Dear Senators SIDDOWAY, Rice, Werk, and
Representatives COLLINS, Wood, Burgoyne:

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

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1401);
IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1402);
IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1403).

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 11/07/2014. 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 12/09/2014.

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.

Legislative Services Office
Idaho State Legislature

Serving Idaho's Citizen Legislature

Eric Milstead
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee

FROM: Principal Legislative Research Analyst - Brooke Brourman

DATE: October 21, 2014

SUBJECT: State Tax Commission - Income Tax

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1401)

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1402)

IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1403)

(1) IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1401): Section 63-3029I(7), Idaho Code, provides that if the broadband equipment investment credit exceeds the statutory limit, then the excess amount may be carried forward for the next fourteen taxable years. The State Tax Commission's proposed rule clarifies that the fourteen-year carryover period extends throughout the fourteen taxable years following the year in which the equipment was installed and begins to run regardless of whether the taxpayer has sought and received approval from the PUC. The Commission's proposed rule further provides that, once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, then the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward.

The Commission states that the rule revision is consistent with language from the Multistate Tax Commission. The Commission also states that the rule change provides interpretation and application of Section 63-3027, Idaho Code, consistent with the Idaho Supreme Court's interpretation and application of the statute, which it expressed in the Union Pacific case.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Sections 63-105 and 63-3039, Idaho Code.

(2) IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1402): The State Tax Commission's proposed rule makes the following changes:

(a) Specifies the order in which a nonresident or part-year resident can deduct suspended losses; and

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Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
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(b) Provides an example of how a nonresident partner of a multistate investment partnership calculates the amount of taxable income from the partnership that is included in Idaho taxable income.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Sections 63-105 and 63-3039, Idaho Code.

(3) IDAPA 35.01.01 - Income Tax Administrative Rules - Proposed Rule (Docket No. 35-0101-1403): The State Tax Commission's proposed rule makes the following changes:

(a) Removes the income tax brackets for calendar year 2009 and adds the income tax brackets for calendar year 2014;

(b) Increases the maximum amount deductible for the Idaho Medical Savings Account to $10,000, and $20,000 for a joint account, which is consistent with changes made during the 2014 legislative session by House Bill No. 595a;

(c) Updates the amount of guaranteed payments that is sourced as compensation for services, consistent with the provisions of Section 63-3026A(3)(a)(i)(2), Idaho Code;

(d) Adds tax year 2014 and the applicable grocery credit amounts; and

(e) Changes language from "split-monthly filers" to "semimonthly filers" with regard to certain employer withholding periods.

Negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes made during the 2014 legislative session.

The proposed rule is within the authority granted to the Commission in Sections 63-105 and 63-3039, Idaho Code.

cc: State Tax Commission - Income Tax
Sherry Briscoe

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1401

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 63-3039, 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 October 15, 2014.

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 560 is being amended consistent with language from the MTC (Multistate Tax Commission). The current version of this rule is an enactment of the model regulation drafted by the MTC in 1973. In 2010, the MTC revised the model regulation language to remove the phrase about "unusual fact situations (which ordinarily will be unique and non-recurring)." This newer version of the rule follows the reasoning found in the Idaho Supreme Court's holding in the Union Pacific case, 139 Idaho 572 (2004). Enacting this revised version of the rule provides interpretation and application of Section 63-3027(s), Idaho Code, that is consistent with the Idaho Supreme Court's interpretation and application of the statute.

Rule 750 is being amended to provide additional guidance regarding the carryover period for the broadband tax credit. As a result of taxpayer inquiry, this version of the rule clarifies the broadband equipment tax credit and its allowable 14 year carryover period.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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: NA

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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 71**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1401
(Only those Sections being amended are shown.)

560. SPECIAL RULES (RULE 560).
Section 63-3027(s), Idaho Code.

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases~~*. Section 63-3027(s), Idaho Code, may be invoked only when unusual fact situations that ordinarily are unique and nonrecurring produce incongruous results pursuant to*~~ where the apportionment and allocation provisions contained in Section 63-3027, Idaho Code, produce incongruous results. ~~*(3-20-97)*~~(____)

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: (3-20-97)

a. Separate accounting; (3-20-97)

b. The exclusion of one (1) or more of the factors; (3-20-97)

c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or (3-20-97)

d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. (3-20-97)

03. Special Industry Methods. Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in Section 63-3027(s), Idaho Code, or in Rules 560 through 599 of these rules precludes the Tax Commission from establishing appropriate procedures pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code, for determining the apportionment factors for each of these industries. These procedures ~~*shall*~~ will be applied uniformly. See Rule 580 of these rules for the list of the special industries. ~~*(3-20-97)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

750. BROADBAND EQUIPMENT INVESTMENT CREDIT: IN GENERAL (RULE 750).
Section 63-3029I, Idaho Code.

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (4-6-05)

02. Limitations. The broadband equipment investment credit allowable in any taxable year ~~*shall*~~ will be limited as follows: ~~*(3-15-02)*~~(____)

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars ($750,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

03. Carryovers. (3-15-02)

a. The carryover period for the broadband equipment investment credit is fourteen (14) years. (3-15-02)

i. The fourteen (14) year carryover period provided by section 63-3029I(7), Idaho Code, extends throughout the fourteen (14) taxable years following the year in which the equipment was installed. The fourteen (14) year carryover period begins to run regardless of whether the taxpayer has sought and received approval from the Idaho public utilities commission (PUC). (   )

ii. Once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward pursuant to section 63-3029I(7), Idaho Code. (   )

iii. Example: A calendar year filer installed qualifying equipment on July 20, 2001. However, it was not until 2013 that the taxpayer sought and received the approval order from the PUC. The fourteen (14) year carryover period already began to run based on the installation date and will expire at the end of the 2015 taxable year. On March 10, 2013 the taxpayer is preparing his tax returns and considering how much broadband credit is available and to which taxable years it could be applied to. The taxpayer can file an amended return to claim the credit starting with taxable year 2009 (prior years would be out of the statute of limitations for filing an amended return assuming all returns had been timely filed and no other special circumstances had held the period open). The taxpayer must look back to taxable year 2001 (the year of installation) to see how much credit the taxpayer could have used in each taxable year up to 2009 to determine how much credit carryover amount is still available pursuant to the carryover limitations of section 63-3029I(7), Idaho Code. The taxpayer must use up or transfer any unused credit before taxable year 2016; after taxable year 2015, the carry forward period will expire and any unused credit will no longer be available for the taxpayer to apply or transfer. (   )

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. (3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules ~~*shall*~~ will apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules ~~*shall*~~ will be those limitations as provided in Section 63-3029I, Idaho Code. ~~*(4-6-05)*~~(   )

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1402

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 63-3039, 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 October 15, 2014.

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 268 is being promulgated to provide guidance on the order in which a nonresident or part-year resident can deduct suspended losses.

Rule 275 is being amended to include an example showing how a nonresident partner of a multistate investment partnership calculates the amount of taxable income from the partnership that is included in Idaho taxable income.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

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: NA

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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 93**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1402
(Only those Sections being amended are shown.)

268. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUSPENDED LOSSES FROM PASS-THROUGH ENTITIES (RULE 268).
Section 63-3026A, Idaho Code.

01. In General. A nonresident individual's suspended losses from a pass-through entity are included in Idaho taxable income in the year included in federal taxable income only to the extent the losses were from an Idaho source in the year incurred. ( )

a. Suspended Loss. For purposes of this rule, a suspended loss is a loss required to be carried over to a succeeding taxable year due to Section 465(a), Section 704(d), or Section 1366(d) of the Internal Revenue Code. ( )

b. Idaho Source. A suspended loss is from an Idaho source in the year incurred to the extent provided by Section 63-3026A, Idaho Code, and related rules. For purposes of this rule, the Idaho source portion of a suspended business loss subject to apportionment is determined by multiplying the loss by the Idaho apportionment factor of the pass-through entity in the year the loss was incurred. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ( )

c. Nonbusiness Losses. A suspended nonbusiness loss is from an Idaho source in the year incurred to the extent the loss is allocable to Idaho pursuant to Section 63-3027, Idaho Code and Rule 263.02 of these rules. ( )

d. Year Loss Incurred. For purposes of this rule, "year incurred" means the tax year the loss was first suspended. ( )

e. Example. A nonresident individual's federal taxable income includes one hundred thousand dollars ($100,000) of loss from a partnership. Sixty thousand dollars ($60,000) of that loss was incurred in the prior tax year and suspended due to the basis limitation of Section 704(d) of the Internal Revenue Code. Forty thousand dollars ($40,000) of that loss was incurred in the current tax year. The Idaho apportionment factor of the partnership is one hundred percent (100%) in the current year and fifty percent (50%) in the prior year. The individual's Idaho taxable income includes seventy thousand dollars ($70,000) of the partnership's loss, computed as follows: ($60,000 prior year suspended loss x fifty percent (50%) prior year Idaho apportionment factor plus (Forty thousand dollars ($40,000) current year loss x one hundred percent (100%) current year Idaho apportionment factor). ( )

02. Losses from Multiple Years. For purposes of this rule, losses from a pass-through entity are considered used in the order incurred. ( )

a. Example. A nonresident individual has suspended losses from a partnership of one hundred thousand dollars ($100,000). The suspended losses consist of forty thousand dollars ($40,000) of loss incurred in Year 1 and sixty thousand dollars ($60,000) of loss incurred in Year 2. The individual also has a loss from the partnership in the current year of fifty thousand dollars ($50,000). The partnership's Idaho apportionment factor is one hundred percent (100%) in the current year and fifty percent (50%) in each of the preceding years. Due to the loss limitation of Section 704(d) of the Internal Revenue Code, the individual's current year deduction is limited to one hundred thousand dollars ($100,000). The one hundred thousand dollar ($100,000) loss allowed in computing federal taxable income is considered to be forty thousand dollars ($40,000) of suspended loss from Year 1 and sixty thousand dollars ($60,000) of suspended loss from Year 2. The amount included in Idaho taxable income is fifty thousand dollars ($50,000), computed as follows: ($40,000 Year 1 loss x 50% Idaho apportionment factor) plus ($60,000 Year 2 loss x 50% Idaho apportionment factor). ( )

~~268.~~ 269. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code.

01. In General. (4-11-06)

a. For taxable years beginning on or after January 1, 2007, the Idaho taxable income of a nonresident individual does not include the distributive share of investment income of a qualified investment partnership. The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. (2-27-12)

b. The exemption from tax on investment income from a qualified investment partnership does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is governed by Section 63-3026A(3)(a)(vii), Idaho Code, and Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership is determined as provided in Rule 263 of these rules. (2-27-12)

02. Qualified Investment Partnership. An entity is a qualified investment partnership only if it meets both of the following criteria: (2-27-12)

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. (4-2-08)

b. The gross income from investments of the entity is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. (2-27-12)

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly. (2-27-12)

04. Examples. (2-27-12)

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars ($90,000) of dividend income and ten thousand dollars ($10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. (2-27-12)

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars ($10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. (2-27-12)

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of eighty thousand dollars ($80,000) of dividend income and twenty thousand dollars ($20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules. (2-27-12)

d. A is a nonresident individual partner in ABC, a partnership with a fifty percent (50%) Idaho apportionment factor. The gross income of ABC consists of ninety thousand dollars ($90,000) of dividend income, five thousand dollars ($5,000) of capital gain from the sale of non-Idaho real property used in the trade or business, and five thousand dollars ($5,000) of gross business income. Since at least ninety percent (90%) of ABC's gross income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but fifty percent (50%) of A's distributive share of ABC's gain from the sale of non-Idaho real property (which is business income under the facts of this example) and fifty percent (50%) of A's distributive share of ABC's other business income is included in Idaho taxable income, based on the Idaho apportionment factor of the partnership as provided in Section 63-3026A(3)(a)(i) and Rule 263 of these rules. (   )

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1403

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 63-3039, 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 October 15, 2014.

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 075 is being amended to add the tax brackets for calendar year 2014 and remove the information for calendar year 2009 so only five years of historical data is retained in the rule.

Rule 190 is being amended consistent with 2014 House Bill 595a to increase the maximum amount deductible for the Idaho Medical Savings Account to $10,000 single/$20,000 married filing joint.

Rule 263 is being amended to conform to updated the amount of guaranteed payments that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code.

Rule 771 is being amended to add tax year 2014 and the applicable grocery credit amounts to the table.

Rule 872 is being amended to change language from split-monthly to semimonthly.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1403
(Only those Sections being amended are shown.)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
Section 63-3024, Idaho Code.

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars ($30,000), the tax is computed as if they had taxable income of fifteen thousand dollars ($15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~*a.*~~ ~~*For taxable years beginning in 2009:*~~

~~IF IDAHO TAXABLE INCOME IS~~		~~IDAHO TAX~~		
~~At least~~	~~But less than~~	~~Is~~		~~Plus~~
~~*$1*~~	~~*$1,321*~~	~~*$0*~~	~~+~~	~~*1.6% of taxable income*~~
~~*$1,321*~~	~~*$2,642*~~	~~*$21.13*~~	~~+~~	~~*3.6% of the amount over $1,321*~~
~~*$2,642*~~	~~*$3,963*~~	~~*$68.69*~~	~~+~~	~~*4.1% of the amount over $2,642*~~
~~*$3,963*~~	~~*$5,284*~~	~~*$122.84*~~	~~+~~	~~*5.1% of the amount over $3,963*~~
~~*$5,284*~~	~~*$6,604*~~	~~*$190.21*~~	~~+~~	~~*6.1% of the amount over $5,284*~~
~~*$6,604*~~	~~*$9,907*~~	~~*$270.78*~~	~~+~~	~~*7.1% of the amount over $6,604*~~
~~*$9,907*~~	~~*$26,418*~~	~~*$505.24*~~	~~+~~	~~*7.4% of the amount over $9,907*~~
~~*$26,418 or more*~~		~~*$1,727.05*~~	~~+~~	~~*7.8% of the amount over $26,418*~~
~~*Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.*~~				

~~*(4-7-11)*~~

~~*b*~~a. For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,316	$0	+	1.6% of taxable income
$1,316	$2,632	$21.06	+	3.6% of the amount over $1,316
$2,632	$3,948	$68.44	+	4.1% of the amount over $2,632
$3,948	$5,264	$122.40	+	5.1% of the amount over $3,948
$5,264	$6,580	$189.52	+	6.1% of the amount over $5,264
$6,580	$9,870	$269.80	+	7.1% of the amount over $6,580
$9,870	$26,320	$503.39	+	7.4% of the amount over $9,870
$26,320 or more		$1,720.69	+	7.8% of the amount over $26,320
Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.				

(4-7-11)

~~c~~b. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,338	$0	+	1.6% of taxable income
$1,338	$2,676	$21.41	+	3.6% of the amount over $1,338
$2,676	$4,014	$69.58	+	4.1% of the amount over $2,676
$4,014	$5,352	$124.44	+	5.1% of the amount over $4,014
$5,352	$6,690	$192.68	+	6.1% of the amount over $5,352
$6,690	$10,035	$274.30	+	7.1% of the amount over $6,690
$10,035	$26,760	$511.80	+	7.4% of the amount over $10,035
$26,760 or more		$1,749.45	+	7.8% of the amount over $26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.				

(2-27-12)

~~d~~c. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,380	$0	+	1.6% of taxable income
$1,380	$2,760	$22.08	+	3.6% of the amount over $1,380
$2,760	$4,140	$71.76	+	4.1% of the amount over $2,760

$4,140	$5,520	$128.34	+	5.1% of the amount over $4,140
$5,520	$6,900	$198.72	+	6.1% of the amount over $5,520
$6,900	$10,350	$282.90	+	7.1% of the amount over $6,900
$10,350 or more		$527.85	+	7.4% of the amount over $10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.				

(4-4-13)

~~e~~d. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,409	$0	+	1.6% of taxable income
$1,409	$2,818	$22.54	+	3.6% of the amount over $1,409
$2,818	$4,227	$73.26	+	4.1% of the amount over $2,818
$4,227	$5,636	$131.03	+	5.1% of the amount over $4,227
$5,636	$7,045	$202.89	+	6.1% of the amount over $5,636
$7,045	$10,568	$288.84	+	7.1% of the amount over $7,045
$10,568 or more		$538.94	+	7.4% of the amount over $10,568
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.				

(3-20-14)

e. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,429	$0	+	1.6% of taxable income
$1,429	$2,858	$22.86	+	3.6% of the amount over $1,429
$2,858	$4,287	$74.30	+	4.1% of the amount over $2,858
$4,287	$5,716	$132.89	+	5.1% of the amount over $4,287
$5,716	$7,145	$205.77	+	6.1% of the amount over $5,716
$7,145	$10,718	$292.94	+	7.1% of the amount over $7,145
$10,718 or more		$546.59	+	7.4% of the amount over $10,718
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.				

(   )

(BREAK IN CONTINUITY OF SECTIONS)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (RULE 190).
Section 63-3022K, Idaho Code.

01. Designation as a Medical Savings Account. An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following: (5-3-03)

a. The name of the account; (5-3-03)

b. The title of the account; (5-3-03)

c. The description of the account; or (5-3-03)

d. The designation of the account. (5-3-03)

02. Withdrawal to Reimburse the Account Holder. (4-5-00)

a. A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (4-5-00)

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars ($300) on March 1. On that day, he paid a medical expense costing four hundred dollars ($400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars ($200) into his medical savings account. On March 11 he withdrew four hundred dollars ($400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars ($300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars ($200) for the contribution to the account. However, he must include one hundred dollars ($100) in Idaho taxable income in addition to paying a penalty of ten dollars ($10). (7-1-98)

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

04. Contributions That Exceed the Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. For taxable years beginning on or after January 1, 1995, but before January 1, 2014, ~~*T*~~the maximum amount deductible is two thousand dollars ($2,000), four thousand dollars ($4,000) for a joint account. For taxable years beginning on or after January 1, 2014, the maximum amount deductible is ten thousand dollars ($10,000), twenty thousand dollars ($20,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, ~~*shall*~~ will be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. ~~*(4-5-00)*~~(   )

05. Death of a Spouse. If an Idaho medical savings account is established for married individuals as a joint account, no contributions ~~*shall*~~ will be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death ~~*shall*~~ will be attributed to each account holder. If the amounts are less than the maximum contribution ~~*of two thousand dollars ($2,000)*~~ amount, the surviving account holder may make contributions so that his total contributions for the year total ~~*two thousand dollars ($2,000)*~~ the maximum contribution amount. For example, a married couple contributes three thousand dollars ($3,000) to their medical savings account in January of 2013. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars ($1,500). Because the wife has not met the maximum deduction of two thousand dollars ($2,000) for taxable year 2013, she can contribute another five hundred dollars ($500) in that year.

~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code.

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

a. Ordinary income or loss from trade or business activities; (3-20-97)

b. Net income or loss from rental real estate activities; (3-20-97)

c. Net income or loss from other rental activities; (3-20-97)

d. Interest income; (3-20-97)

e. Dividends; (3-20-97)

f. Royalties; (3-20-97)

g. Capital gain or loss; (3-20-97)

h. Other portfolio income or loss; (3-20-97)

i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. The 2013 amount is two hundred fifty thousand dollars ($250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars ($250,000). ~~(3-20-14)~~(____)

05. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).
Section 63-3024A, Idaho Code.

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME $1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN $1,000
2014	$100	$90
2013	$100	$80
2012	$90	$70
2011	$80	$60
2010	$70	$50
2009	$60	$40
2008	$50	$30

~~*(3-20-14)*~~(____)

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars ($20). An additional twenty dollar ($20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar ($20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. Circumstances Causing Ineligibility. A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Uniformed Services. A member of the uniformed services who is: (4-7-11)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

c. See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

b. An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

c. No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code.

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer must remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars ($750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars ($750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (3-20-14)

b. ~~*Split M*~~Semimonthly Filers. ~~*(4-6-05)*~~(   )

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, will remit the tax withheld based on ~~*split-*~~semimonthly withholding periods. The first ~~*split-*~~semimonthly withholding period begins on the first day of the month and ends on the 15th day of the same month with payment made no~~t~~ later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. ~~*(3-20-14)*~~(   )

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	$5,000	$60,000
On or After January 1, 2004, but Before July 1, 2005	$6,000	$72,000
On or After July 1, 2005	$20,000	$240,000

(4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer will remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (3-20-14)

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. An employer must file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return will: (3-20-14)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return must be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. (3-20-14)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. (3-20-14)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer must file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment must be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (3-20-14)

b. The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (3-20-14)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule will be filed using the proper forms as prescribed by the Tax Commission. The forms will include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-14)