

Dear Senators SIDDOWAY, Guthrie, Stennett, and
Representatives COLLINS, Trujillo, Erpelding:

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

IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules - Proposed Rules
(Docket No. 35-0110-1601).

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 10/26/2016. 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 11/23/2016.

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: Legislative Research Analyst - Kristin Ford

DATE: October 06, 2016

SUBJECT: State Tax Commission

IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules - Proposed Rules
(Docket No. 35-0110-1601)

The State Tax Commission submits notice of proposed rulemaking at IDAPA 35.01.10 - Idaho Cigarette and Tobacco Products Tax Administrative Rules. This proposed rule amends Rule 017 to provide for the amount of security that must be posted by a cigarette wholesaler and to provide the alternative of prepaying the full value of stamps in the wholesaler's inventory in lieu of posting a bond. This proposed rule implements the 2016 amendment to Idaho Code 63-2510A made by the Legislature. According to the Commission, there is no fiscal impact. Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the May 4, 2016 edition of the Idaho Administrative Bulletin. The rulemaking appears to be within the agency's statutory authority under Sections 63-105, 63-2510A, and 63-3039, Idaho Code.

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 -- IDAHO STATE TAX COMMISSION

35.01.10 -- IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-1601

NOTICE OF RULEMAKING -- PROPOSED RULES

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(2), 63-2516, 63-2523, 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 19, 2016.

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 017, SECURITY FOR TAX REQUIRED.

The rule describes the bonding procedure authorized by Section 63-2510A, Idaho Code, and is amended to clarify the procedure by which the state tax commission determines the amount of the bond required for wholesalers.

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 May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, pages 66-67](#).

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 at (208) 334-7855 or don.williams@tax.idaho.gov.

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 October 26, 2016.

DATED this 1 day of September 2016.

Don Williams
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd, Plaza IV
PO Box 36
Boise, ID 83722-0410
Phone: (208) 334-7855
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0110-1601
(Only Those Sections With Amendments Are Shown.)

017. SECURITY FOR TAX REQUIRED (RULE 017).

Sections 63-2510 and 63-2510A, Idaho Code

01. Security for Payment of Taxes. Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, shall at all times have in effect and on file with the State Tax Commission security for payment of the excise tax. The security shall be in the form and amount acceptable to the State Tax Commission, shall be payable to the State Tax Commission, and shall be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler shall be liable, including any penalty and interest.

(7-1-98)

a. The amount of the security shall be at least the greater of two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base, ~~but in no case shall be less than one thousand dollars (\$1,000)~~ or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received. ~~(3-20-04)~~ ()

b. If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the State Tax Commission accordingly, or pay a deposit to the State Tax Commission for future taxes due which exceed the limitations.

(3-20-04)

c. Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the State Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the State Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the State Tax Commission.

(7-1-98)

02. Reviewing Security on File. The State Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability.

(7-1-98)

03. New Wholesaler Application. When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows:

(7-1-93)

a. If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler shall furnish security based on the most recent twelve (12) month history of the prior ownership.

(7-1-93)

b. If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler shall furnish security in the amount of an estimated two (2) month tax liability of the new ~~firm business~~, or ~~one thousand dollars (\$1,000)~~ the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received, whichever is greater. The estimate shall be prepared by the new wholesaler and shall be subject to review and approval by the State Tax Commission.

~~(7-1-98)~~ ()

04. Types of Security. A person required to post security may, instead of posting a surety bond, deposit with the State Tax Commission any of the following alternatives equivalent to the amount of the bond required.

(4-4-13)

a. Lawful money of the United States. Cash bonds must be submitted as a cashier's check, money order, or other certified funds which are payable to the "Idaho State Tax Commission." A cash bond will not accrue interest. The State Tax Commission will cash the funds and hold the money for the duration the taxpayer holds a

permit. (4-4-13)

b. Letters of credit. Irrevocable letters of credit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made to the benefit of the "Idaho State Tax Commission." The terms of the letter of credit must allow the State Tax Commission to make demand directly against the issuer of the letter of credit for any taxes, penalties, and interest due and unpaid, upon which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (4-4-13)

i. The letter must include the name of the issuing institution, taxpayer's name, effective date, expiration date and place, dollar amount covered, terms of the letter, letter number, and authorized signature. (4-4-13)

c. Time Certificates of Deposit (CD). Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a financial institution doing business in Idaho and federally insured, made in the name of the depositor, payable to the "Idaho State Tax Commission," and containing the provisions that interest earned shall be payable to the depositor. The State Tax Commission will hold the CD. If the financial institution holds the actual CD or does not issue a certificate, a verification form is required by the State Tax Commission confirming the CD. The form may be obtained from the State Tax Commission. (4-4-13)

d. Joint Savings Account. Joint savings accounts, not exceeding the federally insured amount, at a financial institution doing business in Idaho and federally insured. The joint savings account should be issued in the name of the taxpayer and the "Idaho State Tax Commission." Evidence of the insured account must be delivered to the State Tax Commission. The taxpayer will be notified by the State Tax Commission of any increases in bonding when it becomes necessary. The taxpayer may send a check to cover the difference which will be deposited in the joint savings account. The interest accrued on the account is the taxpayer's. The terms of the joint savings account agreement must include the following: (4-4-13)

i. No Automatic Teller Machine (ATM) card may be issued to the account; and (4-4-13)

ii. Withdrawals require both signatures of the parties of the joint account or the signature of the Idaho State Tax Commission alone. (4-4-13)

05. Taxpayer Petition for Release from Security Requirements. A security shall be required in all instances unless the State Tax Commission, upon petition by the taxpayer, determines that a security is not required. (7-1-98)

a. The following conditions must be met before the State Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months. (7-1-98)

b. Upon written petition from the taxpayer, the State Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine his books and records within sixty (60) days. The State Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition. (7-1-98)

c. If a petition for release of security is denied, notice shall be mailed to the taxpayer by certified mail. The notice shall include the reasons for the State Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, he must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant. (7-1-98)

06. Failure to File Timely After Release from Security. If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the State Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted. (7-1-98)

a. The demand shall be in writing and shall be personally served on the taxpayer or mailed to him by certified mail. (7-1-93)

b. If the taxpayer wishes to petition for redetermination of the demand, he must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (7-1-93)

c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions shall be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (7-1-93)