

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. 35-0101-2302);

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No.
35-0102-2301).

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 12/07/2023. 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 01/04/2024.

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: Legislative Drafting Attorney - Peter Cook

DATE: November 20, 2023

SUBJECT: State Tax Commission

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-2302)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-2301)

Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking related to Income Tax Administrative Rules and Sales and Use Tax Administrative Rules. Proposed rule Docket No. 35-0101-2302 (income tax) revises language concerning electronic filing requirements. The agency states that this proposed rule change is a response to the Taxpayer First Act of 2019, enacted July 1, 2019, authorizing the Department of the Treasury and Internal Revenue Service to issue regulations changing the e-file requirements for returns filed on or after January 1, 2024. The federal e-filing requirements will now require the e-file of returns for filers of ten or more returns in a calendar year (down from two hundred fifty). The Tax Commission's proposed rule revises language in the heading and body of Rule 874.05 to align the Idaho e-filing requirements with the e-filing requirements contained in the Internal Revenue Code.

Proposed rule Docket No. 35-0102-2301 (sales and use tax) revises language in Rule 029 by removing two examples. The agency states that these examples are being deleted because they conflict with section 63-3622TT, Idaho Code, which was enacted in 2020 and exempts certain meat processing and packing services from sales and use tax.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was not conducted for Docket No. 35-0101-2302 because the proposed rule refers to a change in Internal Revenue Service Section 6011. Accordingly, the agency states that under section 67-5220(2), Idaho Code, negotiated rulemaking is not required. The agency states that negotiated rulemaking was also not conducted for Docket No. 35-0102-2302 because the rule was proposed to conform to a change in statute. No fiscal impact is expected for either rule change.

Statutory Authority

The proposed rule changes appear to be within the agency's statutory authority pursuant to section 63-105, Idaho Code.

Paul Headlee, Deputy Director Legislative Services Office	Matt Drake, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Norma Clark, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

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.

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.01 – INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-2302

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 November 15, 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 874: The Taxpayer First Act of 2019 enacted July 1, 2019, authorized the Department of the Treasury and the Internal Revenue Service to issue regulations that reduce the e-file requirements (from 250 to 10) for W-2s and other information returns filed on or after January 1, 2024 (see link below).

General Instructions for Certain Information Returns (2023) | Internal Revenue Service ([irs.gov](https://www.irs.gov)).

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 Internal Revenue Service Section 6011 (which the rule points to) has changed.

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 November 22, 2023.

DATED this 1st day of November, 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. 35-0101-2302
(Only Those Sections With Amendments Are Shown.)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).
Sections 63-3035 and 63-3036, Idaho Code

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or altered forms are not acceptable and may be returned to the employer for correction. (4-6-23)

02. Furnishing Forms W-2 to Employees. The employer must furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment. (4-6-23)

03. Filing Forms W-2 With the Tax Commission. On or before the last day of January, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (4-6-23)

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. (4-6-23)

05. Employers ~~With Fifty or More Idaho Employees~~ Required to File Electronically. Each employer ~~with fifty (50) or more Idaho employees~~ who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (4-6-23)()

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. (4-6-23)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-23)

a. The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-23)

b. The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-23)

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-2301

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 November 15, 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 029: Two examples are being deleted because they conflict with a previous change to Section 63-3622TT, Idaho Code.

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 this change is to conform to a change in statute.

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 Philip Johnson at (208) 334-7505.

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 November 22, 2023.

DATED this 1st day of November, 2023.

Philip Johnson, Sales Tax Research Specialist
Idaho State Tax Commission
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714
PO Box 36, Boise ID 83722-0036
philip.johnson@tax.idaho.gov
(208) 334-7505

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-2301
(Only Those Sections With Amendments Are Shown.)

029. PRODUCING, FABRICATING, AND PROCESSING (RULE 029).

Section 63-3612, Idaho Code

01. In General. Tax applies to charges for producing, fabricating, processing, printing, imprinting, or the engraving of tangible personal property for a consideration, whether consumers furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, imprinting, or engraving. (3-31-22)

a. Example 1: An owner purchases cabinets from a cabinetmaker to be made according to specifications furnished by the owner. The cabinetmaker delivers the cabinets to the owner who installs them himself. A sales tax will be collected by the cabinetmaker from the owner measured by the entire sales price. (3-31-22)

b. Example 2: An owner purchases material, on which he pays a sales tax, which he delivers to a cabinetmaker. The cabinetmaker uses this material to manufacture cabinets for the owner according to specification. These cabinets are delivered to the owner and an agreed price is paid for the work done by the cabinetmaker. A sales tax will be collected from the owner, measured by the entire price charged by the cabinetmaker. (3-31-22)

c. Example 3: An individual takes a plaque, on which sales tax has been paid, to an engraver and requests the plaque be engraved with an inscription. The total price paid for the engraving is taxable. (3-31-22)

d. Example 4: A club purchases trophies from a retailer and requests that the trophies be engraved with individual names. The trophies are engraved and delivered for an agreed price. The measure of the sales tax is the price of the trophies plus the engraving charge. (3-31-22)

~~**e.** Example 5: An individual takes a beef to a packing plant and requests that the meat be processed by cutting, wrapping, and freezing the meat to the buyer's specification. The total price paid for this processing is taxable. (3-31-22)~~

~~**f.** Example 6: A hunter takes a deer to a business which processes smoked meats. Although the material consumed in the smoking process may be minimal, the entire price paid for this processing is taxable. (3-31-22)~~

02. Repairing and Reconditioning Distinguished. Producing, fabricating, and processing includes any operation which results in the creation or production of tangible personal property or which is a step in a process or series of operations resulting in the creation or production of tangible personal property. The terms do not include operations which do not result in the creation or production of tangible personal property or which do not constitute a step in a process or series of operations resulting in the creation or production of tangible personal property, but which constitute merely the repair or reconditioning of tangible personal property to refit it for the use for which it was originally produced. (3-31-22)

03. Cross-References. (3-31-22)

a. Repairs and Renovation of Tangible Personal Property. See Rules 011 and 062 of these rules. (3-31-22)

b. Fabrications by Contractors. See Rule 012 of these rules. (3-31-22)