

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0102-1501**

**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 Section(s) 63-105(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

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

**THURSDAY, MAY 21, 2015  
1:45 p.m. MDT**

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

It is likely that some or all of these 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-1141.cfm?com=s> 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. 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 must do the following:

- 1) 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.
- 2) Submit a written comment addressing one or more of the rules to be negotiated. All written comments must be received by July 31, 2015, 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 209 during the 2015 Idaho legislative session necessitates changes to this rule. The bill amends the definition of tangible personal property in Section 63-3616, Idaho Code, to clarify that digital videos, digital music, digital books, and digital games are tangible personal property only when the purchaser has a permanent right to use the digital product. Rule changes will be discussed to conform to the new law. In addition, other changes to the rule will be discussed to clarify ongoing issues with prior House Bills 243 and 598, passed in 2013 and 2014 respectively. Topics that may be addressed with rule changes include software maintenance contracts, ongoing license renewals, and electronic data and reporting.

**Rule 056 - Photographers and Photofinishers**

The rule needs to be updated to address treatment of digital photographs particularly in light of House Bill

598 passed in 2014 which excluded their sale from tax. That change in the law removed digital photographs from the definition of tangible personal property unless the photographs are delivered on disc. Where a photographer primarily sells digital photographs delivered electronically, they may no longer qualify for the production exemption on their purchases. As a result, subsection 02 in particular will be reviewed for possible changes.

**Rule 100 - Prescriptions**

The passage of House Bill 75 during the 2015 legislative session necessitates changes to this rule. The bill amends Section 63-3622N, Idaho Code, to expand the prescription exemption to eyeglasses (effective July 1, 2015) and contact lenses (effective July 1, 2016). The rule will be changed to reflect the new exemptions and make the effective dates clear within the rule language. In addition, the entire rule will be reviewed for possible changes to improve clarity.

**Rule 106 - Motor Vehicle Sales, Rentals, and Lease**

**Rule 107 - Vehicles and Vessels – Gifts, Military Personnel, Nonresident, New Resident, Tax Paid to Another State, Sales to Family Members, Sales to American Indians, and Other Exemption**

**Rule 108 - Motor Vehicle's Manufacturer's, Rental Company's, and Dealer's Purchase or Use of Motor Vehicles**

The passage of House Bill 012 during the 2015 legislative session requires some changes to these rules. The bill amends the exemption for sales of certain vehicles to nonresidents and the rules will need to be updated to reflect those changes. In addition, we will discuss addressing the nonresident exemption when a vehicle is titled in both the name of an Idaho resident and a nonresident. Finally, each of the rules will be reviewed in general for possible changes to improve clarity.

**CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this negotiated rulemaking, contact McLean Russell 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-1141.cfm?com=s>

All written comments must be directed to the undersigned and must be delivered on or before July 31, 2015. Comments may be submitted via e-mail to [sherry.briscoe@tax.idaho.gov](mailto:sherry.briscoe@tax.idaho.gov).

Dated this 3rd Day of April, 2015

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