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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: September 23, 2013

SUBJECT: State Tax Commission

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules 033,705,201,195,263,872 (Docket No. 35-0101-1301)

IDAPA 35.01.01 - Rules Pertaining To The Income Tax Administrative Rules - Rules 040,045,075,105,120,254,121,125,140,180,194,251,252,270,280,291,710,714,771,801,855,880 (Docket No. 35-0101-1302)

IDAPA 35.01.02 - Rules Pertaining To The Sales Tax Administrative Rules (Docket No. 35-0102-1301)

IDAPA 35.01.03 - Rules Pertaining To The Property Tax Administrative Rules (Docket No. 35-0103-1302)

IDAPA 35.01.09 - Rules Pertaining To The Wine Tax Administrative Rules (Docket No. 35-0109-1301)

IDAPA 35.01.10 - Rules Pertaining To The Idaho Cigarette & Tobacco Products Tax Administrative Rules (Docket No. 35-0110-1301)

IDAPA 35.01.14 - Rules Pertaining To The Prepaid Wireless E911 Fee Administrative Rules (Docket No. 35-0114-1301)

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No. 35-0201-1301)

IDAPA 35.02.01 - Rules Pertaining To The Administration & Enforcement Rules (Docket No. 35-0201-1302)

Attached with this memo will be nine sets of proposed rules from the State Tax Commission. I will put them in order. The Income Tax Administrative Rules - Rules 033,705,201,195,263,872 (Docket No. 35-0101-1301). These proposed rules implement four separate bills enacted by the Legislature in 2013. The bills implemented are House Bill 2, House Bill 22, House Bill 139 and House Bill 184. HB 2 allows a deduction for an amount equal to the amount of the loss recovery if the taxpayer did not receive a deduction for the loss on a prior Idaho tax return. HB 22 aligns the reporting and paying of Idaho income tax withheld with the same reporting period for the employee W-2s. Employers would report and pay income tax withheld between the first and fifteenth of each month by the twentieth of the same month and report and pay income tax withheld between the sixteenth of the month and the fifth of the next months. HB 139 limits the amount of compensation (guaranteed payments) paid to a partner by a partnership doing business in Idaho that can be attributed to the

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state in which the partner performed the services to \$250,000. Amounts paid in excess of \$250,000 will be sourced to Idaho based upon the Idaho apportionment factor . The \$250,000 limit will be adjusted each year for inflation. The legislation also clarifies that all compensation paid to a retired partner is sourced to the partner's state of domicile. HB 184 simplifies the treatment of Net Operating Losses (NOLs) for Idaho income tax purposes.

Income Tax Administrative Rules - Rules 040,045,075,105,120,254,121,125,140,180,194,251,252,270,280,291,710,714,771,801,855,880 (Docket No. 35-0101-1302). These rules implement the already mentioned HB 2, 139 and 184 and also implement HB 4 that provides that any taxes paid to another state on which a credit for taxes paid is allowed shall be added back to income to prevent a double benefit; adds the word "widower" for income tax treatment of certain benefits; provides that the deduction for donation of technological equipment shall not exceed the fair market value or cost of the donation; and provides application to backup withholding by pass-through entities. These proposed rules also revise the definition of the term "place of abode" with regard to federal foreign income exclusions. The rules also implement HB 296 of 2011 and HB 438 of 2012 regarding the Idaho Investment Tax Credit and depreciation.

Sales Tax Administrative Rules (Docket No. 35-0102-1301). These proposed rules help implement three bills from 2013: HB 12, 15 and 187. HB 12 provides a sales tax exemption for food purchased with benefits provided under the Federal Supplemental Nutrition Assistance Program; clarifies that for members of the military and accompanying spouses no use tax shall apply to certain articles acquired prior to a certain time. HB 15 defines "primary" and "primarily" as the cumulative amount of all taxable or all non-taxable uses rather than individual uses of tangible personal property for sales and use tax purposes. HB 187 clarifies the serving size of a free tasting of wine or beer and exempt tasting of food from the payment of use taxes, if given as a free sample to a potential customer . This legislation also defined a sample of nonalcoholic beverages and food as a sample from a unit available for sale at the tasting location. Similar legislation was passed in 2012 by the Idaho Legislature under H 489 which exempted tasting of beverages including, but not limited to, wine and beer from the payment of use taxes. Also the Commission is proposed to add a rule to state that sales and use of equipment primarily used to improve and install real property are taxable even if the real property is used in production and implements a 1991 Idaho Supreme Court decision between the Commission and Potlatch.

Property Tax Administrative Rules (Docket No. 35-0103-1302). This bill implements HB 141 and HB 313 of 2013. HB 141 provided that wells drilled for the production of oil, gas or hydrocarbon condensate are exempt from property taxation. HB 315 relates to the business personal property tax. The legislation made three changes to the exemption granted under section 63-602KK, Idaho Code. The bill creates a new \$3,000 exemption on a de minimis item of tangible personal property that is purchased on or after January 1, 2013 and has a purchase price of \$3,000 or less. An item falling under this category will not be placed on the personal property tax rolls and will not be tracked for personal property tax purposes. A definition for "acquisition costs" and an "item of taxable personal property" are also included. The bill triggered the \$100,000 exemption on business personal property in Section 63-602KK, Idaho Code, on January 1, 2013. In addition, the exemption will be expanded to include operating property. The replacement amount will be based on the 2013 personal property tax certification provided by the county clerk to the state tax commission. The replacement amount is estimated to be \$20 million. The amount of the exemption will be fixed in time and annually distributed to taxing districts each year thereafter. Replacement funding will come annually from the state general fund through the sales tax revenue distribution formula provided for in Section 63-3638, Idaho Code. The bill created a uniform application process to be prescribed by the State Tax Commission intended to simplify reporting. The county assessor will be required to mail or email, at the request of the taxpayer, the annual application to all taxpayers and include the prior year application. In lieu of submitting an annual affidavit, taxpayers with taxable personal property values less than \$100,000 will only be required to file an application once every five years provided that certain conditions are met.

Wine Tax Administrative Rules (Docket No. 35-0109-1301). This proposed rule would provide that if an Idaho wine direct shipper is licensed as a wine direct shipper in another state, sales of wine by the wine direct shipper to a resident of that state and delivered to a location in that state are exempt from the Idaho tax on wine.

Idaho Cigarette & Tobacco Products Tax Administrative Rules (Docket No. 35-0110-1301). This implements the provisions of HB 7 of 2011. HB 7 made changes to definitions adding "delivery seller" to the definition of wholesaler. This change brings Idaho into conformity with federal law and deleted the references to any substitute from the tobacco product definition. This eliminated a question as to whether tobacco cessation products should be taxed as tobacco products. The definition of wholesale sales price is expanded to include any person, and place of business no longer includes vending machines.

Prepaid Wireless E911 Fee Administrative Rules (Docket No. 35-0114-1301). These proposed rules implement the provisions of HB 193 of 2013. HB 193 provided for the imposition of prepaid wireless E911 fees, provided for the remittance of fees to the State Tax Commission, provided for seller retention of a percentage of fees, provided for payment of remitted fees to the Idaho Emergency Communications Fund, to restricted certain liability and prohibited the imposition of additional E911 funding obligations, and provided for the distribution of funds. The proposed rules state that out-of-state sales are exempt from the fee and provides guidance to seller in making the determination when a sale is out-of-state.

Administration & Enforcement Rules (Docket No. 35-0201-1301). These rules implement HB 3 of 2013. HB 3 allowed the Tax Commission, upon receipt of a valid written request, to release information that will identify the name and address of the user of the stolen tax identification number but will not allow disclosure of the financial information contained on that return.

Administration & Enforcement Rules (Docket No. 35-0201-1302). This proposed rule will add the interest rate for calendar year 2014 and the Revenue Ruling where the federal rate for the calculation can be found.

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

cc: State Tax Commission

Alan Dornfest, Cynthia Adrian & McLean Russell