

Dear Senators RICE, Grow, Nye, and  
Representatives HARRIS, Addis, Necochea:

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

IDAPA 35.01.09 - Idaho Beer and Wine Taxes Administrative Rules (ZBR Chapter Rewrite) -  
Proposed Rule (Docket No. 35-0109-2201).

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 09/09/2022. 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 10/07/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Terri Kondeff  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee  
**FROM:** Division Manager - Kristin Ford  
**DATE:** August 24, 2022  
**SUBJECT:** State Tax Commission

IDAPA 35.01.09 - Idaho Beer and Wine Taxes Administrative Rules (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 35-0109-2201)

### Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to Beer and Wine Taxes Administrative Rules. The proposed rule rewrites the existing chapter of rules to shorten the chapter by removing provisions that restate statute and that provide examples and text that could be provided on the State Tax Commission's website instead.

### Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 edition of the Idaho Administrative Bulletin. No fiscal impact on the General Fund exceeding \$10,000 is anticipated.

### Statutory Authority

The proposed rules appear to be within the agency's statutory authority pursuant to sections 63-105 and chapters 10 and 13 of title 23, Idaho Code, with one exception. Rule 011(01)(e) references "or any other alcoholic beverages" which exceeds the scope of section 23-1008, Idaho Code. I contacted the Tax Commission with this concern and they agree that this phrase should be "or any alcoholic beverage **that meets the definition of beer in Section 23-1001(a), Idaho Code,**". I expect to see this change in a future publication of the Administrative Bulletin this fall.

cc: State Tax Commission  
Kimberlee Stratton

\*\*\* PLEASE NOTE \*\*\*

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

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

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**

**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**

**DOCKET NO. 35-0109-2201 (ZBR CHAPTER REWRITE)**

**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:** A public hearing concerning this rulemaking will be held as follows:

<b>Thursday, August 18, 2022 1:00 p.m. MT</b>
<i>In-person participation is available at:</i> <b>Idaho State Tax Commission Turquoise Conference Room 11321 W. Chinden Blvd., Bldg. 2 Boise, Idaho 83714</b>
<i>Join by phone:</i> <b>+1-720-279-0026 US Toll</b> <b>When prompted please enter Guest Code: 382472</b>

The hearing site 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:

Changes include deletions to sections that restated statute, unnecessary examples, and text that could be communicated on the Tax Commission’s website instead.

**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 as a result of 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 April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 49](#). The Tax Commission will hold a public hearing and all public comments received will be considered in the formulation and adoption of the pending rule.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Elena Gonzalez 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 August 24, 2022.

DATED this August 3rd, 2022.

Elena Gonzalez, Product Taxes Research Specialist  
Idaho State Tax Commission  
11321 W. Chinden Blvd., Bldg. 2, Boise ID 83714  
PO Box 36, Boise ID 83722-0036  
[elena.gonzalez@tax.idaho.gov](mailto:elena.gonzalez@tax.idaho.gov)  
(208) 334-7855

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0109-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**35.01.09 – IDAHO BEER AND WINE TAXES ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (RULE 000).**

Sections 63-105, 23-1051, 23-1323, Idaho Code, authorize the State Tax Commission (Tax Commission) to adopt the provisions of the Idaho Beer Act and the Idaho County Option Kitchen and Table Wine Act (the Acts). ( )

**001. SCOPE (RULE 001).**

These rules are to be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on: ( )

**a.** All barrels or fractional amounts of beer sold or disposed of by a wholesaler and used or consumed in Idaho. ( )

**b.** All gallons of wine sold or disposed of by a distributor and used or consumed in Idaho. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

Sections 23-1001, 23-1303, Idaho Code  
Definitions provided by statute, including the definitions in Sections 23-1001 and 23-1303, Idaho Code, apply to these rules. The following definitions apply for the purpose of these rules. ( )

**01. Disposition.** A disposition is any decrease of beer or wine from inventory due to any sale, transfer, loss, breakage, spoilage or any other cause or means. ( )

**02. Taxpayer.** A taxpayer is a person liable to report and pay the beer tax or wine tax according to the Acts and these rules. ( )

**03. Wine Direct Shipper.** A wine direct shipper is a winery that has been issued a permit by the Idaho State Police to ship wine directly to residents of Idaho. ( )

**011. BEER AND WINE SALES SUBJECT TO TAX (RULE 011).**

Sections 23-1001, 23-1003, 23-1006, 23-1008, 23-1303, 23-1309A, 23-1314, 23-1319, Idaho Code

**01. In General.** Sections 23-1008 and 23-1319, Idaho Code, impose an excise tax on beer sales by beer wholesalers and wine sales by wine distributors for use or consumption in Idaho. ( )

**a.** Every disposition of beer by a wholesaler or wine by a distributor to a retailer or consumer constitutes a sale for resale or use. Beer wholesalers or wine distributors are liable for the payment of taxes on the sales. Any person making sales or dispositions of beer or wine, whether licensed or not, is liable for the taxes. ( )

**b.** 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. ( )

**c.** Any brewer, brewery, producer, or manufacturer of beer within Idaho will be considered a beer dealer within the meaning of the definitions provided in Section 23-1001(f), Idaho Code. However, to ensure payment of tax on beer, any entity holding a brewery license will be considered a wholesaler to the extent of any disposition from the brewery for the purpose of resale or consumption in, by, or through any retail facilities including, tasting rooms on or near the brewery's premises. ( )

**d.** Any vintner, winery, producer, or manufacturer of wine within Idaho will be considered a wine importer within the meaning of the definitions provided in Section 23-1303(1)(g), Idaho Code. However, to ensure payment of tax on wine, any entity holding a winery license will be considered a distributor to the extent of any disposition from the 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. ( )

**e.** Ales, beer, new beer, or any other alcoholic beverages containing more than five percent (5%) alcohol by volume are imposed an excise tax by Section 23-1008(1), Idaho Code. ( )

**f.** Premixed cocktails with an alcoholic content of fourteen percent (14%) or less by volume are taxed at the wine tax rate. ( )

**g.** Illegal Sales or Dispositions. In addition to the remedies of Sections 23-1055 and 23-1309, Idaho Code, the Tax Commission may assess taxes against persons making illegal sales of beer or wine who otherwise would be liable for payment of taxes. ( )

**02. Supplementing Inventory.** If a brewery or winery supplements inventory, adequate records are required to support any tax paid. The Tax Commission will presume no tax is paid on beer or wine in the inventory of a brewery or winery without evidence of the payment of tax. Wineries are not supplementing their inventory when purchasing wine or grape juice from other wineries to blend and produce wine. ( )

**03. All Sales Presumed Taxable.** Every sale or disposition from inventory is presumed to be a taxable sale unless the sale or disposition is exempt from tax by the Acts or these rules. ( )

**012. EXEMPTIONS (RULE 012).**  
Sections 23-1048, 23-1051, 23-1319, 23-1323, Idaho Code

**01. Burden of Proof.** The burden of proving any exemption, deduction, credit, or refund allowed by the Acts and these rules is upon the person claiming it. ( )

**02. Wholesale Exports.** Every resale of beer or wine by a beer wholesaler, brewery, wine distributor, or winery for the purpose of and resulting in an export of beer or wine from this state for resale outside this state is exempt from beer or wine tax. ( )

**03. Sales By Wine Direct Shippers Outside This State.** When an Idaho wine direct shipper is licensed as a wine direct shipper in another state, they are licensed to sell wine to residents of the other state. Sales of wine by the Idaho wine direct shipper, using another state's wine direct shipper license, to a resident of that state and delivered to a location in that state are exempt from Idaho wine tax. ( )

**04. Sales to Purchasers on Military Reservations.** Sales to authorized purchasers on military reservations for the purpose of and resulting in sales or consumption on the reservation are exempt from beer or wine

tax. ( )

**05. Sales to Idaho State Liquor Dispensary.** Sales of beer or wine to the Idaho State Liquor Dispensary are exempt from beer or wine tax. ( )

**06. Dispositions From One Distributor or Wholesaler to Another.** Any disposition of beer or wine by transfer or sale or any other means from one (1) distributor or wholesaler to another is exempt from beer or wine tax. ( )

**013. BREAKAGE OR SPOILAGE (RULE 013).**  
Sections 23-1051, 23-1319, Idaho Code

**01. Percentage Method.** When a beer or wine container is damaged, contents spoiled, or is otherwise unfit for sale, the beer wholesaler or wine distributor may claim a percentage deduction of their total inventory purchases during the reporting period when the breakage or spoilage occurred. The taxpayer may claim a deduction without prior written approval when adequate records are maintained to verify actual breakage or spoilage. The maximum percentage deductions are one-half of one percent (0.50%) for beer and three-quarters of one percent (0.75%) for wine. ( )

**a.** The Tax Commission may revoke the use of the percentage method for any taxpayer at any time. The Tax Commission will notify the taxpayer in writing that future destructions of breakage or spoilage will require written approval from the Tax Commission. ( )

**b.** Any taxpayer who has received written notice revoking the percentage method must file the destruction request form required by the Tax Commission. ( )

**02. Reporting Destruction or Spoilage.** Taxpayers will report the destruction or spoilage in the manner and form required by the Tax Commission when claiming breakage or spoilage exceeding the maximum percentages allowed or the Tax Commission revokes the percentage method. ( )

**03. Deduction for Breakage or Spoilage.** A deduction may be claimed by the taxpayer for breakage or spoilage when reporting beer or wine tax due. ( )

**014. FINANCIAL SECURITY (RULE 014).**  
Sections 23-1049, 23-1320, Idaho Code

**01. Financial Security for Payment of Tax.** Any person required to pay tax under the Acts must have an acceptable amount of security on file and in acceptable form with the Tax Commission unless excused or waived by the Tax Commission. The security is conditioned upon payment of all taxes imposed on beer or wine by this state for which the person is liable, including any penalty and interest. ( )

**02. Types of Security.** A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600. ( )

**03. Security for a New Taxpayer.** When a new taxpayer applies for a tax account the security required is one thousand dollars (\$1,000) unless one of the following conditions applies: ( )

**a.** If a beer or wine tax reporting history is available from a previous ownership, the security required may be based on the most recent twelve (12) month filing history of the prior ownership. ( )

**b.** If an out-of-state wine direct shipper is applying for an initial account, they may request a bond waiver. ( )

**c.** If the taxpayer can establish a lesser amount should apply based on the average monthly amount payable according to Section 23-1049, Idaho Code. ( )

**015. BEER OR WINE TAX ACCOUNTS (RULE 015).**

Sections 23-1051, 23-1323, Idaho Code

**01. Tax Accounts.** Before engaging in business, taxpayers need to have a beer tax or wine tax account from the Tax Commission to report and pay tax. As evidence of the tax account, a tax permit is issued. The terms tax account and tax permit are used interchangeably in this section. ( )

**02. Tax Accounts Are Non-transferable.** Where there is a change of ownership, it is the responsibility of the tax account holder to cancel the tax account by giving written notice to the Tax Commission. ( )

**a.** Notice requirements include the date of closure or last date of operation, date of sale or lease, and the name of the new owner or lessee. ( )

**b.** If the new owner or lessee uses the previous owner's tax account, the registered tax holder may be responsible for all tax, penalty, and interest incurred during that period. ( )

**03. Tax Account Cancellation.** The Tax Commission may cancel an inactive tax account. A tax account is considered inactive when returns are filed with no reportable beer or wine activity for twelve (12) consecutive months. The Tax Commission will provide notice of cancellation to the last known address of the tax account holder. ( )

**016. BEER OR WINE TAX RETURNS (RULE 016).**

Sections 23-1047, 23-1051, 23-1322, 23-1323, Idaho Code

**01. Reporting Periods.** Returns are due on or before the 15th day of the month following the end of the reporting period, or the next business day when the due date is a Saturday, Sunday, or legal holiday. All returns must be filed monthly unless the Tax Commission approves an alternate reporting period. ( )

**a.** Request to File Quarterly or Semiannually. Taxpayers owing six hundred dollars (\$600) or less per quarter with a timely filing and payment history may request a quarterly or semiannual reporting period. ( )

**b.** Request to File Annually. Wine direct shippers, taxpayers with seasonal activities, and other taxpayers with minimal activity may request an annual reporting period. ( )

**c.** Final Return. A taxpayer will mark cancel on the last return filed. Tax, penalty, and interest will apply if the taxpayer continues business activity after filing a final return and canceling the tax account. ( )

**02. Prescribed Forms.** All sales or other dispositions of beer or wine in Idaho must be reported on forms provided or approved by the Tax Commission. ( )

**03. Inventory Reporting.** Taxpayers, excluding out-of-state direct shippers, are to report all additions to and sales or dispositions out of inventory, whether taxable or tax exempt. ( )

**04. Requirements of a Valid Return.** A valid return includes the fully completed and signed tax return. The return must meet the requirements of these rules and the information must be legible. ( )

**017. -- 018. (RESERVED)**

**019. RECORDS REQUIRED (RULE 019).**

Sections, 23-1006, 23-1051, 23-1314, 23-1323, Idaho Code

**01. In General.** Every person liable for the payment of taxes on beer or wine must keep and preserve the following records: ( )

**a.** A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. ( )

**b.** A record of the amount of all merchandise purchased, including all bills of lading, invoices, sales



receipts, bank statements, canceled checks, and copies of purchase orders arranged in numerical and chronological order. ( )

- c.** Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ( )
- d.** True and complete physical counts of the beer and wine inventory taken at the end of each reporting period. ( )
- e.** True and complete records of breakage and spoilage claimed as a deduction from inventory. ( )
- f.** Any records used to complete a return, including but not limited to those listed above, are to be kept in numerical and chronological order so they can be balanced with the corresponding return. ( )

**02. Record Retention.** These records are to be kept for a minimum of four (4) years. If a taxpayer appeals an assessment, all records are to be legible and kept on the business premises until final disposition of the appeal. ( )

**020. -- 999. (RESERVED)**