

IDAPA 35 – STATE TAX COMMISSION

35.01.02 – IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1803

NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220, 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(2), 63-3624(a), 63-3635, and 63-3039, Idaho Code.

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

MEETING SCHEDULE: Negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

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

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Negotiated meetings will be scheduled and all scheduled meetings shall be posted and made accessible on the agency website at the address listed below.

1. Attend the negotiated rulemaking meeting(s) and participate in the negotiation process,
2. Attend through a teleconference,
3. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting, and/or
4. Submit written recommendations and comments to the address below.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website summary will be made available to interested persons who contact the agency and posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Rule 018 – The legislature amended the Idaho Sales Tax Act to provide a presumption that under certain conditions out-of-state retailers making sales to customers located in this state are retailers engaged in business in this state. These rules must be updated to reflect these changes. We are adding to the list of entities that are retailers, “out-of-state sellers that must overcome the presumption defined by Section 63-3611, Idaho code. We are also adding the statutory reference to the beginning of the rule

Rule 029 – Idaho law provides that the fee a retailer charges for assembling, producing, or fabricating their products to the special order of a customer is part of the sales price subject to sales tax. Assembly is not referenced in Subsection 029.01, of these rules, and adding this will provide clarity for retailers. We will add assembly in Subsection 029.01, of these rules, and an example of assembly that would be subject to sales tax. We will add statutory references at the beginning of the section.

Rule 041 – In 2014, the legislature added Subsection 63-3621(o), extending exemption to the use of food or beverages donated to individuals or nonprofit organizations. The Tax Commission missed removing Subsection 041.12.c. of this rule when that change was made. The change removes Subsection 041.12.c as an example that is subject to tax.

Rule 077 – The legislature amended the exemption for Research and Development at the INL by adding a new section. Section 070 must be revised to include the new language. We will add the new language to the rule and provide the statutory reference at the top.

Rule 106 – The Commission would like to look at making a change to the current NADA standard, “Clean Retail Value.” Currently, the rule states that in the absence of a bill of sale, we are to use the value established as the “clean retail price.” We would like to propose that an alternate **NADA value** be used. The value assessed should not be a penalty to an individual in the absence of a bill of sale, rather we want to collect the correct amount for the vehicle based upon its make, model, year, options, mileage, and condition. The proposed changes will also separate private party vehicles sales from retailers who are not dealers making vehicle sales. The private party section will be Subsection 106.05, and will break the existing sections into the following subcategories to provide clarity about how these are reviewed and subsequently valued by the tax commission: bill of sale, low bill of sale, no bill of sale, trade in, barter/exchange. This rule is also being updated to reflect changes that have been made to exemption claim forms during 2018.

Rule 117 - A taxpayer has three years to request a refund of sales tax related to bad debt or that it has paid in error. A refund request submitted with the appropriate documentation stops the statute of limitations for the requester. The Tax Commission would like to clarify the language in the list of items that need to be provided with a refund request to ensure it is crystal clear exactly what should be submitted with a refund request at the time it is made. We will also add language that clarifies that the taxpayer must first “satisfy” any outstanding liability to request a refund.

Rule 128 – This rule provides description and guidance on the proper execution of approved exemption claim forms. This rule is being updated to reflect changes that have been made to exemption claim forms during 2018.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking, contact Leah Parsons, (208) 334-7531. For general questions, contact Kimberlee Stratton, (208) 334-7544. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the commission website at the following web address: www.tax.idaho.gov.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 25, 2018.

DATED this 8th day of June, 2018.

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