

Dear Senators Ricks, Adams, Rabe, and
Representatives Cannon, Weber, Gannon:

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

IDAPA 35.01.03 - Property Tax Administrative Rules-Temporary and Proposed Rule (Docket No. 35-0103-2602).

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 11/13/2026. 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 12/11/2026.

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: Senior Legislative Drafting Attorney - Peter Cook

DATE: October 26, 2026

SUBJECT: State Tax Commission

IDAPA 35.01.03 - Property Tax Administrative Rules-Temporary and Proposed Rule (Docket No. 35-0103-2602)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of a temporary and proposed rule for the property tax administrative rules, IDAPA 35.01.03. The rulemaking adds a new Rule 419 interpreting certain provisions of the kilowatt-hour tax and therms tax levied by section 63-3502B, Idaho Code. The statute taxes electricity and natural gas that certain rate-regulated companies sell to "retail customers," but it does not define that term. Rule 419 defines a retail customer as one who buys kilowatt-hours or therms for its own consumptive use and not for resale. It also provides that the "classification of a sale as retail is not altered by the rate . . . charged or the existence of another transaction or arrangement," and that kilowatt-hours and therms sold to a retail customer are determined without reduction, offset, or credit for any other transaction or arrangement between the selling company and the retail customer or any other person or entity."

The descriptive summary notes that temporary and proposed rule is meant to: (1) Identify the retail customer because the electricity sold to the company is for consumptive use"; (2) Prevent "non-typical rates or contractual arrangements from altering the classification as a retail sale"; and (3) prevent "the quantity of reported kilowatt hour sales from being reduced or netted against other transactions between the parties."

Negotiated Rulemaking / Fiscal Impact

The Commission states that negotiated rulemaking was not conducted because a temporary rule has been issued and will be promulgated in a public meeting on October 13, 2026; the Governor's Statement also noted that "[a]n earlier effective date prior to legislative review is required in accordance with the provisions of Idaho Code Section 67-5226(2)(b) because it is necessary to comply with governing law." The Commission also states that no new fees are reflected in the rulemaking and that no negative fiscal impact to the General Fund exceeding \$10,000 is anticipated.

Statutory Authority

Paul Headlee, Deputy Director Legislative Services Office	Matt Drake, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
--	---	--	---	--

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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

The Commission appears to have the authority under chapter 1, title 63, Idaho Code, and chapter 52, title 67, Idaho Code, to promulgate the temporary and proposed rule and the language appears to be consistent with section 63-3502B, Idaho Code.

cc: State Tax Commission
Philip Johnson

***** 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.

IDAPA 35 – STATE TAX COMMISSION

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-2602

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

GOVERNOR’S STATEMENT: An earlier effective date prior to legislative review is required in accordance with the provisions of Idaho Code Section 67-5226(2)(b) because it is necessary to comply with governing law.

EFFECTIVE DATE: The effective date of the temporary rule is September 10, 2026.

AUTHORITY: In compliance with Idaho Code Sections 67-5221(1) and 67-5226 notice is hereby given that this agency has adopted a temporary rule and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Idaho Code Sections 63-105(2) and 63-105A(14).

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

Tuesday, October 13, 2026 1:00 PM (MT)
In Person: Coral Conference Room Idaho State Tax Commission 11321 W. Chinden Blvd., Bldg. 2 Boise, ID 83714-1021 Join from the meeting link https://idahogov.webex.com/idahogov/j.php?MTID=m242e8872f2f6488b6bee5f2095f99977 Meeting number: 2630 389 6781 Meeting password: 5MBqgXHXf28 Join by phone: +1-415-655-0001 US Toll Meeting number: 2630 389 6781

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The temporary and proposed rule are meant to: 1. Identify the retail customer because the electricity sold to the company is for consumptive use. 2. Prevents non-typical rates or contractual arrangements from altering the classification as a retail sale. 3. Prevents the quantity of reported kilowatt hour sales from being reduced or netted against other transactions between the parties.

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: N/A.

Pursuant to Idaho Code Section 67-5220(2) negotiated rulemaking was not conducted because a temporary rule has been issued and will be promulgated in a public meeting on October 13, 2026.

INCORPORATION BY REFERENCE: Pursuant to Idaho Code Section 67-5229(2)(a) 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 Garin Evans at garin.evans@tax.idaho.gov or (208) 332-6624.

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 28, 2026.

DATED this 2nd day of September, 2026.

Philip Johnson, Tax Research Specialist/Rules Officer
Idaho State Tax Commission
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
philip.johnson@tax.idaho.gov
(208) 334-7505

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 35-0103-2602
(Only Those Sections With Amendments Are Shown.)**

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

418. — ~~508.~~ (RESERVED)

419. DEFINING RETAIL CUSTOMER – KILOWATT HOURS AND THERMS TAX.
Section 63-3502B, Idaho Code

01. Retail Customer Defined. A retail customer is a customer in Idaho to whom a rate-regulated electric utility company sells kilowatt-hours, or to whom a rate-regulated affiliated gas company or rate-regulated gas company sells therms, for the retail customer's consumptive use and not for resale. (9-10-26)T

02. Classification of Retail Sales. The classification of a sale as retail is not altered by the rate or rate schedule charged or the existence of another transaction or arrangement between the selling company and the retail customer or any other person or entity. (9-10-26)T

03. Determination of Kilowatt Hours or Therms Sold. Kilowatt-hours or therms sold to a retail customer are determined without reduction, offset, or credit for any other transaction or arrangement between the selling company and the retail customer or any other person or entity. (9-10-26)T

420. -- 508. (RESERVED)