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MEMORANDUM

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

FROM: Kristin Ford - Legislative Research Analyst

DATE: June 07, 2017

SUBJECT: Temporary Rule

IDAPA 35.02.01 - Tax Commission Administration and Enforcement Rules - Adoption of Temporary Rule - Docket No. 35-0201-1702

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Kristin Ford at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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IDAPA 35 – IDAHO STATE TAX COMMISSION

35.02.01 – TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1702

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2017.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 67-5224 and 67-5291, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

These rules are to give guidance regarding the appeals process as provided in 2017 HB23 and 24:

RULE 326 – Communications Between the Appeals Unit and the Originating Division and Others During the Redetermination: Definitions

RULE 327 – Communications Between the Appeals Unit and the Originating Division and Others During the Redetermination: Restrictions, Exemptions and Permitted Communications

RULE 328 – Opportunity to Participate: Notice to Petitioner

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Cynthia Adrian (208) 334-7670.

DATED this 5th Day of May, 2017.

Cynthia Adrian
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Idaho State Tax Commission
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 35-0201-1702
(Only Those Sections With Amendments Are Shown.)**

326. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: DEFINITIONS (RULE 326).

Section 63-3045, Idaho Code. For purposes of Rules 327 and 328, the following definitions apply:

01. Appeals Unit. Appeals unit means the business unit created within the Tax Commission with the responsibility for performing the independent administrative redetermination provided for in Section 63-3045, Idaho Code. (7-1-17)T

02. Appeals Officer. Appeals officer means the staff of the appeals unit performing the redetermination. (7-1-17)T

03. Originating Division. Originating division means the division within the Tax Commission that issued the notice of deficiency determination or other determination under dispute. (7-1-17)T

04. Petitioner. Petitioner means the taxpayer or the taxpayer's authorized representative. (7-1-17)T

05. Unable to Participate. Unable to participate means the petitioner had expressed intent to participate in the discussion with the originating division but did not participate and did not provide adequate notice to the appeals officer to reschedule the discussion. (7-1-17)T

327. COMMUNICATIONS BETWEEN THE APPEALS UNIT AND THE ORIGINATING DIVISION AND OTHERS DURING THE REDETERMINATION: RESTRICTIONS, EXEMPTIONS AND PERMITTED COMMUNICATIONS (RULE 327).

Section 63-3045, Idaho Code.

01. In General. Section 63-3045, Idaho Code, does not adopt the formal *ex parte* restrictions on communications that would apply in a judicial proceeding or under section 67-5253, Idaho Code. However, the Tax Commission will apply the following procedures as part of its redetermination process. The provisions contained within this rule do not create substantive rights affecting the taxpayer's tax liability, or the Tax Commission's ability to determine, assess, or collect the tax liability (including statutory interest and any penalties, if applicable). (7-1-17)T

02. Restrictions on Certain Communications. The appeals officer may engage in discussions relating to the petitioner's petition with employees of the originating division, including the strengths and weaknesses of the issues, new issues, and the parties' positions, only after having provided the petitioner the opportunity to participate in the discussions. (7-1-17)T

03. Exceptions. The limitation on communications contained within subsection 02 of this rule does not apply to communications with or by: (7-1-17)T

a. A Commissioner of the Tax Commission; (7-1-17)T

b. An employee of a Tax Commission outside of the originating division; (7-1-17)T

c. An employee of Idaho Attorney General's Office; (7-1-17)T

d. An employee of another state agency that the Tax Commission has entered into an exchange agreement with; (7-1-17)T

e. An employee of the Internal Revenue Service; (7-1-17)T

f. An employee of the Multi State Tax Commission. (7-1-17)T

04. Permitted Communications. Communications with the originating division that do not require the appeals officer to first provide the petitioner with an opportunity to participate in the communication include: (7-1-17)T

- a. Any matters that are ministerial, administrative, or procedural including routine account inquiries, transcript requests, and other similar inquiries in an electronic environment because they do not involve more than a limited amount of dialogue or interaction between appeals and the originating division. (7-1-17)T
- b. Communications in which the petitioner is given an opportunity to participate and is unresponsive, declines or is unable to participate in a discussion between the appeals officer and the originating division. (7-1-17)T
- c. Assisting the appeals officer in locating or indexing documents within the originating division's audit file that were relied upon by the originating division when it issued its notice of deficiency determination. (7-1-17)T
- d. Requesting verification of calculations that the appeals officer may utilize as part of a settlement or decision. (7-1-17)T
- e. Obtaining a response from the originating division when the petitioner provides new information or makes new legal arguments during the redetermination. The originating division's response must be in writing and a copy of the written response provided to the petitioner. (7-1-17)T
- f. Requesting confirmation of calculations that the petitioner has provided during the redetermination process. (7-1-17)T
- g. Requesting verification that information provided by the petitioner during the redetermination is the same or different from what was previously submitted to the originating division. (7-1-17)T
- h. A settlement meeting conducted in accordance with Rule 501 of these rules. (7-1-17)T

328. OPPORTUNITY TO PARTICIPATE: NOTICE TO PETITIONER (RULE 328).

01. Notification and Participation. If the appeals officer believes a discussion with staff from the originating division is warranted to review matters restricted by Rule 327.02 of these rules, the appeals officer shall provide petitioner reasonable notice of the time and date of any discussion. Such notice may be provided to the petitioner by telephone, mail or electronic form and pursuant to Section 63-4003, Idaho Code. The appeals officer shall make a reasonable effort to accommodate the petitioner's schedule but will not unduly delay the discussion. The petitioner may participate by telephone or in-person at the Tax Commission office in Boise, Idaho, and any discussion will be held during normal business hours. (7-1-17)T

02. Additional Petitioner Participation Information. Any discussion held under this rule that includes petitioner participation is not an informal hearing under Rule 325 of these rules, and does not start the one hundred and eighty (180) day period for issuing a final decision. (7-1-17)T

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