

Dear Senators RICE, Grow, Burgoyne, and  
Representatives COLLINS, Stevenson, Ellis:

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

IDAPA 35.01.09 - Idaho Beer and Wine Taxes Administrative Rules - Proposed Rule (Docket No.  
35-0109-2001).

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 10/21/2020. 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 11/18/2020.

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.



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:** October 02, 2020

**SUBJECT:** State Tax Commission

IDAPA 35.01.09 - Idaho Beer and Wine Taxes Administrative Rules - Proposed Rule (Docket No. 35-0109-2001)

#### Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to Beer and Wine Taxes. The Commission proposes to delete language detailing the Commission's authority to require a destruction request from a beer wholesaler or wine distributor for beer or wine breakage or spoilage for the purposes of receiving a tax deduction.

#### Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was not conducted but that a public hearing was held in order to consider public comments before adoption of the pending rule. No fiscal impact is anticipated as a result of this rule docket.

#### Statutory Authority

The proposed rule appears to be within the agency's statutory authority with regard to wine spoilage pursuant to section 23-1319, Idaho Code. No statutory authority in the equivalent chapter of laws for beer appears to support the right to deduct for beer spoilage, but the practice appears to have been in place since at least 1993 by Tax Commission rule. The proposed rule reduces, rather than extends, authority by the State Tax Commission, so no objection is found to the particular change being made in this docket. However, Staff notes that it would be prudent for the Legislature to add equivalent language in chapter 10, title 23, Idaho Code, providing for a right to deduct taxes for breakage and spoilage of beer as is provided for wine distributors. General rulemaking authority is supported by sections 63-105, 23-1051, and 23-1319, Idaho Code.

cc: State Tax Commission  
Kimberlee Stratton

\*\*\* PLEASE NOTE \*\*\*

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

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 – IDAHO STATE TAX COMMISSION

## 35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES

DOCKET NO. 35-0109-2001

### 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, and Sections 23-1051 and 23-1319, Idaho Code.

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

<b>PUBLIC HEARING</b>
<b>Tuesday, September 15, 2020</b> <b>1:00 - 2:00 p.m. (MDT)</b>
<b>Coral Conference Room</b> <b>State Tax Commission</b> <b>11321 W. Chinden Blvd., Bldg. 2</b> <b>Boise, ID 83714</b>

The hearing site 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:

- Beer and Wine Rule 013 - This rule is being amended to remove the Tax Commission's requirement to witness the destruction of breakage and spoilage.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted due to the directive by the Governor in [Executive Order 2020-13](#) to further the continuation of reducing regulatory burden for the citizens of Idaho while maintaining public safety. The Tax Commission will hold a public hearing 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 Don Williams using the contact information below.

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 September 23, 2020.

Dated this 2nd day of September, 2020.

Don William, Excise Tax Research Specialist  
[don.williams@tax.idaho.gov](mailto:don.williams@tax.idaho.gov)  
Phone: (208) 334-7855  
Fax: (208) 334-7690

Idaho State Tax Commission  
Taxpayer Resources Unit, Tax Research  
11321 W. Chinden Blvd., Bldg. 2, Boise, ID 83714  
P.O. Box 36, Boise, ID 83722-0036

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-2001**  
**(Only Those Sections With Amendments Are Shown.)**

**013. BREAKAGE OR SPOILAGE (RULE 013).**

Sections 23-1051, 23-1319, Idaho Code

**01. Percentage Method.** When a beer or wine container is damaged, contents spoiled, or is otherwise unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. (3-20-20)

**a.** The Commission may revoke the use of the percentage method for any taxpayer at any time. The Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Commission. (3-20-20)

**b.** Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Commission. (3-20-20)

**02. Destruction Request Method.** Taxpayers must submit the destruction request form before claiming breakage or spoilage when the amount claimed exceeds the maximum percentages allowed or the Commission revokes the percentage method. (3-20-20)

~~**a.** A destruction request form must be submitted ten (10) days before the proposed destruction date. (3-20-20)~~

~~**b.** The taxpayer must receive written approval from the Commission prior to destruction of any products referred to on the request. (7-1-93)~~

~~**c.** The Commission reserves the right to observe the destruction of beer or wine in person and to delay the destruction until a mutually agreed upon time can be arranged. (3-20-20)~~

**03. Deduction for Breakage or Spoilage.** A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. (3-20-20)