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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 30, 2013

SUBJECT: State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules (Docket No. 35-0101-1303)

IDAPA 35.02.01 - Rules Pertaining To The Administration and Enforcement Rules (Docket No. 35-0201-1303)

The State Tax Commission is proposing to promulgate two sets of temporary and proposed rules to implement the 2013 United States Supreme Court case of Windsor v. the United States. In that case the Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to heterosexual unions, by Section 3 of the Defense of Marriage Act (DOMA), is unconstitutional under the Due Process Clause of the Fifth Amendment. The Court through Justice Kennedy held that "...the federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment."

The facts of that case were as follows: Edith Windsor and Thea Spyer, a same-sex couple residing in New York, were lawfully married in Ontario, Canada in 2007. Spyer died in 2009, leaving her entire estate to Windsor. Windsor sought to claim the federal estate tax exemption for surviving spouses. She was barred from doing so by Section 3 of DOMA (codified at 1 U.S.C. § 7), which provided that the term "spouse" only applies to a marriage between a man and woman. The Internal Revenue Service found that the exemption did not apply to same-sex marriages, denied Windsor's claim, and compelled her to pay \$363,053 in estate taxes. Windsor sued and eventually prevailed in the U.S. Supreme Court.

The State Tax Commission in its notice of rulemaking for temporary and proposed rules states that a recent Revenue Ruling addressing the Windsor case regarding joint filing makes it necessary to amend the Income Tax Administrative Rules 010 and 805 and Administration and Enforcement Rule 010 to give specific guidance on the definition of marriage. The Commission states that because the filing deadlines for both federal and state income tax returns are April 15, 2014, for most taxpayers the rules need to be amended immediately to provide guidance to taxpayers and tax preparers so that they know how to prepare their tax returns for the impending filing seasons.

It appears to us that the temporary and proposed rules are consistent with Idaho's Constitution and statutes on the definition of marriage.

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cc: State Tax Commission
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