

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1403

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105(2), 63-3039, 63-3624(a), & 63-3635, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Thursday, July 17, 2014, 1:30 p.m. (MDT)

**Idaho State Tax Commission
Room 1CR5 - 1st Floor
800 Park Blvd., Plaza IV
Boise, Idaho 83712**

It is possible that the rules will require further discussion in follow up meetings that will also be open to the public. Notification of any additional meetings will be posted on the Tax Commission's website at <http://tax.idaho.gov/i-1090.cfm> at least one week prior to the date of the meeting. All meeting agendas are also posted on the website which will contain specific information on the rules that will be discussed at a particular meeting. Keep in mind there is no guarantee that a particular rule will be discussed beyond the meeting noted above, so please plan accordingly.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking may do either of the following:

Attend the scheduled meeting and participate in the discussion for any of the rules on the agenda. You may join the meeting by phone if you wish; however, notice must be given in advance so accommodations can be arranged.

Submit a written comment addressing one or more of the rules to be negotiated. All written comments must be received by July 31, 2014, or they may not receive consideration in the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Rule 012. Contractors Improving Real Property - There are two issues that need to be addressed. First, the language in subsection 13 regarding the exemption for materials incorporated into real property in a state that does not impose a use tax (Idaho Code Section 63-3622B in statute) needs to state more explicitly what is covered by the exemption. Second, there has been an increase in projects in which the general contractor hires a subcontractor to fabricate and install materials into real property but ultimately the general does the installation work itself (usually through a second contract between the sub and the general). The language in subsections 08-10 needs to be updated to address this scenario and the resulting tax consequences.

Rule 024. Rentals or Leases of Tangible Personal Property - The two types of leases described in subsection 012 have long been administered as mutually exclusive types of leases (i.e. a given lease contract would only fit in one of the categories, not both). It seems as though that was always the intent as well. However, in careful reading, there has been discussion that the differing language of "fair market value" in 12.a and "full remaining purchase price, the residual" in 12.b inadvertently allow for some overlap where it was not intended. The subsection will be reviewed to see how the descriptions can be cleaned up to achieve the original goal of only one lease type applying to a particular lease contract.

Rule 102. Logging - The logging exemption set forth in Section 63-3622JJ, Idaho Code, explicitly applies to certain equipment and materials used in the tree harvesting process alone rather than the whole process of raising and maintaining trees. The production exemption (Section 63-3622D, Idaho Code) is a wholly separate exemption that has applicability in the broader scope of a full tree farm. However, the references to a “tree farm” in subsection 07 of this logging exemption rule do not make this connection to the production exemption clear. In fact, the rule implies that materials and equipment used on a tree farm can qualify for the logging exemption even if they are used outside of the harvesting process. The rule needs to be amended to make it clear that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

Rule 128. Certificates for Resale and Other Exemption Claims - When an exempt organization (such as a governmental entity) pays for lodging accommodations and wishes to claim an exemption, the current rule allows the purchaser to submit to the vendor either Form ST-101, Sales Tax Resale or Exemption Certificate; Form ST-104-HM, Sales Tax Exemption on Lodging Accommodations; or Form ST-104G Sales Tax Exemption Claim for Cash Purchases by the Government. However, the ST-101 does not provide enough information to determine who actually paid the bill -- the exempt organization or the non-exempt employee. As a result, individuals could submit an ST-101, pay for the lodging themselves, and likely get away without paying tax as there is no feasible mechanism to audit such transactions. The ST-104-HM and the ST-104G provide detail and explanations such that the retailer can easily determine whether the sale should be taxed and the Tax Commission will have enough information to pursue the paying guest for unpaid taxes if necessary. Therefore, the proposed rule change will require the use of the ST-104-HM or ST-104G for exempt sales of lodging accommodations.

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact McLean Russell, Tax Policy Specialist at (208) 334-7531. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency’s web site at the following web address: <http://tax.idaho.gov/i-1090.cfm>.

All written comments must be directed to the undersigned and must be delivered on or before July 31, 2014. Comments may be submitted via e-mail to sherry.briscoe@tax.idaho.gov.

Dated this 6th day of June, 2014.

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