

Dear Senators RICE, Grow, Nye, and  
Representatives HARRIS, Addis, Necochea:

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

IDAPA 35.01.07 - Kilowatt Hour Tax Administrative Rules (New Chapter) - Proposed Rule (Docket  
No. 35-0107-2101).

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 12/03/2021. 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 12/31/2021.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondoff**  
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:** Division Manager - Kristin Ford

**DATE:** November 16, 2021

**SUBJECT:** State Tax Commission

IDAPA 35.01.07 - Kilowatt Hour Tax Administrative Rules (New Chapter) - Proposed Rule (Docket No. 35-0107-2101)

#### Summary and Stated Reasons for the Rule

The Idaho State Tax Commission submits notice of proposed rulemaking relating to Kilowatt Hour Tax Administrative Rules. This proposed rule enacts a chapter of rules to govern the filing of statements of electric generating producers with the State Tax Commission and the exemption of certain electricity from taxation as set forth in statute. Some language from the previous edition of the Kilowatt Hour Tax Administrative Rules was removed if it restated statute or could be communicated on the agency's website instead.

#### Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 5, 2021 edition of the Idaho Administrative Bulletin, Vol. 21-5, page 26. No fiscal impact on the state general fund exceeding \$10,000 is expected.

#### Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to sections 63-105, Idaho Code, and chapter 27, title 63, Idaho Code.

cc: State Tax Commission  
Kimberlee Stratton

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

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**IDAPA 35 – IDAHO STATE TAX COMMISSION**  
**35.01.07 – KILOWATT HOUR TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0107-2101 (NEW CHAPTER)**  
**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 63-105, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>Thursday, October 21, 2021 @ 10:30 a.m. (MT)</b>
<b>State Tax Commission Coral Conference Room 11321 W. Chinden Blvd., Bldg. 2 Boise, Idaho 83714</b>

The hearing site 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:

We deleted sections that restated statute and sections or text that could be communicated on our website instead.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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 as a result of this rulemaking: NA.

**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 May 5, 2021 Idaho Administrative Bulletin, [Vol. 21-5, page 26](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending rule.

**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: NA.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian using the contact information below.

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 October 27, 2021.

DATED this October 6th, 2021.

Cynthia Adrian, Income Tax Research Specialist  
Idaho State Tax Commission  
Taxpayer Resources Unit, Tax Research  
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714

PO Box 36, Boise ID 83722-0036  
[cynthia.adrian@tax.idaho.gov](mailto:cynthia.adrian@tax.idaho.gov)  
(208) 332-6691

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0107-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**35.01.07 – KILOWATT HOUR TAX ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY.**

In accordance with Sections 63-105 and 63-2701, Idaho Code, the Tax Commission has promulgated rules implementing the provisions of the Idaho Kilowatt Hour Tax Act. The rules relating to the administration and enforcement of kilowatt hour taxes, as well as other taxes, are promulgated as IDAPA 35.02.01. ( )

**001. SCOPE.**

These rules are construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on producers of electricity from hydroelectric generation. ( )

**002. ADMINISTRATIVE APPEALS.**

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. ( )

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Idaho Customer.** Idaho customer means a customer who has a point of delivery for the transfer of power and energy that is located in Idaho. This includes wholesale power transactions with customers or wheeling agents that have a delivery point located in Idaho. ( )

**02. Point of Delivery.** Point of delivery means the point at which a change in ownership of electrical facilities occurs between the filing party and the wholesale customers or wheeling agents for the transfer of power and energy. ( )

**03. Wheeling Agent.** Wheeling agent means an entity that receives kilowatt hours from a source or sources of supply and makes power or energy available at another point on its system for a delivering entity or a third party. ( )

**011. -- 019. (RESERVED)**

**020. ELECTRICAL PRODUCERS SUBJECT TO TAX.**

Section 63-2701, Idaho Code

The tax does not apply to power generated by facilities owned and operated by a municipal corporation organized pursuant to the laws of Idaho. Municipal corporations are not required to file kilowatt hour tax returns or to pay tax. As used in these rules, the term municipal corporation does not include a producer, as defined in Section 63-2701, Idaho Code, who produces electricity pursuant to a contract with a governmental entity. ( )

**021. -- 029. (RESERVED)**

**030. KILOWATT HOUR TAX RETURNS.**

Section 63-2701, Idaho Code

**01. Monthly Returns.** All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Tax Commission no later than the last day of the month following the month to which the return relates. ( )

**02. Quarterly Returns.** Producers whose previous year's annual tax liability was equal to or less than fifteen thousand dollars (\$15,000) may, at the discretion of the Tax Commission, be allowed to file a quarterly return with the Tax Commission no later than the last day of the month following the end of the calendar quarter to which the return relates. When a filing cycle is changed, the change will take effect on January 1 of the following year. ( )

**03. Previous Year's Annual Tax Liability.** If the previous year's annual tax liability is not available, the estimated current year's liability may be used. ( )

**031. -- 044. (RESERVED)**

**045. EXEMPTIONS.**  
Section 63-2705, Idaho Code

**01. Wheeled Energy.** ( )

**a.** If the taxpayer is a wheeling agent for another entity, the wheeled energy may not be included in the calculation of the exemptions. ( )

**b.** Example. Assume that Company A sells kilowatt hours to Company B and delivers this energy to Company C for wheeling and delivery to Company B at an Idaho delivery point. Company C, as a wheeling agent, would not include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales. Company A would include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales if the transfer between Companies A and C was at a delivery point in Idaho. ( )

**046. -- 999. (RESERVED)**