

Dear Senators JOHNSON, Bayer, Burgoyne, and  
Representatives COLLINS, Trujillo, Erpelding:

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

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket  
No. 35-0201-1701);

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket  
No. 35-0201-1703).

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 11/16/2017. 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 12/15/2017.

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 Local Government & Taxation Committee and the House Revenue & Taxation Committee

**FROM:** Senior Legislative Research Analyst - Kristin Ford

**DATE:** October 27, 2017

**SUBJECT:** State Tax Commission

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket No. 35-0201-1701)

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket No. 35-0201-1703)

1. Proposed Rule (Docket No. 35-0201-1701) - Tax Commission Administration and Enforcement Rules.  
The Idaho State Tax Commission submits notice of proposed rulemaking relating to the Tax Commission Administration and Enforcement Rules. This docket proposes to add three new rules that provide guidance for the appeals process. Rule 326 defines terms. Rule 327 implements the provisions of section 63-3045, Idaho Code, which requires certain restrictions on communications between Tax Commission employees in order to ensure an independent administrative redetermination of a taxpayer's deficiency. Rule 328 provides requirements for a meeting between Tax Commission divisions to include an opportunity for a taxpayer to participate. The Commission states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-6, pages 67-69. The proposed rule changes appear to be within the State Tax Commission's authority under sections 63-105, 63-3039 and 63-3045, Idaho Code.

2. Proposed Rule (Docket No. 35-0201-1703 - Tax Commission Administration and Enforcement Rules.  
The Idaho State Tax Commission submits notice of proposed rulemaking relating to the Tax Commission Administration and Enforcement Rules. The proposed rule amends Rule 310 to update the Tax Commission's chart of Idaho interest rates and applicable Internal Revenue Service Revenue Ruling with 2018 information. The Commission states that negotiated rulemaking was not conducted due to the simple nature of the change. The proposed rule changes appear to be within the State Tax Commission's authority under sections 63-105 and 63-3039, Idaho Code.

cc: State Tax Commission  
Sherry Briscoe

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1701**

#### **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 63-3039, 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 October 18, 2017.

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:

Rules 326, 327 and 328 are being promulgated to provide guidance for the appeals process. These rules will establish definitions, provide restrictions, exceptions, permitted communications and procedures for a taxpayer to participate in communications between the appeals unit and the originating division and others during the redetermination process.

**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 June 7, 2017, Idaho Administrative Bulletin, [Vol. 17-6, pages 67-69](#).

**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 Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 25, 2017.

DATED this 1st day of September, 2017.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1701  
(Only Those Sections With Amendments Are Shown.)

**326. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: DEFINITIONS (RULE 326).**

Section 63-3045, Idaho Code

For purposes of Rules 327 and 328, the following definitions apply: ( )

01. Appeals Unit. Appeals unit means the unit created within the State Tax Commission with the responsibility for performing the independent administrative redetermination provided for in Section 63-3045, Idaho Code. ( )

02. Appeals Officer. Appeals officer means the staff of the appeals unit performing the redetermination. ( )

03. Originating Division. Originating division means the division within the State Tax Commission that issued the notice of deficiency determination or other determination under dispute. ( )

04. Petitioner. Petitioner means the taxpayer or the taxpayer's authorized representative. ( )

05. Unable to Participate. Unable to participate means the petitioner had expressed intent to participate in the discussion with the originating division but did not participate and did not provide adequate notice to the appeals officer to reschedule the discussion. ( )

**327. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: RESTRICTIONS, EXCEPTIONS, AND PERMITTED COMMUNICATIONS (RULE 327).**

Section 63-3045, Idaho Code

01. In General. Section 63-3045, Idaho Code, does not adopt the formal ex parte restrictions on communications that would apply in a judicial proceeding or under Section 67-5253, Idaho Code. However, the State Tax Commission will apply the following procedures as part of its redetermination process. The provisions contained within this rule do not create substantive rights affecting the taxpayer's tax liability, or the State Tax Commission's ability to determine, assess, or collect the tax liability (including statutory interest and any penalties, if applicable). ( )

02. Restrictions on Certain Communications. An appeals officer may engage in discussions relating to the petitioner's petition with employees of the originating division, including the strengths and weaknesses of the issues, new issues, and the parties' positions, only after having provided the petitioner the opportunity to participate in the discussions. ( )

03. Exceptions. The limitation on communications contained within Subsection 327.02 of this rule does not apply to communications with or by: ( )

a. A Commissioner of the State Tax Commission; ( )

b. An employee of a State Tax Commission outside of the originating division; ( )

c. An employee of the Idaho office of Attorney General; ( )

d. An employee of another state agency that the State Tax Commission has entered into an exchange agreement with; ( )

e. An employee of the Internal Revenue Service; or ( )

f. An employee of the Multi State Tax Commission. ( )

**04. Permitted Communications.** Communications with the originating division that do not require an appeals officer to first provide the petitioner with an opportunity to participate in the communication include: ( )

a. Any matters that are ministerial, administrative, or procedural including routine account inquiries, transcript requests, and other similar inquiries because they do not involve more than a limited amount of dialogue or interaction between appeals and the originating division. ( )

b. Communications in which the petitioner is given an opportunity to participate and is unresponsive, declines, or is unable to participate in a discussion between an appeals officer and the originating division. ( )

c. Assisting an appeals officer in locating or indexing documents within the originating division's audit file that were relied upon by the originating division when it issued its notice of deficiency determination. ( )

d. Requesting verification of calculations that an appeals officer may utilize as part of a settlement or decision. ( )

e. Obtaining a response from the originating division when the petitioner provides new information or makes new legal arguments during the redetermination. The originating division's response must be in writing and a copy of the written response provided to the petitioner. ( )

f. Requesting confirmation of calculations that the petitioner has provided during the redetermination process. ( )

g. Requesting verification that information provided by the petitioner during the redetermination is the same or different from what was previously submitted to the originating division. ( )

h. A settlement meeting conducted in accordance with Rule 501 of these rules. ( )

**328. OPPORTUNITY TO PARTICIPATE; NOTICE TO PETITIONER (RULE 328).**

**01. Notification and Participation.** If an appeals officer believes a discussion with staff from the originating division is warranted to review matters restricted by Subsection 327.02 of these rules, an appeals officer shall provide petitioner reasonable notice of the time and date of any discussion. Such notice may be provided to the petitioner by telephone, mail or electronic form and pursuant to Section 63-4003, Idaho Code. An appeals officer shall make a reasonable effort to accommodate the petitioner's schedule but will not unduly delay the discussion. The petitioner may participate by telephone or in-person at the State Tax Commission office in Boise, Idaho, and any discussion will be held during normal business hours. ( )

**02. Additional Petitioner Participation Information.** Any discussion held under this rule that includes petitioner participation is not an informal hearing under Rule 325 of these rules and does not start the one hundred and eighty (180) day period for issuing a final decision. ( )

**329. -- 399. (RESERVED)**

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES**

**DOCKET NO. 35-0201-1703**

#### **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 63-3039, 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 October 18, 2017.

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 to add the interest rate for calendar year 2018 and the Revenue Ruling where the federal rate for the calculation can be found.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the changes were 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 Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 25, 2017.

DATED this 1st day of September, 2017.

Cynthia Adrian  
Tax Policy Specialist  
Idaho State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
(208) 334-7670

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1703**  
**(Only Those Sections With Amendments Are Shown.)**

**310. INTEREST RATES (RULE 310).**  
Sections 63-3045 and 63-3073, Idaho Code

**01. In General.** The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.  
(4-6-05)

**02. Idaho Interest Rates and Applicable Revenue Rulings.**

<b>PERIOD</b>	<b>RATE OF INTEREST</b>	<b>INTERNAL REVENUE SERVICE REVENUE RULING</b>
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24

<b>PERIOD</b>	<b>RATE OF INTEREST</b>	<b>INTERNAL REVENUE SERVICE REVENUE RULING</b>
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22
Calendar Year 2016	4% simple interest	Revenue Ruling 2015-19
Calendar Year 2017	3% simple interest	Revenue Ruling 2016-20
<u>Calendar Year 2018</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2017-17</u>

~~(3-29-17)~~ ( )