

Dear Senators RICKS, Schroeder, Rabe, and
Representatives MONKS, Cannon, Necochea:

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

IDAPA 35.01.08 - Mine License Tax Administrative Rules (ZBR Chapter Rewrite) - Proposed Rule
(Docket No. 35-0108-2301).

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 08/21/2023. 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 09/18/2023.

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 Kondeff
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 04, 2023
SUBJECT: State Tax Commission

IDAPA 35.01.08 - Mine License Tax Administrative Rules (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 35-0108-2301)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to Mine License Tax Administrative Rules. The agency states the reason for the rule changes is to comply with Executive Order 2020-01: Zero-Based Regulation. The proposed rule removes language that is duplicated in statute or is obsolete, and it streamlines other existing language. I noted no substantive changes.

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 April 5, 2023 edition of the Idaho Administrative Bulletin. No fiscal impact exceeding ten thousand dollars is anticipated.

Statutory Authority

The proposed rules appear to be within the agency's statutory authority pursuant to section 63-105 and chapter 12, title 47, 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 Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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IDAPA 35 – IDAHO STATE TAX COMMISSION
35.01.08 – MINE LICENSE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0108-2301 (ZBR CHAPTER REWRITE)
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 16, 2023.

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:

Under Executive Order 2020-01, Zero-Based Regulation, the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and [Executive Order 2020-01: Zero-Based Regulation](#).

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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 66](#). The Tax Commission has held two public meetings, 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Elena Gonzalez at (208) 334-7855.

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 23, 2023.

DATED this 2nd day of August, 2023.

Elena Gonzalez, Product Taxes Research Specialist
Idaho State Tax Commission
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(208) 334-7855

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0108-2301
(ZBR Chapter Rewrite)

35.01.08 – MINE LICENSE TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

~~In accordance with~~ Section 63-105, Idaho Code, the State Tax Commission (Tax Commission) has promulgated rules implementing the provisions of the Idaho Mine License Tax Act. ~~The rules relating to the administration and enforcement of mine license taxes, as well as other taxes, are promulgated as IDAPA 35.02.01.~~ (3-31-22)()

001. ~~TITLE AND SCOPE (RULE 001).~~

These rules are ~~titled IDAPA 35.01.08.000, et seq., Idaho State Tax Commission Rules, IDAPA 35.01.08, “Mine License Tax Administrative Rules.”~~ They are construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a mine license tax. (3-31-22)()

~~002. ADMINISTRATIVE APPEALS (RULE 002).~~

~~This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code.~~ (3-31-22)

002. INCORPORATION BY REFERENCE (RULE 002).

These rules incorporate IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules” and all income tax rules promulgated by the Tax Commission and statutes that relate to the Mine License Tax Act. ()

003. -- ~~0019.~~ (RESERVED)

010. DEFINITIONS (RULE 010).

~~Section 47-1205, Idaho Code~~

01. ~~These Rules.~~ The term ~~these rules~~ refers to IDAPA 35.01.08, relating to Idaho mine license tax. (3-31-22)

02. ~~Valuable Mineral.~~ The term “valuable mineral,” for purposes of the Idaho Mine License Tax, is ~~defined to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to Section 613 of the Internal Revenue Code. This includes, but is not limited to, calcium carbonates, garnet, granite, pumice, quartzite, scoria, shale, slate, and stone (including dimension and ornamental stone). However, sand and gravel are not included in this definition.~~ (3-31-22)

~~011.—014.~~ (RESERVED)

015. ~~REFERENCE TO INCOME TAX RULES (RULE 015).~~

~~Section 47-1205, Idaho Code. All income tax rules promulgated by the Tax Commission that relate to sections of the Idaho Code incorporated by reference in the Mine License Tax Act apply to the mine license tax.~~ (3-31-22)

016.—019. (RESERVED)

020. ADVANCE ROYALTIES (RULE 020).

Section 47-1201, Idaho Code. ~~Payments received from mining properties in Idaho from which no minerals or ores were extracted, sold, or used during the taxable year shall not be subject to the mine license tax. Provided, however, the~~Any tax arising from payments of advance royalties shall be deferred until the year during which the ore to which

the advance royalty relates is actually extracted.

(3-31-22)()

021. -- 029. (RESERVED)

030. NET VALUE OF ORE TO BE USED AS MEASURE OF TAX -- HOW DETERMINED (RULE 030).
Section 47-1202, Idaho Code

01. Election. The taxpayer may elect to use one (1) of the methods prescribed in Section 47-1202, Idaho Code, for the measurement of the mine license tax. This election must be made in writing and attached to the first mine license tax return filed. If no timely written election is made, the taxpayer shall be presumed to have elected to compute the mine license tax in accordance with the method described in Section 47-1202(a), Idaho Code. Once an election is made, the taxpayer may not change the method of computing ~~his~~their tax unless ~~he~~they receives written permission from the Tax Commission prior to the due date of the return.

(3-31-22)()

a. ~~This election is not available to~~ Taxpayers whose only taxable mining activity is receiving royalties. ~~Such taxpayers~~ must determine their mine license tax liability by use of the method described in Section 47-1202(a), Idaho Code.

(3-31-22)()

b. Taxpayers whose mining activity includes both the receiving of royalties and the extracting of ores must separately determine that portion of their mine license tax liability arising from the royalty received by using the method described in Section 47-1202(a), Idaho Code. ~~However, the taxpayer may elect to determine that~~ The portion of their mine license tax liability arising from their extraction of ores ~~by use of~~may use either method for which a proper election ~~has been~~was made. The separate determination may not be netted together or offset against each other.

(3-31-22)()

02. Method Under Section 47-1202(a). ~~For each taxpayer using the method described in Section 47-1202(a), Idaho Code, the net value of ores mined shall be the amount of taxable income from the property as defined by Section 613, Internal Revenue Code, and Treasury Regulation 1.613-5 less the deduction for depletion expense on the property that was allowed in the taxpayer's federal income tax return.~~ For taxpayers receiving royalties, gross royalties shall be reduced by the deduction for depletion expense on the royalty that was allowed in the taxpayer's federal income tax return.

(3-31-22)()

03. Method Under Section 47-1202(b). ~~For each taxpayer using the method described in Section 47-1202(b), Idaho Code,~~ In addition to requirements under Section 47-1202(b), the net value of ores mined shall ~~be the result of~~include the computations in Subsections 030.03.a. ~~through~~and 030.03.eb.

(3-31-22)()

a. ~~Gross value of the ores shall be equal to that determined by the U.S. Department of Interior during the same taxable year for purposes of identifying the amount of mineral royalties to be paid for the privilege of mining public lands. This~~ The value used under 47-1202(b) shall apply regardless of whether the ore is extracted from public, tribal, or private land. If the taxpayer is mining properties for which a royalty must be paid, the taxpayer must attach to the mine license tax return a copy of the value determination made by the U.S. Department of the Interior.

(3-31-22)()

b. ~~From the gross value determined in Subsection 030.03.a., the taxpayer shall deduct direct mining costs attributable to the Idaho production of the ores and Idaho transportation costs to the point at which they are valued by the U.S. Department of the Interior.~~

(3-31-22)

eb. ~~From the amount in Subsection 030.03.b.,~~ The taxpayer shall also deduct a portion of the depletion expense attributable to the property that was allowed as a deduction in the taxpayer's federal income tax return for the same taxable year. The deductible portion shall be determined by multiplying the depletion expense allowed on the federal income tax return by the ratio of the gross value of ores for mine license tax purposes to the gross value of ores for federal percentage depletion purposes. For purposes of this computation, all references to gross value and depletion expense shall be limited to those arising from mining conducted in Idaho.

(3-31-22)()

031. -- 034. (RESERVED)

035. MINE LICENSE TAX RATE (RULE 035).

~~Section 47-1201, Idaho Code.~~

~~(3-31-22)~~

~~**01. Tax Rate Prior to July 1, 2001.** The mine license tax shall be two percent (2%) of the net value of the royalties received or the ores mined or extracted prior to July 1, 2001.~~

~~(3-31-22)~~

~~**02. Tax Rate After June 30, 2001.** The mine license tax shall be one percent (1%) of the net value of the royalties received or the ores mined or extracted after June 30, 2001.~~

~~(3-31-22)~~

~~**03. Application of Tax Rate Change.** If a taxpayer's taxable year includes days before and after July 1, 2001, the taxpayer shall separately compute the net value of royalties received and the ores mined or extracted as if the taxable year were two (2) separate tax periods. For the period prior to July 1, 2001, the mine license tax rate of two percent (2%) shall apply. For the period after June 30, 2001, the mine license tax rate of one percent (1%) shall apply. The two (2) tax amounts shall then be added together to arrive at the total mine license tax for that taxable year.~~

~~(3-31-22)~~

~~**036. -- 039. (RESERVED)**~~

040. MINE LICENSE TAX RETURNS (RULE 040).

Section 47-1203, Idaho Code.

~~In addition to the requirements of a~~ valid return needs to be filed as provided in Rule 150 of the Tax Commission Administration and Enforcement Rules, ~~a mine license tax return shall~~ and include a schedule listing the name, address, and employer identification number or social security number, of each recipient of royalties paid by the taxpayer filing the return. The royalties shall be separately stated for each mining operation. Each mine license tax return shall also include a copy of the depletion expense computation applicable to Idaho mining properties that was included in the taxpayer's federal income tax return.

~~(3-31-22)~~ ()

~~**041. -- 999. (RESERVED)**~~