

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 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-2301).

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 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-2301)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to Income Tax Administrative Rules. The agency states the rule is being promulgated to relieve confusion surrounding the credit for taxes paid in relation to an affected business entity. The rule appears to correctly restate the provisions of section 63-3026B(7)(b) and section 63-3029, Idaho Code.

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 June 7, 2023, edition of the Idaho Administrative Bulletin. No fiscal impact exceeding \$10,000 is anticipated.

Statutory Authority

This rulemaking docket is within the agency's statutory authority pursuant to sections 63-105, 63-3026B, 63-3029, and 63-3039, 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

35.01.01 – INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-2301

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:

RULE 700: This is to relieve the confusion surrounding the credit for taxes paid in relation to an affected business entity.

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 June 7, 2023 Idaho Administrative Bulletin, [Vol. 23-6, page 79](#). The Tax Commission has held one public meeting, 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 Cynthia Adrian at (208) 334-6691.

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.

Cynthia Adrian, Income Tax Research Specialist
Idaho State Tax Commission
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
cynthia.adrian@tax.idaho.gov
(208) 334-6691

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-2301
(Only Those Sections With Amendments Are Shown.)**

700. CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY: IN GENERAL (RULE 700).

Section 63-3029, Idaho Code

01. Taxes Not Eligible for the Credit. If any tax or portion thereof is imposed on capital stock, retained earnings, stock values, or a basis other than income, the tax is not eligible for the credit. The credit is not allowed for income taxes imposed by another state on income not taxed by Idaho. (4-6-23)

02. Credit Calculated on a State-by-State Basis. The credit and credit limitations are to be calculated on a state-by-state basis. The taxpayer may not aggregate the income taxed by other states or the taxes paid to the other states for purposes of calculating the credit and its limitations. (4-6-23)

03. Income Tax Payable to Another State. The income tax payable to another state is to be the tax paid after the application of all credits. The tax paid to the other state must be for the same taxable year that the credit is claimed. Tax paid to cities or counties does not qualify for the credit. (4-6-23)

04. Affected Business Entities. ()

a. The credit provided in Section 63-3026B(7)(b), Idaho Code, for income taxes paid to another state by an affected business entity, shall be calculated as specified in that statute. The credit is a pro rata share of the actual tax paid to the other state. The pro rata share of the tax credit is calculated by excluding the share of any member that is an exempt entity. ()

b. If a pass through entity has not elected to be treated as an affected business entity in Idaho, but pays an entity level income tax in another state, an Idaho resident who is a shareholder, partner, or member is allowed the Idaho credit for taxes paid to another state to the extent the tax is attributable to the individual as a result of his share of the entity's taxable income in another state, as provided in Section 63-3029(1), Idaho Code. ()

045. Limitations. The credit for taxes paid to another state is limited as follows: (4-6-23)

a. The credit allowed may not exceed the amount of tax actually paid to the other state. This includes the amount paid by a qualifying individual and the amount paid for such individual by an S corporation, partnership, limited liability company, estate, or trust. (4-6-23)

b. If an individual receives a refund due to a refundable credit for all or part of the income tax paid by the pass-through entity, the amount of the refund attributable to the refundable credit reduces the income tax paid by the pass-through entity. (4-6-23)

c. The credit may not exceed the proportion of the tax otherwise due to Idaho that the adjusted gross income of the individual derived from sources in the other state as modified by Chapter 30, Title 63, Idaho Code, bears to total adjusted gross income for the individual so modified. (4-6-23)

d. The credit allowed to an estate or trust may not exceed the proportion of the tax otherwise due to Idaho that the federal total income of the estate or trust derived from sources in the other state and taxed by that state bears to the federal total income of the estate or trust. (4-6-23)

i. Federal total income of the estate or trust derived from sources in the other state is to be determined using the Idaho sourcing rules applicable to nonresidents found in Section 63-3026A, Idaho Code and related rules. Income derived from the ownership or disposition of any interest in real or tangible personal property located in the other state is to be considered to be income derived from sources in the other state. Interest income earned on a bank account generally would not be income derived from sources in the other state as provided in Rule 266 of these rules. (4-6-23)

056. Examples. Available at [Income Tax Rules Examples](#). (4-6-23)