

Dear Senators BRACKETT, Hagedorn, Buckner-Webb, and
Representatives PALMER, Shepherd, King:

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

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No.
35-0105-1602).

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 08/01/2016. 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 08/29/2016.

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 Transportation Committee and the House Transportation & Defense Committee

FROM: Legislative Research Analyst - Kristin Ford

DATE: July 13, 2016

SUBJECT: State Tax Commission

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No. 35-0105-1602)

The Idaho State Tax Commission submits notice of rulemaking at IDAPA 35.01.05. This proposed rule revises an existing rule governing fuel tax reports by distributors, to remove supplemental reports and outdated language. It also adds existing language taken from Rule 140, which is being deleted in another docket. The Commission states that negotiated rulemaking was conducted and that Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 edition of the Idaho Administrative Bulletin. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Commission in Sections 63-105 and 63-2406, Idaho Code.

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-1602
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 63-2427, Idaho Code, and Sections 63-2406 and 63-2407, 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 July 20, 2016.

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:

Motor Fuels Tax Rule 130, Distributor's Fuel Tax Reports, outlines the procedure licensed motor fuel distributors follow to complete the monthly motor fuel distributor's report. Subsection 130.04, Supplemental Reports, will be deleted from this rule. In addition, dated material will be removed.

Motor Fuels Tax Rule 140, Deductions, is not being negotiated, however, it will be deleted. Subsections 140.01, Motor Fuels and Petroleum Products Presumed To Be Distributed, and 140.04, Exported Fuel, will be added to Rule 130.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

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: 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 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, page 65](#).

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 temporary and proposed rule, contact Don Williams at (208) 334-7855. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2016.

DATED this 6th Day of July 2016.

Don W. Williams
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
Phone: (208) 334-7855
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Don.williams@tax.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1602
(Only Those Sections With Amendments Are Shown.)

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

Sections ~~63-2406~~, ~~63-2407~~, and ~~67-402~~ Idaho Code.

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and ~~or~~ outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: ~~(3-30-01)~~()

- a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b. The total quantity of motor fuels ~~includes natural gasoline, gasoline blend stocks, ethanol, ethanol blended with motor fuel,~~ and other petroleum products received during the month. ~~See Rule 130.06 of these Rules;~~ (4-7-11)()
- c. The total quantity of motor fuels and other petroleum products disbursed during the month. A disbursement is motor fuel that is: (4-7-11)
 - i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)
 - ii. Exported tax and transfer fee exempt; (4-7-11)
 - iii. Delivered to the Idaho National Guard tax exempt; (4-7-11)
 - iv. Delivered to a tribe or an Indian-owned retail outlet fuels tax and transfer fee not collected because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007; or (4-7-11)
 - v. Delivered to an Idaho pipeline terminal and placed into storage fuels tax and transfer fee not collected. (4-7-11)
- d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h. The tax-paid purchases; (7-1-98)

- i. The net taxable gallons; (7-1-98)
- ~~j.~~ *The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This Subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009);* (3-29-10)
- ~~k.~~ *The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules;* (4-2-08)
- ~~l.~~ *The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules;* (4-2-08)
- ~~m.~~ The tax computation; (7-1-98)
- ~~n.~~ *The bad debt amounts; refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.);* (3-29-10)
- ~~o.~~ *The gaseous fuels permit fees; and* (4-11-06)
- ~~p.~~ The net tax due. (4-11-06)
- 02. Exemption from Licensing and Monthly Reporting.** See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. (3-29-10)
- 03. Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)
- ~~04. Supplemental Reports.~~ *In addition to a timely filed original monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due.* (4-7-11)
- ~~05.4. Timely Reporting.~~ Any motor fuel and other petroleum product shipments that are: (4-7-11)
- a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)
- b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)
- 06.5. Motor Fuels Receipts.** All gasoline, natural gasoline, gasoline blend stocks, ethanol, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 132 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (4-7-11)

06. Motor Fuels and Other Petroleum Products Presumed To Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. ()

07. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: ()

a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and ()

b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or ()

c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or ()

d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. ()

e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. ()