

# IDAPA 35 - IDAHO STATE TAX COMMISSION

## 35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1401

### 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 & 63-3624, Idaho Code.

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

**Thursday, May 15, 2014  
1:30 p.m. MDT**

**Idaho State Tax Commission  
Room 1CR5 - 1st Floor  
800 Park Boulevard, Plaza IV  
Boise, ID 83712-7742**

It is possible that the rule will require further discussion in a follow up meeting 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 027.* Computer Equipment, Software, and Data Services - The passage of House Bill 598 during the 2014 Idaho legislative session necessitates changes to this rule. Of particular note, the bill clarified that software accessed remotely (i.e. cloud-based software) is not tangible personal property and removed existing exceptions. In addition, software delivered electronically or by the load and leave method will no longer be tangible personal property. Finally, the bill clarified that digital books, games, music, and movies are tangible personal property regardless of how they are transferred to the user. All of the above statutory changes will need to be addressed in the rule.

*Rule 100.* Computer Equipment, Software, and Data Services - During the 2013 rulemaking, representatives with the optometry industry and eyeglass and contact sellers discussed concerns related to the rules governing sales of eyeglasses and contacts along with associated services. The Commission ran out of time to promulgate an amended rule last year but promised the interested parties that a rule would be discussed in 2014. There are two specific areas of concerns that were raised during last year's discussion:

1. The proper amount of sales tax to charge on a sale of eyeglasses or contacts when the customer has insurance coverage and the precise insurance reimbursement is unknown at the time of the transaction with the customer; and

2. Services that should be included in the taxable sales price of the eyeglasses.

The Commission wishes to discuss both these issues and to amend the rule to provide the necessary guidance in these areas. In the course of the discussion, it is possible that other related issues may be discussed and addressed as part of the rule change.

**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](mailto:sherry.briscoe@tax.idaho.gov).

Dated this 8th day of April, 2014.

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