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Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Local Government & Taxation Committee and the House Revenue & Taxation Committee

FROM: Division Manager - Mike Nugent

DATE: October 09, 2015

SUBJECT: State Tax Commission

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1501)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1502)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1504)

IDAPA 35.02.01 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0201-1501)

The Idaho State Tax Commission is proposing to promulgate four sets of proposed rules to implement bills enacted by the Legislature in 2014 and 2015 relating to the State Sales and Use Tax.

(Docket No. 35-0102-1501). This proposed rule deals with three rules. Rule 027 - Computer Equipment, Software, & Data Services. The passage of House Bill 209 during the 2015 Idaho legislative session necessitated changes to this rule. Effective April 1, 2015, the bill amended the definition of tangible personal property in Section 63-3616, Idaho Code, clarifying 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. The proposed changes primarily focus on removing conflicts with the new law. The old subsection 08 addressing digital games has been combined into subsection 06 with the other digital products. The new subsection 08 contains changes to bring it in line with legislative changes from previous years (primarily House Bill 598 from the 2014 session).

Rule 056 - Photographers and Photofinishers. The proposed rule has been updated to address taxability of digital photographs particularly in light of House Bill 598 passed during the 2014 legislative session. That change in the law removed digital photographs from the definition of tangible personal property unless the photographs are delivered on disc. As a result, where a photographer primarily sells digital photographs delivered electronically, they no longer qualify for the production exemption on their purchases.

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. The passage of

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House Bill 12 during the 2015 legislative session added utility-type vehicles (UTVs) and specialty off-highway vehicles to the exemption available to nonresidents purchasing certain vehicles and boats in Idaho. The proposed rule has been updated to reflect those changes.

(Docket No. 35-0102-1502). Rule 041 - Food, Meals, or Drinks. This proposed rule addresses free give aways to employees and brings in statutory references. Rule 072 - Application and Payment of Use Tax. The passage of House Bill 237 during the 2015 Idaho legislative session exempted prepared food and beverage freely given to employees if the retailer is in the business of selling prepared food and beverage (e.g. a restaurant). A new subsection has been added to the proposed draft of Rule 041 to define prepared food and prepared beverage. The only change to the proposed draft of Rule 072 is an addition of a cross reference to Rule 041.

Rule 050 Veterinarians and Veterinary Supplies. Rule 079 - Production Exemption. Rule 083 - Farming & Ranching. Rule 103 - Hand Tool, Component, and Unit Price. The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule drafts of each of the above remove the language that is in conflict with the new statute.

Rule 128 - Certificates for Resale and Other Exemption Claims. The proposed rule draft includes changes to several descriptions of exemption certificates that have been updated to reflect the current version of the form. In addition, several changes have been made to remove hand tool language due to the passage of House Bill 39 mentioned above.

(Docket No. 35-0102-1504) Rule 081 - Underground Mining. The passage of House Bill 39 during the 2015 Idaho legislative session allowed hand tools with a unit cost of less than one hundred dollars (\$100) to qualify for the production exemption where they could not qualify previously. The proposed rule draft removes the language that is in conflict with the new law. Rule 099, the Occassonal Sale rule, incorporates an Idaho Code reference. Rule 110 - Returns Filed By County Assessors and Financial Institutions. These proposed rule drafts change references to an exemption certificate to reflect the current version of the form.

(Docket No. 35-0201-1501). Rule 310 is being amended to add the interest rate for calendar year 2016 and the Revenue Ruling where the federal rate for the calculation can be found. Rule 400 is being amended to clarify the penalty computation for substantial understatement. Rule 704 is being amended consistent with 2015 HB236 to allow the Tax Commission to exchange information with the Department of Correction and the Department of Health and Welfare regarding incarcerated persons and food stamp recipients claiming the food tax credit.

It appears that all four sets of proposed rules have been promulgated within the scope of statutory authority granted to the State Tax Commission.

cc: State Tax Commission
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