

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 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket
No. 35-0201-2201).

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 09/09/2022. 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 10/07/2022.

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: August 24, 2022
SUBJECT: State Tax Commission

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Proposed Rule (Docket No. 35-0201-2201)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to Tax Commission Administration and Enforcement Rules. The agency states that an outdated deadline in the rule is being removed and replaced with a reference to the relevant statute.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was not conducted because the change is being made to align the rule with statute. No fiscal impact on the General Fund greater than \$10,000 is anticipated.

Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to section 63-105, 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 Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-2201

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: 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 August 17, 2022.

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:

35.02.01.410: The deadline in rule is outdated and being deleted and reverted to statutory authority.

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 this rulemaking is being done to make the rule in alignment with the statute.

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) 334-6691.

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 August 24, 2022.

DATED this August 3rd, 2022.

Cynthia Adrian, Income Tax Research Specialist
Idaho State Tax Commission
Governmental Affairs, Tax Research
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
cynthia.adrian@tax.idaho.gov
(208) 334-6691

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-2201
(Only Those Sections With Amendments Are Shown.)

410. NEGLIGENCE PENALTIES.

Section 63-3046(a), Idaho Code

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-15-22)

02. Imposition of Penalty. A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Situations that justify the penalty include but aren't limited to the following: (3-15-22)

a. Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. (3-15-22)

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (3-15-22)

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-15-22)

d. Taxpayer fails to offer any explanation for understating taxes. (3-15-22)

e. Unreported taxable income is a material amount as compared with the reported income. (3-15-22)

f. Taxpayer exhibits a careless disregard of his tax obligations. (3-15-22)

g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-15-22)

h. Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-15-22)

i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination ~~within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules according to Section 63-3069, Idaho Code.~~ ~~(3-15-22)~~()

j. Taxpayer fails to file an Idaho amended return ~~within sixty (60) days after filing a federal amended return according to Section 63-3069, Idaho Code.~~ ~~(3-15-22)~~()

k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-15-22)

l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. (3-15-22)

03. Negligence Penalty for Sales and Use Tax Deficiencies. For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.02.b. or material amount in Subsection 410.02.e., might include the following: (3-15-22)

a. The ratio of untaxed sales that should have been taxed to total taxable sales; (3-15-22)

- b.** The ratio of untaxed sales that should have been taxed to total sales; (3-15-22)
- c.** The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; (3-15-22)
- or
- d.** Other computations bearing on negligence. (3-15-22)
- 04. Waiver of Negligence Penalty.** The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One (1) factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. (3-15-22)
- 05. Circumstances Precluding Waiver of Penalty.** The following circumstances do not constitute sufficient cause to waive the penalty: (3-15-22)
- a.** An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-15-22)
- b.** An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-15-22)
- c.** Inability to pay the tax. (3-15-22)