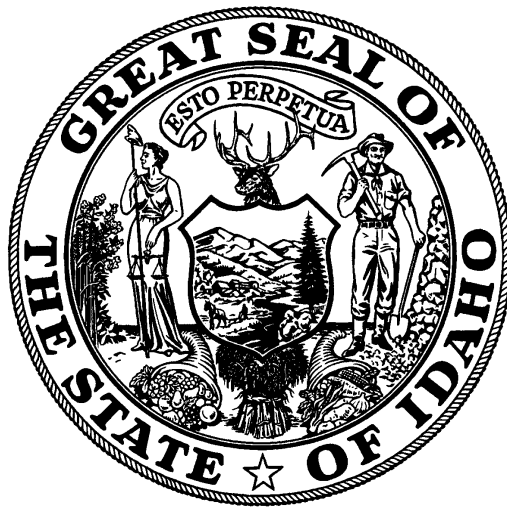


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Local Government
& Taxation Committee
68th Idaho Legislature
First Regular Session – 2025**



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2025

SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-2401

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Property Tax Administrative Rule 617 addresses the income capitalization approach used for Animal Units per Month (AUM) for grazing land assessments in Idaho. The rule provides the formula used by county assessors to properly value specific types of Agricultural land. The statute, Section 63-205C, Idaho Code, doesn't specify the formula and corrected calculation instruction is needed.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2024 Idaho Administrative Bulletin, [Volume 24-9, pages 559-562](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest at (208) 334-7742.

DATED this 4th day of December, 2024.

Kimberlee Stratton
Rules Coordinator, Government Affairs
Idaho State Tax Commission
11321 W. Chinden Blvd., Boise ID 83714
PO Box 36. Boise ID 83722-0036
(208) 334-7544

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2024.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Property Tax Administrative Rule 617 addresses the income capitalization approach used for Animal Units per Month (AUM) for grazing land assessments in Idaho. The rule provides the formula used by county assessors to properly value specific types of Agricultural land. The statute, Section 63-602K, Idaho Code, doesn't specify the formula and corrected calculation instruction is needed.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2024 Idaho Administrative Bulletin, [24-7, pages 269-270](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at Alan.Dornfest@tax.idaho.gov or (208) 334-7742.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2024.

DATED this 4th day of September, 2024.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-2401

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

617. AGRICULTURAL LAND VALUATION DEFINITIONS AND GUIDELINES.
Section 63-205C, Idaho Code

01. Definitions. (7-1-24)

a. The actual use value of agricultural land will be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-205C, Idaho Code, plus a component for the local tax rate. The Actual Use Value will be considered market value for assessment purposes. (7-1-24)

b. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. Only the rent solely attributable to the agricultural land is included in economic rent. (7-1-24)

c. Net Income (Rent) is determined by deducting the landlord's share of all typical current expenses from economic rent per acre. (7-1-24)

d. Agricultural Area is an identifiable geographical area of similar agricultural land. (7-1-24)

02. Determination of Average Crop Rental Rates. (7-1-24)

a. Determine the average per acre gross income from individual crop cash rents, whole farm cash rents, or crop share typical to the Agricultural Area over the immediate past five (5) growing seasons as reported by local farmers. (7-1-24)

b. If data from local farmers is insufficient, data typical to the Agricultural Area from third party providers, such as the United States Department of Agriculture (USDA), University of Idaho Crop Enterprise Budgets, or similar sources, may be used. (7-1-24)

c. The choice to use cash rent or crop share analysis in determining the taxable value of agricultural land should be predicated on the quantity and quality of data available when developing a supportable value conclusion. (7-1-24)

03. Determination of Farm Credit Services Capitalization Rate. (7-1-24)

a. The Tax Commission will gather the interest rate data from the Spokane office of the Farm Credit Services, average the rate over the immediate past five (5) years and distribute the rate annually to assessors by the second Monday in September. (7-1-24)

b. The local tax rate component is the rate most applicable to the Agricultural Area. (7-1-24)

c. The local tax rate will be added to the Farm Credit Services capitalization rate to develop the overall capitalization rate. (7-1-24)

04. Calculation of Net Income from a Cash Rent Analysis. ~~Net Income from cash rent for land secondary categories 1 and 3 is calculated in the following manner:~~ (7-1-24) ()

a. Crops Grown. Determine the crops typically grown in the area. (7-1-24)

b. Economic Rent. Determine the average per acre gross income from individual crop rents or whole farm cash rents typical to the Agricultural Area over the immediate past five (5) years. (7-1-24)

c. Landlord's Expenses. Determine the landlord's share of all typical expenses paid in the

immediately preceding growing season. (7-1-24)

d. Landlord's Net Income. Subtract the landlord's share of all typical expenses from the average gross income per acre for the immediately preceding year to determine net income. (7-1-24)

05. Calculation of Net Income from a Crop Share Analysis. ~~Net income from crop share rent for secondary land categories 1 and 3 is calculated in the following manner:~~ (7-1-24)()

a. Crops Grown. Determine the crops typically grown in the Agricultural Area. (7-1-24)

b. Average Crop Production. Determine the most recent five (5) year average production for typical crops grown in the Agricultural Area. (7-1-24)

c. Average Commodity Prices. The Tax Commission will publish five (5) year average crop prices by surveying publicly available data from various sources, including the annual crop summary published by the USDA National Agricultural Statistics Service (NASS). Average crop prices determined in this manner by the Tax Commission should be considered guidelines when determining net income, subject to modification based on local market data. (7-1-24)

d. Gross Income. Multiply average crop production per acre by the average commodity price to determine gross income per acre. (7-1-24)

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the Agricultural Area. (7-1-24)

f. Landlord's Expenses. Determine the landlord's share of all typical expenses paid in the immediately preceding growing season. (7-1-24)

g. Net Income. Subtract the landlord's share of all typical expenses from the landlord's share of gross income to determine net income. (7-1-24)

06. Calculation of Grazing and Meadow Land Net Income. ~~Net income from grazing and meadow rent for land secondary categories 2, 4, and 5 is calculated in the following manner:~~ (7-1-24)()

a. Animal Unit Month (AUM) ~~Defined. An AUM consists of the amount feed for a~~ is the amount of feed the land produces to sustain a one thousand (1,000) pound cow-calf pair, or other animal equivalent for one month. (7-1-24)()

b. Determine the ~~gross yearly income of an~~ number of AUMs by multiplying the ~~five (5) year average of locally reported rent per AUM or third party provider equivalent by the average~~ number of cow-calf pairs, or animal unit equivalent, grazing a land parcel by the number of months ~~of the grazing season~~ grazed. (7-1-24)()

c. ~~Divide the total acres grazed by the total number of cow-calf pairs, or other animal equivalent, to determine the number of acres making up an AUM. Multiply the number AUMs by the five (5) year average of locally reported or third party provided rents per AUM to arrive at the total AUM income.~~ (7-1-24)()

d. Divide the total AUM income ~~per AUM~~ by the number of acres ~~per AUM to determine a gross annual income per acre~~ grazed to calculate the gross income per acre. (7-1-24)()

e. Subtract landlord's typical expenses from the immediately preceding year to determine net income per acre. (7-1-24)

07. Calculation of Value Estimate per Acre to be used for Categories 1-5. Divide the Net Operating Income by the overall capitalization rate to calculate a value estimate per acre. (7-1-24)

087. Cross Reference. See Rules 645 and Rule 131 of these rules. (7-1-24)

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-2402

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Current Property Tax Administrative Rule 810 conflicts with statute due to the passage of House Bill 521 during the 2024 legislative session. The pending version of Rule 810 eliminates these inconsistencies and guides local county governments on procedures necessary to distribute property tax relief payments as appropriated by the Idaho Legislature. Procedures changed with the passage of House Bill 521 include the elimination of one of the three original property tax relief programs.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2024 Idaho Administrative Bulletin, [Volume 24-9, pages 563-565](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest at (208) 334-7742.

DATED this 4th day of December, 2024.

Kimberlee Stratton
Rules Coordinator, Government Affairs
Idaho State Tax Commission
11321 W. Chinden Blvd., Boise ID 83714
PO Box 36, Boise ID 83722-0036
(208) 334-7544

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is July 30, 2024.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 18, 2024.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule section 810 now conflicts with the current statute due to the passage of House Bill 521 during the 2024 legislative session. This rule guides local county governments on procedures necessary to distribute property tax relief payment appropriated by the Idaho Legislature. Those procedures changed with the passage of House Bill 521, including the elimination of one of the three original property tax relief programs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule is necessary for “compliance with deadlines in amendments to governing law or federal programs”.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were made to conform to new statute.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest at Alan.Dornfest@tax.idaho.gov or (208) 334-7742.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2024.

DATED this 4th day of September, 2024.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-2402

35.01.03 – PROPERTY TAX ADMINISTRATIVE RULES

810. PROPERTY TAX RELIEF.

Sections 33-911, 57-810, 63-724, 63-902, 63-315, Idaho Code.

01. Procedures Regarding School District Facilities Fund. The Tax Commission will notify each county clerk no later than the first Monday in September each year of the amounts being distributed annually, pursuant to Section 33-911, Idaho Code, to each school district. ~~Such A~~ amounts received by each school district must be reported on the L2 form and subtracted from property tax otherwise to be certified for the following funds:

(7-1-24)()

a. Bonds. (7-1-24)

b. Temporary Supplemental Funds. (7-1-24)

~~c. School District plant facilities and safe school plant facilities funds. ()~~

02. Additional School District Facilities Funds. If the amount received by the school district from the school district facilities fund exhausts the payments for bonds, ~~and~~ temporary supplemental funds, ~~and plant facilities funds~~, the remaining sums of money are ~~saved in a reserve account and~~ not subtracted from other school district levies ~~as provided in Section 33-911(2)(d), Idaho Code.~~

(7-1-24)()

03. Procedures Regarding Homeowner Property Tax Relief. (7-1-24)

a. The homeowner property tax relief roll certified in August will be the preliminary roll and will include the market value, amount of homestead exemption granted, and net taxable value for the portion of each homestead, as defined in Section 63-701, Idaho Code, granted the homestead exemption. (7-1-24)

i. No property granted the homestead exemption after the second Monday in July each year is to be included in this roll. (7-1-24)

ii. No improvement granted the homestead exemption on property subject to occupancy tax, as provided in Section 63-317, Idaho Code, is to be included in this roll. Land associated with such improvement may be included if it is part of the homestead and if it has a homestead exemption granted by the second Monday in July. (7-1-24)

iii. The amount of each homestead property's net taxable value attributable to increment and base, as defined in Section 50-2903, Idaho Code, will be shown on this roll. (7-1-24)

iv. The amount of taxable value to which tax levies will apply will be shown on this roll. In the case of taxing districts that do not levy property tax against all otherwise taxable property, the net taxable value of the homestead applicable to each taxing district will be shown. (7-1-24)

~~b. The completed homeowner property tax relief roll certified by the fourth Monday in October will include the following information in addition to the information provided in Subsection 03 of these rules. (7-1-24)~~

~~i. The current year's tax levy applicable to the homestead and eligible for homeowner property tax relief pursuant to Section 63-724, Idaho Code. (7-1-24)~~

~~ii. The amount of property taxes levied on the homestead based on levies eligible for homeowner property tax relief. (7-1-24)~~

~~iii. The total homeowner property tax relief for all eligible properties in the county. (7-1-24)~~

~~iv. The total amount of homeowner property tax relief based on increment value. (7-1-24)~~

eb. Actual tax relief provided to each homestead and shown on property tax notices will be based on current year's eligible levies applied to properties on the homeowner property tax relief roll, provided however, the amounts so determined will be reduced proportionally so that the total provided to all eligible homeowners will not exceed the percentage and amounts certified to the county by the Tax Commission as provided in Section 63-724, Idaho Code. (7-1-24)()

dc. The provision in Section 63-724, Idaho Code, that requires homeowner property tax relief monies to be distributed in the same manner as property tax includes allocation to urban renewal agencies and all taxing districts as otherwise required. (7-1-24)

~~**04. Procedures for Additional Property Tax Relief.** The procedures in this subsection pertain to the distributions to each county pursuant to Section 57-810(2), Idaho Code, other than the amounts distributed to the school district facilities fund. (7-1-24)~~

~~**a.** The amount of property tax levied for the current year and approved by the Tax Commission will be the total amount based on approved property tax budgets for all taxing districts and amounts otherwise allocated to urban renewal agencies in each county. When this amount is determined for taxing districts located in more than one (1) county, each county's share will be based on the prorated amount of the district's property tax being levied in that county. (7-1-24)~~

~~**b.** In addition to the market values submitted to the Tax Commission pursuant to Section 63-510, Idaho Code, each county auditor will include the net taxable value and increment value applicable to each urban renewal revenue allocation area within each taxing district. (7-1-24)~~

ed. Tax relief amounts provided pursuant to Section 57-810(2), Idaho Code, will be subtracted prior to determining amounts otherwise certified to the Tax Commission on the property tax reduction roll pursuant to Section 63-707, Idaho Code. (7-1-24)

054. Tax Cancellations and Levy Corrections. Tax cancellations and levy corrections pursuant to Section 63-810, Idaho Code, occurring after certification of tax relief amounts to be paid by the Tax Commission to each county will not alter amounts to be paid by the Tax Commission. Counties receiving tax relief payments that exceed the amount that would have been paid had the tax cancellations or levy corrections been known at the time of the certification of tax relief amounts will remit the excessive amount to the state general fund using the procedure required for homeowner property tax relief overpayments in Section 63-724, Idaho Code. (7-1-24)

IDAPA 35 – IDAHO STATE TAX COMMISSION

35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAXES ADMINISTRATIVE RULES

DOCKET NO. 35-0110-2401 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State Tax Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01: Zero-Based Regulation.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2024, Idaho Administrative Bulletin, [Volume 24-9, pages 591-602](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Elena Gonzalez at (208) 334-7855.

DATED this 4th day of December, 2024.

Kimberlee Stratton
Rules Coordinator, Government Affairs
Idaho State Tax Commission
11321 W. Chinden Blvd., Boise ID 83714
PO Box 36, Boise ID 83722-0036
(208) 334-7544

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Tuesday, October 1, 2024 at 2:00 p.m. (MT)

In Person:

Idaho State Tax Commission
11321 W Chinden Blvd., Bldg. 2
Boise, ID 83714

(Meeting to be held in the Coral Conference Room)

Teleconference via WebEx:

Join from the meeting link: <https://idahogov.webex.com/idahogov/j.php?MTID=m46424fa37f3fdfd58b32b5b756030d2>

Join by meeting number:

meeting number (access code) 2632 814 3495
meeting password: JJncgPqp224

Join by phone:

+1-415-655-0001 US Toll

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The State Tax Commission performed a critical and comprehensive review of the statutes and existing rules chapter. This chapter rewrite was done under the premise of zero-based rulemaking, as per [Executive Order 2020-01: Zero Based Rule Regulation](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 3, 2024 Idaho Administrative Bulletin, [Vol. 24-4, page 48](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Elena Gonzalez, (208) 334-7855.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 2, 2024.

DATED this 4th day of September, 2024.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 35-0110-2401

35.01.10 – IDAHO CIGARETTE AND TOBACCO PRODUCTS TAXES ADMINISTRATIVE RULES

000. LEGAL AUTHORITY ~~(RULE 000).~~

~~In accordance with~~ Sections 63-105, 63-2501, 63-2553, Idaho Code, ~~the State Tax Commission (Tax Commission)~~ has promulgated rules implementing the provisions of the Idaho Cigarette and Tobacco Products Taxes Acts. (3-31-22)()

001. TITLE AND SCOPE ~~(RULE 001).~~

~~These rules are titled IDAPA 35.01.10, “Idaho Cigarette and Tobacco Products Taxes Administrative Rules.”~~ These rules are construed to reach the full jurisdictional extent of the state of Idaho’s authority to impose a tax on all cigarette and tobacco products sold, used, consumed, handled or distributed within this state. (3-31-22)()

~~002. ADMINISTRATIVE APPEALS (RULE 002).~~

~~Sections 63-2516, 63-2563, Idaho Code~~
~~This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code, and related rules.~~ (3-31-22)

~~003. INCORPORATION BY REFERENCE (RULE 003).~~

~~Sections 63-2516, 63-2563, Idaho Code~~
~~These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.”~~ (3-31-22)

004. -- 009. (RESERVED)

010. DEFINITIONS ~~(RULE 010).~~

Sections 63-2502, 63-2528, 63-2551, 63-3611, Idaho Code
~~Definitions provided by statute, including the definitions in Sections 63-2502, 63-2528, and 63-2551, Idaho Code, apply to these rules. Additionally, the following definitions apply for the purposes of these rules.~~ (3-31-22)

01. Distributor. ~~The term distributor, as defined by Section 63-2551, Idaho Code, includes persons who receive tobacco within this state for purposes of blending and/or repackaging.~~ (3-31-22)

02. Manufacturer. ~~The term manufacturer means a person who manufactures and sells cigarettes. The term manufacturer, as defined by Section 63-2551, Idaho Code, does not include persons who receive tobacco within this state for purposes of blending and/or repackaging.~~ (3-31-22)

03. Person. ~~The term “person” includes any individual, firm, partnership, LLC, venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.~~ (3-31-22)

01. Interstate Commerce Sale. A sale or other transfer of ownership between a person located in Idaho and a person located outside Idaho or within the boundaries of an Idaho reservation. ()

02. Reservation. Reservation means: ()

a. Federally recognized land reserved for American Indian tribes by treaty with the United States, a state, or a territorial government and established by acts of Congress or the Executive branch of the United States; ()

b. Land held in trust by the United States for the use and benefit of an Idaho tribe; or ()

c. Land reserved for the United States military. ()

03. Unmarketable Cigarettes and Tobacco Products. Any package of cigarettes with an Idaho stamp or tobacco product becomes unmarketable when: ()

a. It is returned to the manufacturer as stale or otherwise unsellable, or ()

b. The manufacturer or brand family of such cigarettes or roll-your-own tobacco is removed from the Idaho Attorney General's directory. ()

011. ~~DISTRIBUTION OF FREE OR BELOW COST CIGARETTE AND TOBACCO PRODUCTS SUBJECT TO TAX (RULE 011).~~

~~Sections 63-2506, 63-2510, 63-2510A, 63-2552, 63-2552A, 63-2552B, Idaho Code~~

~~**01. Distribution of Free or Below Cost Tobacco Products Cigarette Tax.** The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. Cigarette tax is due when a cigarette stamp is affixed to a package of cigarettes. (3-31-22)()~~

~~**a.** Only an Idaho tribe, an enrolled Idaho tribal member, or a business wholly owned and operated by the tribe or tribal member, can purchase unstamped packages of cigarettes for delivery to the reservation. ()~~

~~**b.** Non-tribal retailers located within a tribal reservation are forbidden from selling cigarettes without an Idaho cigarette stamp affixed. ()~~

012. TAX PERMITS (RULE 012).

~~Sections 63-2503, 62-2504, 63-2526, 63-2554, Idaho Code~~

~~Every wholesaler of cigarettes is required to obtain a cigarette wholesaler's permit from the Tax Commission and post a bond as required by Rule 017 of these rules before engaging in business. The wholesaler must apply for the permit on the form prescribed by the Tax Commission, accompanied by a fee of fifty dollars (\$50). Application forms may be obtained by contacting the Tax Commission. The permit holder will at all times conspicuously display the permit at their place of business. (3-31-22)~~

~~**01. Permit Is Nonassignable Cigarette Tax Permit.** A cigarette wholesaler's permit is nonassignable. Upon any change of ownership, it is the responsibility of the permit holder to immediately give written notification to the Tax Commission. A wholesaler does not need a cigarette tax permit when buying only stamped cigarettes. It is mandatory to have a cigarette tax permit when: (3-31-22)()~~

~~**a.** The notice will set forth the date of closure, date of sale, or date of lease of the business. If a sale or lease, the notice must state the last day of operation and the name of the new owner or lessee. The permit holder must return the permit or send a written statement that the permit has been destroyed. The wholesaler affixes Idaho stamps to packages of cigarettes. (3-31-22)()~~

~~**b.** If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's cigarette wholesaler's permit without filing for and obtaining a new~~

~~permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated the business under the previous owner's permit.~~ The wholesaler is located in Idaho and makes interstate commerce sales of cigarettes. (3-31-22)()

c. The wholesaler makes sales delivered to a reservation and the purchaser is the U.S. military, an Idaho tribe, an enrolled Idaho tribal member, or a business wholly owned and operated by the tribe or tribal member. ()

~~02. **Seller's Permit** Permits **Non-Transferable**. Every retailer of cigarettes must obtain an Idaho seller's permit from the Tax Commission before engaging in business as required by Section 63-3620, Idaho Code. When a wholesaler sells stamped cigarettes to a retailer of cigarettes, they must obtain from the retailer a Sales Tax Resale or Exemption Certificate, Form ST-101.~~ When a business is sold or transferred the permits are not transferable. (3-31-22)()

a. It is mandatory for the new owner or lessee to obtain their own permits. ()

b. If the previous owner does not cancel their permits, they may be responsible for all tax, penalty, and interest resulting from the use of their permit by the new owner or lessee. ()

c. Cancellation of a permit is accomplished by written notice to the Tax Commission. ()

~~**013. SHIPMENTS IN INTERSTATE COMMERCE (RULE 013).**~~

~~Section 63-2505, Idaho Code~~

~~Sales of cigarettes in the course of interstate commerce for purposes of Section 63-2505, Idaho Code, include only those sales where title is transferred outside the state of Idaho, or on U.S. military reservations, or on Indian reservations.~~ (3-31-22)

~~**01. Types of Conveyances.** Shipments of cigarettes to U.S. military reservations or Indian reservations must be made by conveyance used in the normal operation of the wholesaler's business, or by common carrier hired by the wholesaler.~~ (3-31-22)

~~a. In the case of shipment by common carrier, a copy of the bill of lading must be kept on file at the wholesaler's place of business for three (3) years.~~ (3-31-22)

~~b. In the case of shipments by the wholesaler's conveyance, an itemized receipt must be obtained by the wholesaler bearing the signature of the receiver's representative and the wholesaler's employee making such delivery. Receipts must be serially numbered.~~ (3-31-22)

~~**02. Records of Unstamped Deliveries.** In addition, all deliveries made outside the state and all deliveries made to U.S. military reservations or Indian reservations, and which are delivered without state tax stamps of another state must be listed in a chronological log by delivery date and customer. The log must contain the following information: delivery date, number of cigarettes delivered, and an itemized receipt number, as described in Subsection 013.01.b. of this rule.~~ (3-31-22)

~~**014. SHIPMENTS DELIVERED ON INDIAN RESERVATIONS (RULE 014).**~~

~~**01. Shipments Without Idaho Stamps.** Cigarette wholesalers may deliver cigarettes which do not have Idaho stamps affixed to Idaho Indian reservations when:~~ (3-31-22)

~~a. The purchaser is an enrolled member of an Idaho Indian tribe.~~ (3-31-22)

~~b. The purchaser is a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe.~~ (3-31-22)

~~c. The purchaser is a business enterprise wholly owned and operated by an Idaho Indian tribe.~~ (3-31-22)

~~02. Reservation Means Lands Which Are:~~ (3-31-22)

~~a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; or established by formal decision of the Executive Branch of the United States or;~~ (3-31-22)

~~b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 014.02.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe.~~ (3-31-22)

~~03. Sales of Cigarettes to Non-Indians Within Reservation Boundaries. Sales of cigarettes by wholesalers to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation must have Idaho cigarette stamps affixed.~~ (3-31-22)

~~04. Non-Indian Retailers. Non-Indian retailers located within the boundaries of an Idaho Indian reservation may not sell cigarettes upon which Idaho cigarette stamps have not been affixed.~~ (3-31-22)

013. -- 014. (RESERVED)

015. STAMPS SOURCE, AMOUNT, AND LIMITATIONS (RULE 015) INVENTORY.
Sections 63-2510, 63-2510A, Idaho Code

01. Obtaining Stamps. Cigarette stamps may only be obtained from the Boise office of the Tax Commission. Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Tax Commission to a wholesaler until clear and convincing evidence is received by the Tax Commission that the return has been filed and the tax has been paid. (3-31-22)()

02. Unused Stamp Inventory. ~~Wholesalers~~ A wholesaler may not hold an inventory of unused Idaho cigarette stamps, ~~the face value of which exceeds the amount exceeding the face value~~ of their bond. ~~Where~~ If no bond is required ~~a~~, wholesaler's ~~may not hold an~~ inventory of unused Idaho cigarette stamps, ~~the face value of which exceeds~~ cannot exceed two (2) times the wholesaler's average monthly tax liability. (3-31-22)()

03. Filing and Paying Timely ~~Repayment of Allowance.~~ Failure to file a cigarette tax return or pay the tax on a timely basis will result in no additional stamps being issued by the Tax Commission to a wholesaler until clear and convincing evidence is received by the Tax Commission that the return has been filed or the tax has been paid. The Tax Commission will reduce all credit or refund claims for stamps affixed to packages of cigarettes by the discount for affixing stamps. (3-31-22)()

04. Physical Security. ~~Wholesalers are~~ A wholesaler is responsible for the face value of all stamps received from the Tax Commission. ~~Wholesalers must~~ and for providing provide physical security for the stamps in ~~their~~ the wholesaler's possession. (3-31-22)()

05. Unusable Stamps. Stamps that are unused, unfit, or damaged may be returned to the Tax Commission. If stamps cannot be returned to the Tax Commission, the wholesaler will submit a request for stamp destruction on a Tax Commission prescribed form. Destruction of stamps cannot take place without approval from the Tax Commission. The wholesaler may make the adjustment on the next monthly tax return, provided the approval documentation is attached to the return. ()

016. WHOLESALER'S CREDIT OR REFUND CLAIMS ~~FOR UNMARKETABLE STAMPS (RULE 016).~~
Sections, 62-2510, 63-2559, Idaho Code

01. Destroyed Stamps Stamped Cigarette Tax Credits or Refunds. ~~On and after July 1, 1989, stamps~~ Stamps affixed to cigarettes destroyed by the manufacturer or wholesaler as a result of ~~the return of stale or otherwise unmarketable~~ being unmarked cigarettes may be redeemed by the wholesaler for credit against future tax due if: (3-31-22)()

~~a. The manufacturer provides an affidavit to the Tax Commission indicating that said stamped cigarettes were received from an Idaho licensed wholesaler and detailing the number and package type received.~~ The wholesaler provides an affidavit or returned goods receipt from the manufacturer detailing the number of packages, package type, and date the stamped cigarettes were returned. The returned goods receipt will include a bill of lading. (3-31-22)()

~~b. The wholesaler provides to the Tax Commission a returned goods receipt obtained from the manufacturer's representative verifying the number of packages, the package type, and the date the cigarettes were returned and a bill of lading traceable to the returned goods receipt. The credit must be claimed on the wholesaler's cigarette tax return and all required documentation must be attached.~~ The wholesaler submits a request for stamped cigarette destruction to the Tax Commission in writing at least ten (10) working days prior to the scheduled destruction. The notice has to include a complete description of the number of packages, package type, date and time, and manner the stamped cigarettes will be destroyed. All requests have to be approved by the Tax Commission prior to destruction. (3-31-22)()

~~02. **Stale and Unmarketable Cigarettes**~~ **Tobacco Products Tax Credits and Refunds.** ~~When stamps are to be destroyed by a wholesaler as a result of stale or otherwise unmarketable cigarettes that cannot be returned to the manufacturer, a credit will be allowed against future tax only if~~ Credit or refund claims can be made for unmarketable tobacco products using the following methods: (3-31-22)()

~~a. The wholesaler notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the number of packages, the package type, and the time and manner the cigarettes and stamps will be destroyed.~~ Records are provided documenting the return of tobacco products to the manufacturer. (3-31-22)()

~~b. The Tax Commission reserves the right to observe the destruction of all cigarette stamps and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction.~~ The distributor destroys tobacco products after submitting a destruction request form to the Tax Commission. Tobacco products can be destroyed in a manner authorized by the Tax Commission after receiving approval. (3-31-22)()

~~03. **Unused, Unfit or Damaged Stamps.**~~ Stamps that are unused, unfit, or damaged may be returned to the Tax Commission by the wholesaler for credit. (3-31-22)

~~04. **Manufacturers Removed From Directory.**~~ It is unlawful for a wholesaler to affix stamps to a package of cigarettes manufactured by a manufacturer or belonging to a brand family not included in the directory of certified manufacturers and brands published by the Idaho Attorney General. See Section 39-8403, Idaho Code. It is possible for a wholesaler to affix stamps to cigarettes manufactured by a manufacturer that is later removed from the directory. The cigarettes would then become unmarketable. In such a case a wholesaler may apply for a credit by following the procedures described in Subsection 016.02 of this rule. No credit will be allowed if the cigarettes are purchased after the manufacturer or brand family has been removed from the directory. (3-31-22)

~~05. **Credits and Refund.**~~ All credits and refunds of cigarette tax will be reduced by the amount of the compensation provided for by Section 63-2509, Idaho Code. (3-31-22)

~~017. **SECURITY FOR TAX REQUIRED (RULE 017).**~~
~~Sections 63-2510A, Idaho Code~~

~~01. **Security for Payment of Taxes.**~~ Every wholesaler liable for payment of cigarette taxes provided by Chapter 25, Title 63, Idaho Code, will always have in effect and on file with the Tax Commission security for payment of the excise tax. The security will be in the form and amount acceptable to the Tax Commission, will be payable to the Tax Commission, and will be conditioned upon remittance of taxes imposed on cigarettes by this state for which such wholesaler will be liable, including any penalty and interest. (3-31-22)

~~a. The amount of the security will be the greater of two (2) times the amount of the tax due on an average monthly cigarette tax return, using the previous twelve (12) month period as a base or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received.~~ (3-31-22)

~~**b.** If a wholesaler wishes to hold an inventory of unused Idaho cigarette stamps in excess of the limitations set by Rule 015 of these rules, the wholesaler must increase the amount of the security on file with the Tax Commission accordingly, or pay a deposit to the Tax Commission for future taxes due which exceed the limitations.~~ (3-31-22)

~~**c.** Example: A wholesaler has an average monthly tax liability of two thousand dollars (\$2,000). The wholesaler is required by the Tax Commission to post a security in the amount of four thousand dollars (\$4,000). The wholesaler wishes to hold an unused Idaho cigarette stamp inventory of ten thousand eight hundred dollars (\$10,800). The wholesaler must increase the amount of the security on file with the Tax Commission by six thousand eight hundred dollars (\$6,800), or pay a deposit of six thousand eight hundred dollars (\$6,800) to be applied to future tax due to the Tax Commission.~~ (3-31-22)

~~**02. Reviewing Security on File.** The Tax Commission will review the amount of security on file periodically, but no less than annually, and may increase or decrease the amount of the required security in accordance with the increase or decrease of the wholesaler's average monthly tax liability.~~ (3-31-22)

~~**03. New Wholesaler Application.** When a new wholesaler applies for a cigarette wholesaler's permit, as provided by Section 63-2503, Idaho Code, the security required will be determined as follows:~~ (3-31-22)

~~**a.** If a cigarette tax reporting history is available from a previous ownership of the business, the new wholesaler will furnish security based on the most recent twelve (12) month history of the prior ownership.~~ (3-31-22)

~~**b.** If there is no cigarette tax reporting history available from a previous ownership of the business, the new wholesaler will furnish security in the amount of an estimated two (2) month tax liability of the new business, or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received, whichever is greater. The estimate will be prepared by the new wholesaler and will be subject to review and approval by the Tax Commission.~~ (3-31-22)

~~**04. Types of Security.** A person required to provide security must use the forms of security allowed by Tax Commission Administration and Enforcement Rule 600.~~ (3-31-22)

~~**05. Taxpayer Petition for Release from Security Requirements.** A security will be required in all instances unless the Tax Commission, upon petition by the taxpayer, determines that a security is not required.~~ (3-31-22)

~~**a.** The following conditions must be met before the Tax Commission will release a taxpayer from the posting of a security: The taxpayer has filed all cigarette tax returns including supplemental schedules on a timely basis for a period of not less than twelve (12) months, and the taxpayer has paid all cigarette tax due on a timely basis for a period of not less than twelve (12) months.~~ (3-31-22)

~~**b.** Upon written petition from the taxpayer, the Tax Commission will review the filing record of the taxpayer and, if determined necessary, examine their books and records within sixty (60) days. The Tax Commission will advise the taxpayer of its determination no later than ninety (90) days from the date of receipt of the taxpayer's petition.~~ (3-31-22)

~~**c.** If a petition for release of security is denied, notice will be mailed to the taxpayer by certified mail. The notice will include the reasons for the Tax Commission's determination. If the taxpayer wishes to seek a redetermination of the decision, they must file a petition for redetermination in the manner set forth in Section 63-3045, Idaho Code. The petition for redetermination must be filed no later than thirty (30) days from the date on which the notice of determination is mailed to or served upon the claimant.~~ (3-31-22)

~~**06. Failure to File Timely After Release from Security.** If a taxpayer has been released from security requirements and fails to file a cigarette tax return or fails to pay the cigarette tax due by the due date specified in Chapter 25, Title 63, Idaho Code, the Tax Commission may immediately make demand for the tax return or payment, and demand that a security be posted.~~ (3-31-22)

~~a. The demand will be in writing and will be personally served on the taxpayer or mailed to him by certified mail. (3-31-22)~~

~~b. If the taxpayer wishes to petition for redetermination of the demand, they must do so in writing within ten (10) days of the date upon which the demand is mailed to or served on him. (3-31-22)~~

~~c. Failure to file a petition for redetermination will cause the demand to become final and a jeopardy assessment will be issued. Immediate collection actions will be taken which may include seizing all Idaho cigarette stamps held by the taxpayer, filing liens of record, seizing all cigarettes held in the inventory of the taxpayer, revoking the taxpayer's cigarette permit, or notifying the manufacturers of the cigarettes held in the taxpayer's inventory of all actions taken. (3-31-22)~~

018. CIGARETTE TAX RETURN (RULE 018).
Section 63-2510, Idaho Code

~~01. Cigarette Tax Return. All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (3-31-22)~~

~~02. Filing Returns. The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. (3-31-22)~~

~~03. Due Date. The return will be filed by the wholesaler on or before the twentieth day of the month immediately following the month to which the return applies. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (3-31-22)~~

~~04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (3-31-22)~~

~~a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (3-31-22)~~

~~b. All cigarette tax returns or other documents filed by the taxpayer must include their cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (3-31-22)~~

~~c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (3-31-22)~~

~~d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-31-22)~~

~~05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return will be in violation of this regulation and will be required to appear before the Tax Commission to show cause as to why their permit should not be revoked. See Section 63-2503, Idaho Code. (3-31-22)~~

~~06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The Tax Commission is required to ascertain the amount of~~

~~state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement.~~ (3-31-22)

~~**07. Wholesale Sales of Stamped Cigarettes.** Every wholesaler who imports unstamped cigarettes into this state must file a return, however; a cigarette wholesaler who buys only stamped cigarettes for resale is not required to file a return.~~ (3-31-22)

~~**019. TOBACCO MANUFACTURERS AND DISTRIBUTORS (RULE 019).**~~

~~**01. Shipments to Retailers/Distributors.** In the case where a person who is not a registered Idaho tobacco dealer ships tobacco products to a person who is both a retailer, as defined in Section 63-2551(5), Idaho Code, and a distributor, as defined in Section 63-2551(3)(b), Idaho Code, and Rule 010 of these rules, the shipper will be considered a manufacturer for purposes of all shipments of products intended for blending and/or repackaging and the receiver will be primarily liable for the tax. In the case where shipments are made to a person who is both a retailer and a distributor and products are prepackaged for retail sale, the shipper will be considered a distributor, Section 63-2551(3)(c), Idaho Code, and held primarily liable for the tax.~~ (3-31-22)

~~**02. Nontaxed Tobacco Purchases from Outside the State.** Any person purchasing tobacco products from without this state and making any type of sale, as defined in Section 63-2551(6), Idaho Code, will be deemed to be the distributor and held liable for the unpaid tax on said tobacco products not otherwise taxed.~~ (3-31-22)

~~**03. Determining Wholesale Sales Price.** Any time a distributor makes a purchase of tobacco products from a manufacturer or any person upon which the tax has not been paid, and the documents pertaining to that purchase do not clearly indicate the wholesale sales price, as defined by Section 63-2551(7), Idaho Code, wholesale sales price will be determined to be the purchase price of that product, or the wholesale sales price of that same or a like product in the course of normal commerce whichever is greater. It is the responsibility of the distributor to provide the accuracy of the wholesale sales price of any product it may be held liable for.~~ (3-31-22)

~~**a. Separately Stated Nontaxable Charges.** Separately stated nontaxable charges for shipping, handling, transportation, and delivery may not be used to avoid tax on the wholesale sales price of tobacco products. If the allocation of the wholesale sales price is unreasonable, the Tax Commission may adjust it.~~ (3-31-22)

~~**b. An out of state distributor with nexus in the state of Idaho must use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho. If an out of state distributor without nexus in Idaho applies for and receives a tobacco tax permit voluntarily, that distributor must also use the same method in determining "wholesale sales price" as other distributors that distribute tobacco products in Idaho.**~~ (3-31-22)

~~**i. Example 1.** An out of state tobacco manufacturer manufactures tobacco and acts as its own distributor. The manufacturer distributes its products to Idaho distributors, retailers, and end users. In this case, the manufacturer is acting as both manufacturer and distributor. The wholesale sales price will be the price at which it sells to the Idaho distributor, retailer or end user.~~ (3-31-22)

~~**ii. Example 2:** An out of state importer (Company X) purchases tobacco products. Company X sells its product to its sister company (Company Y) which then acts as the distributor. The dollar amount for which Company X sells its product to Company Y is not disclosed. Company Y then ships the product into Idaho to Idaho distributors and retailers. In this case, the purchase price from the manufacturer to Company X is unknown. Additionally, there are no records provided to show the sales price between Company X and Company Y. There are records showing the price between Company Y and the Idaho distributors and retailers. Under this subsection, where the wholesale sales price is unknown, the wholesale sales price will be the greater of the purchase price of that product or the wholesale sales price of that same or a like product in the course of normal commerce. The "purchase price of the product" is the price the Idaho distributor or retailer actually paid Company Y to purchase the product. The wholesale sales price of the same or similar product in the normal course of commerce could be interpreted as the price a manufacturer would sell the same or similar product to a distributor.~~ (3-31-22)

~~iii. Example 3: An out-of-state distributor buys tobacco products from a manufacturer that is not a related party as defined in IRC Section 267. The distributor ships its products to Idaho distributors and retailers. If the wholesale sales price (the price paid by the distributor to the manufacturer for the product) is known, then that is the wholesale sales price. If the distributor does not know the wholesale sales price paid to the manufacturer, then this subsection requires the wholesale sales price to be the price paid by the Idaho distributors and retailers for the product OR the wholesale sales price of the same or similar products, whichever is greater. (3-31-22)~~

~~020. TOBACCO TAX RETURN (RULE 020).~~

~~01. Tobacco Tax Return. All tobacco distributors who make wholesale purchases are required to file a tobacco products tax return. (3-31-22)~~

~~02. Timing of Filing Return. The return will be in a form prescribed by the Tax Commission and will be filed on a monthly basis. (3-31-22)~~

~~03. Due Date of Return. The return will be filed by the distributor on or before the twentieth (20th) day of the month immediately following the month to which the return applies. If the twentieth (20th) day falls on a Saturday, Sunday, or legal holiday, the return will be due on the next following day which is not a Saturday, Sunday, or a legal holiday. (3-31-22)~~

~~04. Requirements of a Valid Return. A tax return or other document required to be filed in accordance with Section 63-2552, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3046 and 63-3075, Idaho Code, and related rules. (3-31-22)~~

~~a. The tobacco products tax return form must be completed and copies of all pertinent supporting documentation must be attached. The results of supporting documentation must be carried forward to applicable lines on the tobacco products return form. (3-31-22)~~

~~b. All tobacco products tax returns or other documents filed by the taxpayer must include their tobacco products tax permit number and Federal Taxpayer Identification Number in the space provided. (3-31-22)~~

~~c. A tobacco products tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (3-31-22)~~

~~d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required, it must be on the proper form, as prescribed by the Tax Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (3-31-22)~~

~~017. -- 020. (RESERVED)~~

~~021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021) MANDATORY RECORDS.~~

~~01. Sales for Eventual Resale In General. When a registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state the duty to pay the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. Every person liable for payment of taxes on cigarettes or tobacco products needs to keep and preserve the following records in date order: (3-31-22)(____)~~

~~a. A daily record of all cash and credit sales including invoices, receipts, journals, and other related records. (____)~~

~~b. A record of the amount of all merchandise purchased, including all bills of lading, invoice, sales receipts, bank statements, canceled checks, and copies of purchase orders. (____)~~

- c. Supporting documents for all deductions and exemptions allowed by law or claimed on a tax return. ()
- d. True and complete physical counts of the cigarette and tobacco products inventory taken at the end of each reporting period. ()
- e. True and complete records of breakage and spoilage claimed as a deduction from inventory. ()
- f. Other documents used in preparing or supporting the accuracy of the return. ()

02. ~~First Receiver~~Records Retention. ~~The first receiver, the tobacco products distributor who first causes the tobacco products to be shipped to Idaho will report the tax on their tobacco products tax return for the month in which the sales occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax.~~ If a taxpayer appeals an assessment, all records need to be kept until final disposition of the appeal. (3-31-22)()

03. ~~Subsequent Receiver.~~ Any subsequent receiver will not be required to pay the tax as long as they maintains records showing that the first receiver has paid the tax. (3-31-22)

022. EXEMPTIONS (RULE 022):

01. ~~Credit for Taxes Paid.~~ Tobacco distributors may claim a credit for taxes paid on tobacco products other than cigarettes that are: (3-31-22)

- a. Sold and delivered to retailers or distributors at locations outside the state of Idaho; (3-31-22)
- b. Sold and delivered to the United States Government on U.S. Military reservations located within Idaho; (3-31-22)
- e. Sold and delivered to a purchaser within the boundaries of an Idaho Indian reservation when the purchaser is an enrolled member of an Idaho Indian tribe; a business enterprise wholly owned and operated by an enrolled member or members of an Idaho Indian tribe; or a business enterprise wholly owned and operated by an Idaho Indian tribe. (3-31-22)

02. ~~Documentation.~~ ~~Distributors must maintain adequate records to show the validity of credits claimed under this subsection, including delivery records and invoices. If the distributor is selling to an enrolled member of an Indian tribe they should keep a copy of the purchaser's tribal identification card in their files. If they are selling to a tribally owned entity, they should keep a certificate of tribal ownership or some other form of clear and convincing evidence that the purchaser is a business wholly owned and operated by an Idaho Indian tribe.~~ (3-31-22)

03. ~~Indian Reservations.~~ ~~Indian reservation means lands which are:~~ (3-31-22)

- a. Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; established by acts of the United States Congress; established by formal decision of the Executive Branch of the United States; or (3-31-22)

- b. Held by an Idaho Indian tribe not holding lands which meet the definition of Subsection 022.03.a., above, and are tribal lands held in trust by the United States for the use and benefit of such tribe. (3-31-22)

04. ~~Non-Indian Enterprises.~~ ~~Tobacco distributors may not claim a credit for taxes paid on tobacco products sold to non-Indian enterprises or persons located within the boundaries of an Idaho Indian reservation.~~ (3-31-22)

05. ~~Non-Indian Retailers.~~ ~~Non-Indian retailers located within the boundaries of an Idaho Indian~~

~~reservation may not sell tobacco products upon which tobacco products tax has not been paid. (3-31-22)~~

~~**023. CREDIT FOR RETURNED TOBACCO PRODUCTS (RULE 023).**~~

~~**01. Credit Allowed.** When tobacco products have been returned to the manufacturer, credit will be allowed against future tax only if: (3-31-22)~~

~~**a:** The distributor has an itemized credit memorandum or credit invoice from the manufacturer; and (3-31-22)~~

~~**b:** The distributor has a bill of lading or manufacturer's credit receipt which can be traced to the credit memorandum and which verifies the amount shipped to the manufacturer. (3-31-22)~~

~~**02. Notice of Returned Tobacco Products.** The Tax Commission reserves the right to require the distributor to notify the Tax Commission in writing at least five (5) working days prior to shipment of any tobacco products returned to the manufacturer. If required, the notice must include a complete description of the item returned, the quantity to be returned, and the wholesale sales price of the item, and the date items will be shipped. (3-31-22)~~

~~**03. Verifying Shipments.** The Tax Commission reserves the right to verify the shipment of all tobacco products returned to the manufacturer and further reserves the right to delay the shipment until such time as a mutual appointment can be arranged for verifying such shipment. (3-31-22)~~

~~**024. CREDIT FOR DESTRUCTION OF TOBACCO PRODUCTS (RULE 024).**~~

~~**01. Destroyed Tobacco.** When tobacco products are to be destroyed by a distributor, credit will be allowed against future tax only if: (3-31-22)~~

~~**a:** The distributor notifies the Tax Commission in writing at least ten (10) working days prior to destruction. The notice must include a complete description of the items to be destroyed, the quantity of each item, the wholesale sales price of each item and the time and manner the items will be destroyed; and (3-31-22)~~

~~**b:** The distributor has a verifiable credit memorandum from the manufacturer. (3-31-22)~~

~~**02. Observing Destruction.** The Tax Commission reserves the right to observe the destruction of all tobacco products and further reserves the right to delay the destruction until such time as a mutual appointment can be arranged for witnessing such destruction. (3-31-22)~~

~~**0252. -- 999. (RESERVED)**~~