1, 2017), the IFTA Procedures Manual (revised January 1, 201~~5~~7), and the IFTA Audit Manual (revised January ~~20, 2012~~ 1, 2017). IFTA is an international agreement between jurisdictions to encourage use of the highway system by uniformly administering fuels use tax laws. The IFTA governing documents are equally binding on all IFTA member jurisdictions and licensees. Motor fuels users licensed or required to be licensed to operate under an Idaho IFTA license must comply with all applicable rules contained in these rules. These documents can be found on the IFTA website at <http://www.iftach.org>. ~~(3-25-16)~~()

03. International Registration Plan. These rules incorporate the International Registration Plan (IRP) governing documents: The IRP Plan (revised January 1, 201~~5~~7) and IRP Audit Procedures Manual (revised July 1, 2013). IRP is an international registration reciprocity agreement. The documents are included to aid the Commission in complying with IRP registration application audits authorized in Chapter 4, Title 49, Idaho Code. These documents can be found on the IRP website at <http://www.irponline.org>. ~~(3-25-16)~~()

(BREAK IN CONTINUITY OF SECTIONS)

138. -- ~~139~~40. (RESERVED)

~~140. DEDUCTIONS (RULE 140).~~
~~Section 63-2407, Idaho Code.~~

~~01. Motor Fuels and Petroleum Products Presumed To Be Distributed.~~ Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

~~02. Distributor's and Retail Dealer's Allowances for Motor Fuels.~~ (This Subsection only applies to sales of motor fuels made before December 1, 2007.) The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for motor fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of motor fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: (4-2-08)

~~a. That the amount of the allowance has been passed on; or (7-1-98)~~

~~b. A statement that the allowance has been deducted in determining the price. (7-1-98)~~

~~03. Distributor's Allowance for Motor Fuels.~~ (This subsection only applies to sales of motor fuels made on and after December 1, 2007.) The State Tax Commission will allow a two percent (2%) allowance granted in Section 63-2407, Idaho Code, to reimburse the licensed distributor for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty. (4-2-08)

~~04. Exported Fuel.~~ Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)

~~a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)~~

~~b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or (7-1-98)~~

~~c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)~~

~~d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. (7-1-98)~~

~~e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)~~

~~05. Bad Debt Write Off.~~ (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.) A distributor may take a bad debt tax credit for fuel taxes paid on sales made after July 1, 1995. After the debt has been written off for income tax purposes in the distributor's records, the distributor may claim the credit on its fuel tax report for the month in which it made the bad debt adjustment. (4-2-08)

~~a. First in/first out method for partial payments. When a distributor receives partial payments on a~~

~~fuel account that includes taxable and nontaxable fuel sales, the distributor must apply the payments to the unpaid fuel sales on a first in/first out basis before calculating the amount of the bad debt credit. (4-11-06)~~

~~**b.** Proration of partial payments. When a distributor receives partial payments on a fuel account, before and/or after claiming a bad debt credit on its fuel tax report, the distributor must prorate the taxable and nontaxable fuel sales that occurred on the same day or on the same invoice for each such account. (4-11-06)~~

~~**e.** Amount of credit allowed. A distributor may claim a credit or refund on its monthly fuels tax report for fuels tax that is found to be uncollectible. If both nontaxable and taxable fuel sales are included in the fuel account, a distributor may take credit only for the portion of the bad debt that represents unpaid fuels tax. (4-11-06)~~

~~**d.** Multiple accounts—allocation of unspecified payments. If a distributor receives an unspecified payment from a customer that may be applied to an unpaid fuel account and nonfuel accounts, the distributor must allocate the payment to the various accounts upon receipt of the partial payment. If the distributor fails to make the allocation at the time the payment is received, the entire amount of the payment will be allocated to the customer's fuel account for purposes of calculating the amount of the credit. (4-11-06)~~

~~**e.** Statute of limitations for bad debt claim. A distributor may receive a credit or refund of fuels taxes in Subsection 140.04 of this rule if a written claim is filed with the State Tax Commission within three (3) years from the date the tax was paid to the State Tax Commission. The State Tax Commission will review all such refund claims. (4-11-06)~~

(BREAK IN CONTINUITY OF SECTIONS)

311. IFTA LICENSE BOND (RULE 311).

Sections 63-2442A and 63-2470, Idaho Code

01. General. The State Tax Commission (Commission) may require an International Fuel Tax Agreement (IFTA) licensee to post a bond following the requirements of the IFTA Agreement in order to maintain his license. A bond may be required when he files returns or remits taxes, separately or in combination, after the due date at least three times within a three year period. When a bond is required, the licensee must post the bond within thirty (30) days from the date of the request. When no bond is posted within the thirty (30) days, the license is automatically revoked and it must be surrendered to the Commission. An assessment may be made for any unreported tax liability based on actual records or an estimate. (4-11-15)

02. Reinstating Revoked Licenses. An applicant may be required to post a bond when he has previously had his IFTA license revoked or is related to a person who has previously had his IFTA license revoked. An applicant is related to a person who has previously had his IFTA license revoked when: (4-11-15)

a. The applicant is owned at least twenty-five percent (25%) by a person or persons who has previously had his IFTA license revoked. (4-11-15)

b. The applicant is operated or controlled by a person or persons who has previously had his IFTA license revoked. Operation and control includes, but is not limited to, an officer or director or other person authorized by the applicant to engage in the business or commercial activity of the applicant. (4-11-15)

03. Amount and Type of Bond. The amount of the bond will be one thousand dollars (\$1,000) or twice the estimated tax liability for the licensee's quarterly tax reporting period, whichever is greater, without regard to actual or anticipated tax-paid credits. Any type of bond allowed by the IFTA Agreement or these rules may be secured. The bond amount will be reviewed annually, but may be reviewed at any time, thereafter. The licensee's returns and records may be reviewed to determine if the bond amount will be raised, lowered, or remain unchanged. (4-11-15)

04. Bond Waiver Request. The licensee may request a waiver of bond requirement within thirty (30) days from the approval of the license renewal request. The licensee must be a quarterly filer. The licensee must have submitted the quarterly returns and paid the tax due by the due date for one calendar year. An annual filer may not

request a bond waiver.

(4-11-15)

05. Denial of Bond Waiver Request and Appeal of Denial. The Commission may deny a bond waiver request when it determines that waiving the bond requirement puts the financial interests of IFTA jurisdictions in jeopardy. The licensee must follow the appeal procedure in Section ~~RI400, IFTA Articles of Agreement (revised July 2013)~~ 63-2470, Idaho Code, to appeal the denial of a bond waiver request. ~~(4-11-15)()~~

(BREAK IN CONTINUITY OF SECTIONS)

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING ~~REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT~~ (RULE 400).

~~The following rules relate to the special fuels tax licensing system provided in Sections 49-434, 63-2401, 63-2434, 63-2438 through 63-2440, and 63-2442A, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA.~~ Sections 49-434, 63-2401, 63-2434, 63-2438 through 63-2440, and 63-2442A, Idaho Code, ~~inclusive and, where expressly stated, supplements the requirements of IFTA.~~ ~~(7-1-98)()~~

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels as defined in Section 63-2401, Idaho Code, on the highways of this state without having obtained one (1) of the following: (3-30-07)

a. A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)

b. A temporary fuel tax permit from the Idaho Transportation Department. ~~(3-15-02)()~~

c. An IFTA license. (7-1-98)

~~d. In the case of vehicles powered by gaseous fuels, a gaseous fuels permit as provided by Section 63-2424, Idaho Code.~~ ~~(4-7-11)~~

02. Federal or In-State Governmental Vehicles. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (3-15-02)

03. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

04. Temporary Fuel Tax Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a temporary fuel tax permit from the Idaho Transportation Department in the manner provided and required by that department. ~~(3-30-07)()~~

05. Failure to Obtain an IFTA License, or Temporary Fuel Tax Permit, or a Gaseous Fuels Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license, or an Idaho temporary fuel tax permit, ~~or a gaseous fuels permit for motor vehicles powered by gaseous fuels as provided by Section 63-2424, Idaho Code~~, is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections ~~63-2434 and 63-3065~~, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a temporary fuel tax permit. ~~(4-7-11)()~~