

**IDAPA 35 - IDAHO STATE TAX COMMISSION**

**35.01.12 - IDAHO BEER TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0112-1501**

**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 a rule and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 63-105(2) and 23-1051, Idaho Code.

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

**Thursday, July 23, 2015, 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 this rule 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=> 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.

Of course, there is no guarantee that this 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 011. Sales Subject to Beer Tax**

There has been confusion over the precise meaning of this language in subsection 02.b of the rule:

“However, to ensure payment of taxes on beer, any entity holding a brewery license shall be considered a wholesaler to the extent of any dispositions from such brewery for the purpose of resale or consumption in, by or through any retail facilities including, but not limited to, tasting rooms on or near the brewery's premises.”

In particular the language after “a wholesaler...” has caused some uncertainty about who is responsible to pay beer tax and, in specific cases, even resulting in multiple parties paying beer tax where it should only be paid once. We would like to discuss revisions to this subsection to clarify when a wholesaler should be paying tax on beer inventory. Another goal is to clarify which entities qualify for Idaho's wholesaler-to-wholesaler tax exemption. In addition, the rule will be reviewed in its entirety for changes to improve clarity, grammar, etc. These changes will not

have an effect on contracts entered into between wholesalers, distributors, and/or breweries nor will there be an impact on the three-tier system as required by the Alcohol Beverage Control Division of the Idaho State Police.

**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 5th Day of June 2015.

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