

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Thursday, January 17, 2019

**TIME:** 3:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Rice, Vice Chairman Grow, Senators Hill, Vick, Anthon, Lakey, Cheatham, Burgoyne, and Nye

**ABSENT/ EXCUSED:** None

**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 Rice** called the meeting of the Senate Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

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

**DOCKET NO. 35-0102-1801** **Idaho Sales & Use Tax Administrative Rules. Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), said the proposed changes revise language in Idaho Code § 63-3622GG, regarding exempted parts installed in nonresident aircraft. He explained this issue has not been addressed in rule. The proposed rulemaking would add clarifying language regarding which parts are exempt. **Mr. Shaner** said the rules cross reference exemption for parts installed in non-resident aircraft in Idaho Code § 63-3613. **Mr. Shaner** explained Idaho Code § 63-3619 requires the Commission to provide retailers with schedules for tax collection on sales which involve a fraction of a dollar and updates current practices.

**Mr. Shaner** affirmed there was no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 35-0102-1801**. **Chairman Rice** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0102-1802** **Idaho Sales & Use Tax Administrative Rules. Mr. Shaner** said the Docket provides guidance on where a taxpayer can find information about the administrative appeals process available to them. The proposed rulemaking will add reference to additional areas within Idaho Code Administrative Rules, specifically, Idaho Code §§ 63-3626, 63-3621, 63-3633, and 63-3634 with a reference to Idaho Code § 121 and Idaho Administrative Procedure Act (IDAPA) 53.02.02: "The Tax Commission Administration and Enforcement Rules."

**Mr. Shaner** said specific topics relating to motor vehicles including gifts, military personnel and exemptions were discussed. The proposed rulemaking updated the rule to reflect changes regarding a tax exemption claim removal and a new form created for gift transfers. The form name will be updated and given statutory reference.

**Mr. Shaner** stated the proposed rulemaking adds guidance that directs financial institutions to obtain a permit if they are collecting sales taxes. They can then properly report the tax collected.

**Mr. Shaner** affirmed that there was no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**DISCUSSION:**

**Senator Burgoyne** asked if there were references to vessels and non-resident Limited Liability Companies (LLCs) in other sections. **Mr. Shaner** said he did not know but could provide the information. **Chairman Rice** asked how soon the Committee could have an answer to **Senator Burgoyne's** question regarding vessels. **Mr. Shaner** stated that he could have that information quickly. **Senator Nye** asked about language consistency and the use of "vessels" in this Docket. **Mr. Shaner** replied there may have been an oversight, but it was not intentionally done. **Senator Lakey** asked if the word "aircraft" should be added. **Mr. Shaner** replied he did not know and would provide information in the near future.

**Chairman Rice** asked if a non-resident could form an LLC, or other legal entity formed under the laws of another state, to bypass the statute. **Mr. Shaner** replied in the negative; taxes would be triggered by getting a license at the Department of Motor Vehicles (DMV).

**Chairman Rice** asked if the State would also treat a canoe under the same circumstances. **Mr. Shaner** replied he did not know and would provide information in the near future. **Senator Burgoyne** asked if there was a statutory basis for the language used. **Mr. Shaner** responded that the other rules would give clarification.

**Mr. Shaner** proposed a rule making change, relating to county assessors and financial institutions, that sales taxes are turned over to the Commission if they are collected as part of financing a vehicle or vessel.

**Mr. Shaner** stated a few credit unions had put the sales commission and sales tax in a lump sum which was then presented to the Commission. This lowered the efficiency of the Commission as they had to determine the sales tax value from the lump sum.

**Senator Lakey** asked why financial institutions needed a sellers permit, what the process was to get a permit, and if there was a fee. **Mr. Shaner** said it would make the Commission more efficient, the process was online, and there was no fee with the permit. **Chairman Rice** asked if all banks who provided loans on cars are required to have a sellers permit. **Mr. Shaner** replied in the negative. **Chairman Rice** asked if there was a statute stating whether or not financial institutions could be required to use forms instead of applying for a permit. **Mr. Shaner** replied in the negative.

**Senator Burgoyne** asked what kind of transactions involved financial institutions remitting taxes to the Commission, what kind of tangible personal property is being discussed, and what the nature of those transactions are. **Mr. Shaner** replied in the context of the rule change, it was limited to whether or not a financial institution was acting as a retailer. The change would not be dealing with repossessed or resold cars.

**Senator Burgoyne** and **Mr. Shaner** discussed how the Commission could be more efficient with better policies.

**MOTION:**

**Senator Lakey** moved that **Docket No. 35-0102-1802** be held subject to the call of the Chair. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
35-0102-1803**

**Idaho Sales & Use Tax Administrative Rules. Mr. Shaner** explained that **Docket No. 35-0102-1803** amends the Idaho Sales Tax Act to provide a presumption that under certain conditions, out-of-state retailers making sales to Idaho customers are retailers engaged in business in Idaho. It revises language to reflect the rulemaking and includes a list of entities that must overcome the presumption defined by Idaho Code § 63-3611 and a statutory reference. **Mr. Shaner** said the rulemaking change also updates Idaho Code § 63-3621 which includes the use of food or beverages donated to individuals or nonprofit organizations.

**Mr. Shaner** stated the updates also amend the exemption for Research and Development at the Idaho National Laboratory (INL) and include language revisions to conform to Idaho Code including a statutory reference. **Mr. Shaner** explained the changes which apply to the current National Automobile Dealers Association (NADA) standard "Clean Retail Value." and provide clarity about how these are reviewed and valued by the Commission. **Mr. Shaner** said the proposed changes clarify the language in a list form required to satisfy a refund claim. They also provide description and guidance claim forms. The language is updated to conform to the statute.

**Mr. Shaner** affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**DISCUSSION:**

**Senator Burgoyne** asked if the language in **Docket No. 35-0102-1803** was informational. **Mr. Shaner** replied in the affirmative and that it was also part of H 578 (2018). **Mr. Shaner** listed changes in section 106.05b and 106.05c for either a low bill of sale or no bill of sale. The DMV uses the NADA guide to determine "Average Trade-in Price", including photographs, the vehicle itself, and documentation with a statement of reason of sale. **Chairman Rice** asked for the definition of "dramatic difference" and why the Commission should go with the average. **Mr. Shaner** replied the Commission would be more efficient if it used the average. **Senator Lakey** said he was not sure this was the best way to carry out this particular policy. **Senator Hill** said he supports the rule change.

**Chairman Rice** commented on a distinction regarding the no bill of sale or barter situations and agreed with Senator Hill. However, regarding a bill of sale, these were major changes for section 106.05b and for section 106.05c and section 106.05d there were improvements. He expressed concern that tax payers would be charged a higher sales tax rate by creating presumptions of a value that contradicts their bill of sale.

**Senator Burgoyne** asked if the changes would make a common transaction too complicated. **Mr. Shaner** said the rule change would increase efficiency of the Idaho Department of Transportation (ITD) and DMV employees. **Senator Burgoyne** asked if the changes prevent off-sets as originally written. **Mr. Shaner** replied in the affirmative.

**MOTION:**

**Chairman Rice** moved to approve **Docket No. 35-0102-1803**, excluding section 106.05b. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0106-1801** **Hotel/Motel Room and Campground Sales Tax Administrative Rules. Mr. Shaner** presented **Docket No. 35-0106-1801** stating the changes provide guidance regarding the administrative appeals process. They also added references to additional areas within Idaho Code and Administrative Rules.

**Mr. Shaner** indicated where a tax payer can find information regarding the administrative process and that there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was not conducted.

**MOTION:** **Senator Vick** moved to approve **Docket No. 35-0106-1801**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0109-1801** **Idaho County Option Kitchen and Table Wine Tax Administrative Rules. Mr. Shaner** presented **Docket No. 35-0109-1801** with the rule being amended to change the term "wholesaler" to "distributor."

**Mr. Shaner** affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**MOTION:** **Senator Cheatham** moved to approve **Docket No. 35-0109-1801**, **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0110-1801** **Idaho Cigarette & Tobacco Products Tax Administrative Rules. Mr. Shaner** presented **Docket No. 35-0110-1801** and said the proposals limit all wholesalers that stamp cigarettes to an unused stamp inventory equal to two times their average tax liability. He said bonded and unbonded wholesalers will have the same limitations on their unused stamp inventory.

**Mr. Shaner** affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**DISCUSSION:** **Chairman Rice** and **Mr. Shaner** discussed how stamp value is determined and increased over time.

**MOTION:** **Senator Anthon** moved to approve **Docket No. 35-0110-1801**. **Senator Cheatham** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0110-1802** **Idaho Cigarette & Tobacco Products Tax Administrative Rules. Mr. Shaner** presented **Docket No. 35-0110-1802** and stated the tax will amend all codes and rules in the administrative appeals process, including requirements to file an appeal and other steps prior to possible judicial review. **Mr. Shaner** said the changes will correct the titles of "distributor" and "wholesaler" to match the statute.

**Mr. Shaner** affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**MOTION:** **Senator Burgoyne** moved to approve **Docket No. 35-0110-1802**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 35-0114-1801** **Prepaid Wireless E911 Fee Administrative Rules. Mr. Shaner** presented **Docket No. 35-0114-1801**, and explained the proposed rule making will add references to IDAPA section 121.

**Mr. Shaner** affirmed there is no fiscal impact to the General Fund. There is no incorporation by reference. Negotiated rulemaking was conducted.

**MOTION:** **Senator Anthon** moved to adopt **Docket No. 35-0114-1801**. **Senator Cheatham** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Vice Chairman Grow** adjourned the meeting at 4:17 p.m.

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Senator Rice  
Chair

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Carol Waldrip  
Secretary

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Jonathan von Nieda  
Assistant Secretary