

Dear Senators JOHNSON, Bayer, Burgoyne, and
Representatives COLLINS, Trujillo, Erpelding:

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

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1701).

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 08/03/2017. 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 08/31/2017.

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 Local Government & Taxation Committee and the House Revenue & Taxation Committee

FROM: Legislative Research Analyst - Kristin Ford

DATE: July 17, 2017

SUBJECT: State Tax Commission

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1701)

The Idaho State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.01 - Income Tax Administrative Rules. The proposed rule amends Rule 075 to add the tax brackets for calendar year 2017 and remove the 2012 calendar year brackets. The proposed rule also amends Rule 263 to update the amount of guaranteed payments that are sourced as compensation for services as required by Idaho Code 63-3026A(3)(a)(i)(2). Finally, the rule amends Rule 771 to add language stating that the amount of the grocery income tax credit is \$100 for tax years 2015 and later, in accordance with Idaho Code 63-3024A(1).

The Commission states that it did not conduct negotiated rulemaking because the changes were of a simple nature or complied with statutory changes.

The Commission's proposed rule is authorized pursuant to sections 63-105 and 63-3039, Idaho Code.

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.01 – INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1701

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 63-3039, 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 19, 2017.

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:

Rule 075 is being amended to add the tax brackets for calendar year 2017 and remove the information for calendar year 2012 so only five years of historical data is retained in the rule.

Rule 263 is being amended to update the amount of guaranteed payments that are sourced as compensation for services per Idaho code section 63-3026A(3)(a)(i)(2).

Rule 771 is being amended to add language stating that the amount of the grocery credit is \$100 for tax years 2015 and after.

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 the changes were of a simple nature or complied with statutory changes.

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) 334-7670.

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 Wednesday, July 26, 2017.

DATED this 9th day of June, 2017.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1701
(Only Those Sections With Amendments Are Shown.)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
 Section 63-3024, Idaho Code

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~*a. For taxable years beginning in 2012:*~~

<i>IF IDAHO TAXABLE INCOME IS</i>		<i>IDAHO TAX</i>		
<i>At least</i>	<i>But less than</i>	<i>Is</i>	<i>Plus</i>	
<i>\$1</i>	<i>\$1,380</i>	<i>\$0</i>	<i>+</i>	<i>1.6% of taxable income</i>
<i>\$1,380</i>	<i>\$2,760</i>	<i>\$22.08</i>	<i>+</i>	<i>3.6% of the amount over \$1,380</i>
<i>\$2,760</i>	<i>\$4,140</i>	<i>\$71.76</i>	<i>+</i>	<i>4.1% of the amount over \$2,760</i>
<i>\$4,140</i>	<i>\$5,520</i>	<i>\$128.34</i>	<i>+</i>	<i>5.1% of the amount over \$4,140</i>
<i>\$5,520</i>	<i>\$6,900</i>	<i>\$198.72</i>	<i>+</i>	<i>6.1% of the amount over \$5,520</i>
<i>\$6,900</i>	<i>\$10,350</i>	<i>\$282.00</i>	<i>+</i>	<i>7.1% of the amount over \$6,900</i>
<i>\$10,350 or more</i>		<i>\$527.85</i>	<i>+</i>	<i>7.4% of the amount over \$10,350</i>

~~*Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.*~~

(4-4-13)

~~*b.a.*~~ For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,409	\$0	+	1.6% of taxable income
\$1,409	\$2,818	\$22.54	+	3.6% of the amount over \$1,409
\$2,818	\$4,227	\$73.26	+	4.1% of the amount over \$2,818
\$4,227	\$5,636	\$131.03	+	5.1% of the amount over \$4,227
\$5,636	\$7,045	\$202.89	+	6.1% of the amount over \$5,636
\$7,045	\$10,568	\$288.84	+	7.1% of the amount over \$7,045
\$10,568 or more		\$538.94	+	7.4% of the amount over \$10,568

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.

(3-20-14)

eb. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,429	\$0	+	1.6% of taxable income
\$1,429	\$2,858	\$22.86	+	3.6% of the amount over \$1,429
\$2,858	\$4,287	\$74.30	+	4.1% of the amount over \$2,858
\$4,287	\$5,716	\$132.89	+	5.1% of the amount over \$4,287
\$5,716	\$7,145	\$205.77	+	6.1% of the amount over \$5,716
\$7,145	\$10,718	\$292.94	+	7.1% of the amount over \$7,145
\$10,718 or more		\$546.59	+	7.4% of the amount over \$10,718

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.

(4-11-15)

dc. For taxable years beginning in 2015:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,452	\$0	+	1.6% of taxable income
\$1,452	\$2,904	\$23.23	+	3.6% of the amount over \$1,452
\$2,904	\$4,356	\$75.50	+	4.1% of the amount over \$2,904
\$4,356	\$5,808	\$135.03	+	5.1% of the amount over \$4,356
\$5,808	\$7,260	\$209.08	+	6.1% of the amount over \$5,808
\$7,260	\$10,890	\$297.65	+	7.1% of the amount over \$7,260

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$10,890 or more		\$555.38	+	7.4% of the amount over \$10,890

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2015.

(3-25-16)

ed. For taxable years beginning in 2016:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,454	\$0	+	1.6% of taxable income
\$1,454	\$2,908	\$23.26	+	3.6% of the amount over \$1,454
\$2,908	\$4,362	\$75.60	+	4.1% of the amount over \$2,908
\$4,362	\$5,816	\$135.21	+	5.1% of the amount over \$4,362
\$5,816	\$7,270	\$209.36	+	6.1% of the amount over \$5,816
\$7,270	\$10,905	\$298.05	+	7.1% of the amount over \$7,270
\$10,905 or more		\$556.14	+	7.4% of the amount over \$10,905

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2016.

(3-29-17)

e. For taxable years beginning in 2017:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is		Plus
\$1	\$1,472	\$0	±	1.6% of taxable income
\$1,472	\$2,945	\$23.56	±	3.6% of the amount over \$1,472
\$2,945	\$4,417	\$76.57	±	4.1% of the amount over \$2,945
\$4,417	\$5,890	\$136.94	±	5.1% of the amount over \$4,417
\$5,890	\$7,362	\$212.03	±	6.1% of the amount over \$5,890
\$7,362	\$11,043	\$301.85	±	7.1% of the amount over \$7,362
\$11,043 or more		\$563.21	±	7.4% of the amount over \$11,043

Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2017.

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(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 263.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. The amount of guaranteed payments that are sourced as compensation for services is as follows:

TAX YEAR	AMOUNT
<u>2017</u>	<u>\$257,500</u>
2016	\$254,250
2015	\$254,000
2014	\$250,000
2013	\$250,000

(3-29-17)()

05. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).
 Section 63-3024A, Idaho Code

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2016	\$100	\$100
2015	\$100	\$100
2014	\$100	\$90
2013	\$100	\$80
2012	\$90	\$70
2011	\$80	\$60
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

For tax years 2015 and after, the credit is one hundred dollars (\$100). ~~(3-29-17)~~()

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

- 03. Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)
- a.** Received assistance under the federal food stamp program; or (5-8-09)
 - b.** Was incarcerated. (5-8-09)
- 04. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)
- 05. Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)
- 06. Members of the Uniformed Services.** A member of the uniformed services who is: (4-7-11)
- a.** Domiciled in Idaho is entitled to this credit; (5-8-09)
 - b.** Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)
 - c.** See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)
- 07. Spouse or Dependents of Members of the Uniformed Services.** Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)
- 08. Claiming the Credit.** (5-8-09)
- a.** An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)
 - b.** An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)
 - c.** No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)
- 09. Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)