

Dear Senators JOHNSON, Bayer, Burgoyne, and  
Representatives COLLINS, Trujillo, Erpelding:

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

IDAPA 35.01.09 - Idaho County Option Kitchen and Table Wine Tax Administrative Rules -  
Proposed Rule (Docket No. 35-0109-1702);

IDAPA 35.01.12 - Idaho Beer Tax Administrative Rules - Proposed Rule (Docket No. 35-0112-1702).

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 11/16/2017. 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 12/15/2017.

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:** Senior Legislative Research Analyst - Kristin Ford

**DATE:** October 27, 2017

**SUBJECT:** State Tax Commission

IDAPA 35.01.09 - Idaho County Option Kitchen and Table Wine Tax Administrative Rules - Proposed Rule (Docket No. 35-0109-1702)

IDAPA 35.01.12 - Idaho Beer Tax Administrative Rules - Proposed Rule (Docket No. 35-0112-1702)

1. Docket No. 35-0109-1702- Idaho County Option Kitchen and Table Wine Tax Administrative Rules. The State Tax Commission submits notice of proposed rulemaking relating to the County Option Kitchen and Table Wine Tax. The proposed rule amends Rule 011 to provide recordkeeping requirements for wineries, and it amends Rule 015 to provide for the cancellation of wine tax reporting permits that have been inactive for a period of twelve months, after notice to the permitholder. The Commission states that negotiated rulemaking was conducted. Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-8, page 123. The proposed rule changes appear to be within the statutory authority of the State Tax Commission, pursuant to sections 63-105, 23-1314, 23-1322 and 23-1323, Idaho Code.

2. Docket No. 35-0112-1702 - Idaho Beer Tax Administrative Rules. The State Tax Commission submits notice of proposed rulemaking relating to the Idaho Beer Tax. The proposed rule amends Rule 016 to provide recordkeeping requirements for breweries, and it amends Rule 016 to provide for the cancellation of beer tax reporting permits that have been inactive for a period of twelve months, after notice to the permitholder. The Commission states that negotiated rulemaking was conducted. Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 2, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-8, page 124. The proposed rule changes appear to be within the statutory authority of the State Tax Commission, pursuant to sections 63-105, 23-1006, 23-1047 and 23-1051, Idaho Code.

cc: State Tax Commission  
Sherry Briscoe

## IDAPA 35 – STATE TAX COMMISSION

### 35.01.09 – IDAHO COUNTY OPTION KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0109-1702

#### 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 23-1323), Idaho Code, and Section 23-1314, 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 18, 2017.

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:

Wine Tax Rule 011 – Sales Subject To Wine Tax. This rule describes when dispositions of wine are subject to the wine tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Wine Tax Rule 015 – Wine Tax Permit Reporting Number. This rule authorizes the issuing of a wine tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

**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 August 2, 2017 Idaho Administrative Bulletin, [Vol. 17-8, page 123](#).

**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 the undersigned 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 October 25, 2017.

DATED this 30th day of August, 2017.

Don Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7846  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1701  
(Only Those Sections With Amendments Are Shown.)

011. SALES SUBJECT TO WINE TAX (RULE 011).

Sections 23-1314 and 23-1319, Idaho Code

01. **In General.** Section 23-1319, Idaho Code, imposes an excise tax per gallon basis upon all wine sold or disposed of by a distributor in Idaho. (7-1-93)

02. **Imposition.** All of the terms defined in Section 23-1303, Idaho Code, the Idaho County Option Kitchen and Table Wine Act apply to ~~the assessment of the excise taxes provided in Section 23-1319, Idaho Code~~ these rules. (7-1-93)(    )

a. All wine distributors, as defined in Section ~~s~~ 23-1303 ~~(d) and (g)(c)~~, Idaho Code, and wine direct shippers as defined in Section 23-1309A, Idaho Code are required to collect and to pay the excise taxes imposed by Section 23-1319, Idaho Code. (3-30-07)(    )

b. Any vintner, winery, producer or manufacturer of wine within Idaho shall be considered a wine importer within the meaning of the definitions provided in Sections 23-1303(e) and (h), Idaho Code, for the purpose of administration of the excise tax as imposed by Section 23-1319, Idaho Code. However, to ensure payment of taxes on wine, any entity holding a winery license shall be considered a distributor to the extent of any dispositions from such winery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the winery's premises. (7-1-93)

~~e. References to the Act as used in these rules, are to the County Option Kitchen and Table Wine Act, Chapter 13, Title 23, Idaho Code. (7-1-93)~~

~~dc.~~ Ales, strong beer, new beer, or any other alcoholic beverages containing ~~a greater percentage of more than four percent (4%) alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code~~ are taxed as wine. (3-30-07)(    )

~~ed.~~ Premixed cocktails having an alcoholic content of fourteen percent (14%) or less by volume shall be taxed as wine. (7-1-93)

~~e.~~ If a winery supplements its inventory, adequate records are required to support any tax paid. The State Tax Commission may presume no tax is paid on wine in the winery's inventory without evidence of the payment of tax. Wineries purchasing wine or grape juice from other wineries to blend and produce wine are not considered supplementing their inventory for the purpose of this rule. (    )

03. **Every Disposition is a Sale.** Every disposition of wine by a distributor to a retailer or consumer shall constitute a sale of wine for resale or consumption in this state, whether said sale is made within or without this state, and the distributor shall be liable for the payment of taxes on such sales. Wine direct shippers are liable for payment of wine tax imposed by Chapter 13, Title 23, Idaho Code as well as the sales and use taxes imposed by Chapter 36, Title 63, Idaho Code on all shipments of wine to Idaho residents. Any person making sales or dispositions of wine, whether licensed as a distributor or not, shall be liable for the taxes on such sale or disposition of wine for which no tax under the Act has otherwise been collected. (3-30-07)

04. **All Sales Presumed Taxable.** Every sale or disposition of a distributor's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

015. WINE TAX ~~REPORTING~~ PERMIT ~~NUMBER~~ (RULE 015).  
Sections 23-1322 and 23-1323, Idaho Code

01. **Permit ~~Number~~ Required.** Every winery and wine distributor located within this state, ~~every wine distributor~~ and every wine direct shipper is required to obtain a wine tax ~~reporting~~ permit ~~number~~ before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a wine tax ~~number~~ ~~permit~~. (3-30-07)( )

02. **Permit ~~Number~~ Is Non-Assignable.** A wine tax ~~reporting~~ permit ~~number~~ is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. (3-30-07)( )

a. The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's wine tax ~~reporting~~ permit ~~number~~ without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (3-30-07)( )

03. **Cancellation of Permit.** The State Tax Commission may cancel the permit of a person not actively engaged in activities requiring a permit according to the Idaho County Option Kitchen and Table Wine Act or these rules. ( )

a. Notice of cancellation must be given in the manner provided for deficiencies by the Idaho County Option Kitchen and Table Wine Act and these rules. ( )

b. A permit held by a person who, for a period of twelve (12) consecutive months, files reports showing no wine activity reportable under the Idaho County Option Kitchen and Table Wine Act or these rules is canceled automatically upon the State Tax Commission providing notice of the cancellation to the last known address of the person to whom the permit was issued. ( )

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.12 – IDAHO BEER TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0112-1702**  
**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 23-1051, Idaho Code, and Section 23-1006, 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 18, 2017.

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:

Beer Tax Rule 011 – Sales Subject To Beer Tax. This rule describes when dispositions of beer are subject to the beer tax. The intent of amending the rule is to give instruction on maintenance of inventory for tax purposes.

Beer Tax Rule 016 – Beer Tax Permit Reporting Number. This rule authorizes the issuing of a beer tax permit. The intent of amending the rule is to allow cancellation of inactive permits.

**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 August 2, 2017 Idaho Administrative Bulletin, [Vol. 17-8, page 124](#).

**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 the undersigned 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 October 25, 2017.

DATED this 30th day of August, 2017.

Don Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0112-1702  
(Only Those Sections With Amendments Are Shown.)

**011. SALES SUBJECT TO BEER TAX (RULE 011).**  
Sections 23-1003, 23-1006, 23-1008, and 23-1048, Idaho Code

**01. In General.** Idaho imposes an excise tax upon barrels or fractional amounts of barrels as provided by Section 23-1008, Idaho Code, sold by wholesalers for use or consumption within Idaho. (7-1-93)

**02. Imposition.** All of the terms defined in ~~Section 23-1001, Idaho Code, et seq., the Beer Act~~ apply to ~~the assessment of the tax provided in Section 23-1008, Idaho Code~~ these rules. (7-1-93)(    )

**a.** All beer wholesalers, as defined in Section 23-1001(~~gk~~), Idaho Code, are required to collect and to pay the tax imposed by Section 23-1008, Idaho Code. (7-1-93)(    )

**b.** Any brewer, brewery, producer or manufacturer of beer within Idaho shall be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(d), Idaho Code, for the purpose of administration of the tax as imposed by Section 23-1008, Idaho Code. However, to ensure payment of taxes on beer, any entity holding a brewery license shall be considered a wholesaler to the extent of any dispositions from such brewery for the purpose of resale or consumption in, by or through any retail facilities including, but not limited to, tasting rooms on or near the brewery's premises. (7-1-93)

~~**e.** References to the Act as used in these rules are to Chapter 10, Title 23, Idaho Code.~~ (7-1-93)

~~**dc.** Ales, strong beer, new beer, or any other alcoholic beverages containing a greater percentage of more than four percent (4%) alcohol by weight than specified in Section 23-1002, Idaho Code, shall be taxed as if they were wine, as defined under Chapter 13, Title 23, Idaho Code are taxed as wine.~~ (7-1-93)(    )

~~**d.** If a brewery supplements its inventory, adequate records are required to support any tax paid. The State Tax Commission may presume no tax is paid on beer in the brewery's inventory without evidence of the payment of tax.~~ (    )

**03. Every Disposition Is a Sale.** Every disposition of beer by a wholesaler to a retailer or consumer shall constitute a sale of beer for use in this state, whether said sale is made within or without this state, and the wholesaler shall be liable for the payment of taxes on such sales. Any person making sales or dispositions of beer, whether licensed as a wholesaler or not, shall be liable for the tax on such sale or disposition of beer for which no tax under the Act has otherwise been collected. (7-1-93)

**04. All Sales Presumed Taxable.** Every sale or disposition of a wholesaler's inventory shall be presumed to be a taxable sale, except as such disposition is allowed as an exemption by the Act and these rules. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

**016. BEER TAX ~~REPORTING~~ PERMIT ~~NUMBER~~ (RULE 016).**

**01. Permit ~~Number~~ Required.** Every brewery and beer wholesaler located within this state ~~and every beer wholesaler~~ is required to obtain a beer tax ~~reporting~~ permit ~~number~~ before engaging in business. Application forms may be obtained from the State Tax Commission. No fee is required to obtain a beer tax ~~number~~ permit. (7-1-93)(    )

**02. Permit ~~Number~~ Is Non-Assignable.** A beer tax ~~reporting~~ permit ~~number~~ is nonassignable. Upon any change of ownership, it shall be the responsibility of the permit holder to immediately give written notification to the State Tax Commission. (7-1-93)( )

**a.** The notice shall set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

**b.** If this information is not furnished to the State Tax Commission and the new owner or lessee continues operation of the business on the previous owner's beer tax ~~reporting~~ permit ~~number~~ without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit. (7-1-93)( )

**03. Cancellation of Permit. The State Tax Commission may cancel the permit of a person not actively engaged in activities requiring a permit according to the Beer Act or these rules.** ( )

**a. Notice of cancellation must be given in the manner provided for deficiencies by the Beer Act and these rules.** ( )

**b. A permit held by a person who, for a period of twelve (12) consecutive months, files reports showing no beer activity reportable under the Beer Act or these rules is canceled automatically upon the State Tax Commission providing notice of the cancellation of the last known address of the person to whom the permit was issued.** ( )