

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

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

IDAPA 35.01.09 - Idaho County Option Kitchen and Table Wine Tax Administrative Rules -
Proposed Rule (Docket No. 35-0109-1801);

IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules - Proposed Rule
(Docket No. 35-0110-1802).

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 07/06/2018. 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 08/03/2018.

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: Division Manager - Kristin Ford

DATE: June 15, 2018

SUBJECT: State Tax Commission

IDAPA 35.01.09 - Idaho County Option Kitchen and Table Wine Tax Administrative Rules - Proposed Rule (Docket No. 35-0109-1801)

IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules - Proposed Rule (Docket No. 35-0110-1802)

IDAPA 35.01.09 - Idaho County Option Kitchen and Table Wine Tax Administrative Rules - Proposed Rule (Docket No. 35-0109-1801). The Idaho State Tax Commission submits notice of proposed rulemaking related to the County Option Kitchen and Table Wine Tax. The proposed rule amends Rule 016 to correct the term "wholesaler" to instead read "distributor," in conformance with the terminology used in the County Option Kitchen and Table Wine Act (Chapter 13, Title 23, Idaho Code). The agency states that negotiated rulemaking was not conducted due to the simple nature of the change. The proposed rule is within the agency's statutory authority under sections 23-1303 and 23-1323, Idaho Code.

IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules - Proposed Rule (Docket No. 35-0110-1802). The Idaho State Tax Commission submits notice of proposed rulemaking related to the Cigarette and Tobacco Products Tax. The proposed rule amends Rule 003 to provide reference to Idaho code sections that apply to the administrative appeals process pursuant to section 63-2516, Idaho Code. It also amends Rule 018 to correct the term "distributor" to instead read "wholesaler" in conformance with terminology used in Chapter 25, Title 63, Idaho Code. The agency states that negotiated rulemaking was not conducted because of the simple nature of the proposed rule changes. The proposed rule is and will be within the agency's statutory authority under section 63-2516, Idaho Code, as amended by 2018 HB 383, effective July 1, 2018.

cc: State Tax Commission
Kimberlee Stratton

IDAPA 35 – STATE TAX COMMISSION

35.01.09 – IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-1801

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 23-1323, and 23-1303, 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 June 20, 2018.

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:

Wine Tax Rule 016 – Wine Tax Returns and Reports – The rule incorrectly uses “wholesaler” when referring to a wine distributor. Pursuant to Section 23-1303(1)(c), Idaho Code, anyone distributing wine is a “distributor.” The rule is being amended to correct the term “wholesaler” to “distributor”.

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 of the simple nature of the proposed rule 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 Don Williams, (208) 334-7855. For general questions, contact Kimberlee Stratton, (208) 334-7544.

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 June 27, 2018.

DATED this 3rd Day of May, 2018.

Don Williams, Tax Policy Specialist
State Tax Commission/Product Tax
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P.O. Box 360109-1801,
Boise, ID 83722-0410
Phone: (208) 334-7855
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-1801
(Only Those Sections With Amendments Are Shown.)

016. WINE TAX RETURNS AND REPORTS (RULE 016).

[Section 23-1322, Idaho Code](#)

01. Due Date of Reports. Every person liable for the payment of taxes on wine and every person responsible for making reports to the Commission shall, on or before the 15th day of the month following the end of the reporting period, file a written report with the Commission showing all sales of wine for use or delivery within Idaho during the immediately preceding reporting period. Taxes payable with respect to such sale, distribution, or disposition shall be paid by the person liable therefor, at the time such report is filed. (3-29-10)

a. Monthly Filing Generally Required. All persons who pay wine tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all wine tax due from the first through the last day of the preceding calendar month. (3-29-10)

b. Request to File Quarterly or Semiannually. Distributors or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the wine tax may request permission to file quarterly or semiannually instead of monthly. (3-29-10)

c. Request to File Annually. Wine direct shippers, distributors, or persons who have seasonal activities may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (3-29-10)

d. Final Report. Whenever a taxpayer who is required to file returns under the Idaho County Option Kitchen and Table Wine Act or these rules stops doing business, he must mark cancel on the last report he files. This report ends the taxable year for wine tax purposes and constitutes the taxpayer's final report of wine tax liabilities. The taxpayer must enclose his permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report, he may be subject to liabilities or penalties for failing to comply with the Idaho County Option Kitchen and Table Wine Act and these rules. (3-29-10)

02. Weekend or Holiday Due Date. For purposes of this rule, if the 15th day of any month following the end of a reporting period shall fall upon Saturday, Sunday or a legal holiday, then the due date for the report or the payment of the taxes, or both, required by this Act shall be the first business day thereafter. (3-29-10)

03. Prescribed Forms. (7-1-93)

a. All importers engaged in the sale or other disposition of wine imported into Idaho shall report all sales and dispositions of wine on forms either provided by or approved by the Commission. (3-29-10)

b. Distributors of wine must report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt, using inventory reporting methods on forms provided by the Commission. (7-1-93)

c. In-state distributors, wineries, vintners, producers or manufacturers shall use Form 1752 and related forms to report withdrawals, sales, or other dispositions from inventory. Withdrawals from inventory for the purpose of resale or consumption in, by, or through any tasting room or retail facilities owned or operated by the winery are subject to tax at the time of withdrawal from the winery's inventory. (3-30-07)

d. All persons liable for wine tax must file a wine tax return provided by the State Tax Commission. The returns must show the relevant information required for computing the amount of tax due, including: (3-30-07)

i. The name, address, telephone number and permit number of the taxpayer. (3-30-07)

- ii. Beginning and ending inventories. (3-30-07)
- iii. Wine purchases made during the reporting period. (3-30-07)
- iv. Exempt sales and transfers including sales to in-state and out-of-state ~~wholesalers~~ **distributors** and sales to military or liquor dispensaries. ~~(3-30-07)~~ **()**
- v. Purchases and sales of wine in odd size containers. (3-30-07)
- vi. Spoilage. (3-30-07)
- vii. Total taxable gallons. (3-30-07)
- viii. Credits from previous periods, if any. (3-30-07)
- ix. Total tax due. (3-30-07)
- x. Penalty and interest due, if any. (3-30-07)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 23-1322, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." (3-30-07)

a. All wine tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the wine tax return form. (7-1-93)

b. All wine tax returns or other documents filed by the taxpayer must include his wine tax permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A wine tax return that does not provide sufficient information to compute a tax liability does not constitute a valid wine tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required it must be on the proper form, as prescribed by the State Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-30-07)

IDAPA 35 – STATE TAX COMMISSION

35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1802

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, 63-3039, 63-2516, 63-2563, and 63-2510, 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 June 20, 2018.

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:

Tobacco Tax Rule 003 – Administrative Appeals – The rule will be amended to include all the codes and rules in the administrative appeals process, including the requirements to file an appeal and other steps prior to possible judicial review.

Tobacco Tax Rule 018 – Cigarette Tax Return – The rule will correct the titles of “distributor” and “wholesaler” in the rule to match statute.

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 of the simple nature of the proposed rule 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 Don Williams, (208) 334-7855. For general questions, contact Kimberlee Stratton, (208) 334-7544.

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 June 27, 2018.

DATED this 3rd Day of May, 2018.

Don Williams, Tax Policy Specialist
State Tax Commission/Product Tax
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1802
(Only Those Sections With Amendments Are Shown.)

003. ADMINISTRATIVE APPEALS (RULE 003).

Sections 63-2516 and 63-2563, Idaho Code

This chapter ~~does~~ allows administrative relief ~~of the provisions outlined herein under~~ as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

018. CIGARETTE TAX RETURN (RULE 018).

Section 63-2510, Idaho Code

01. Cigarette Tax Return. All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (7-1-93)

02. Filing Returns. The return shall be in a form prescribed by the Commission and shall be filed on a monthly basis. (7-1-93)

03. Due Date. The return will be filed by the wholesaler on or before the twentieth day of the month immediately following the month to which the return applies. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (4-11-06)

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (7-1-93)

b. All cigarette tax returns or other documents filed by the taxpayer must include his cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return shall be in violation of this regulation and shall be required to appear before the Commission to show cause as to why his permit should not be revoked. See Section 63-2503, Idaho Code. (7-1-93)

06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The State Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. (4-5-00)

07. Wholesale Sales of Stamped Cigarettes. Every ~~distributor~~ wholesaler who imports unstamped cigarettes into this state must file a return, however; a cigarette ~~distributor~~ wholesaler who buys only stamped cigarettes for resale is not required to file a return. (4-11-06)()