

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 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No.
35-0102-1701).

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 08/21/2017. 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 09/19/2017.

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: August 03, 2017

SUBJECT: State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rules (Docket No. 35-0102-1701)

The State Tax Commission submits notice of proposed rulemaking relating to the Idaho Sales and Use Tax Administrative Rules. The proposed rule removes language regarding the classification of abandoned cable in a building and adds language stating that certain cable installed in a building is presumed to be a real property improvement. The Commission states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 3, 2017 edition of the Idaho Administrative Bulletin, Vol. 17-5, pages 74-75. The Commission's proposed rule change is within their statutory authority under sections 63-105 and 63-3624, Idaho Code.

cc: State Tax Commission
Sherry Briscoe

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1701

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), 63-3624(a), 63-3635, 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 August 16, 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:

Sales Tax Rule 067 – Real Property. We are proposing changing this rule to clearly state that data cabling that is installed in a building will be presumed to be an improvement to real property.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking published in the May 3, 2017, Idaho Administrative Bulletin, [Vol. 17-5, pages 74-75](#).

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 Tom Shaner at (208) 334-7518 or tom.shaner@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 August 23, 2017.

DATED this 10 Day of June, 2017.

Tom Shaner
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410
Phone: (208) 334-7531
Fax: (208) 334-7846

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1701
(Only Those Sections With Amendments Are Shown.)

067. REAL PROPERTY (RULE 067).
Sections 63-3609, 63-3612, & 63-3616, Idaho Code.

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- 01. Improvements or Fixtures.** Improvements or fixtures to real property include: (7-1-93)
- a.** Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)
 - b.** Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)
 - c.** Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)
- 02. Three Factor Test.** A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)
- a.** Annexation to the realty, either actual or constructive. (7-1-93)
 - b.** Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)
 - c.** Intention to make the article a permanent addition to the realty. (7-1-93)
- 03. Example 1:** The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)
- 04. Example 2:** The three (3) factor test would not be met in Subsection 067.03 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (5-8-09)
- 05. Personal Property Incidental to the Sale of Real Property.** This rule does not affect the provisions of Section 63-3609(b), Idaho Code. (7-1-93)
- 06. Store Fixtures.** Store fixtures are items that are affixed to a building and used by retailers in the conduct of their business. The term "store fixtures" includes display cases, trophy cases, clothing racks, shelving, modular displays, kiosks, wall cases, register stands, and check-out counters. If store fixtures only benefit the particular business occupying a building, they are not adapted to the use of the real estate and are therefore personal property. A store fixture will only be deemed to be a real property improvement if: (5-8-09)
- a.** It is affixed to the real estate and its removal would cause significant structural damage to the building itself; or (5-8-09)

b. It is affixed to the real estate and is of benefit to the land or building regardless of the particular business conducted on the premises. (5-8-09)

~~07. **Abandoned Cable.** The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. (5-8-09)~~

07. Fiber Optic and Communication Cable. Fiber optic and communication cable installed in a building is presumed to be a real property improvement. ()