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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: Principal Legislative Research Analyst - Brooke Brouman

DATE: October 21, 2014

SUBJECT: State Tax Commission - Sales Tax

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1401)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1402)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1403)

IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1404)

(1) Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1401):
The State Tax Commission's proposed rule is prompted by House Bill No. 598 that passed during the 2014 legislative session. House Bill No. 598 amended Section 63-3616, Idaho Code, to specify that software accessed remotely is not "tangible personal property" and to define "remotely assessed computer software." The Commission's proposed rule makes the following changes:

- (a) Defines "computer hardware," "computer program," "computer software," "information stored in electronic medium," "load and leave method," and "remotely accessed computer software" and revises the definitions of "computer software" and "storage media";
- (b) Sets forth criteria for determining whether or not canned software is taxable;
- (c) Specifies that remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax;
- (d) Revises provisions relating to maintenance contracts;
- (e) Specifies that sales, leases and rentals of certain digital products are taxable;
- (f) Specifies which digital subscriptions are and are not taxable;
- (g) Specifies that digital games are tangible personal property regardless of access or delivery method and the sale of a digital game is taxable; and

(h) Specifies that charges to store data on storage media owned and controlled by another party is a nontaxable service.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

(2) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1402): The State Tax Commission's proposed rule revises requirements relating to drop shipments, sets forth sales tax responsibilities of unpermitted manufacturers and sales tax responsibilities of retailers and provides related matrices. The Commission states that the purpose of the proposed rule changes is to clarify for manufacturers, retailers and customers what their sales or use tax responsibilities are.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

(3) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1403): The State Tax Commission's proposed rule makes the following changes:

(a) Revises provisions relating to contractors improving real property to clarify which materials are and are not covered by the out-of-state contracts tax exemption set forth in Section 63-3622B, Idaho Code;

(b) Revises provisions relating to leases of tangible personal property to clarify that property purchased pursuant to exercising an option to purchase will be at fair market value and to clarify when the owner/lessor must collect taxes from the lessee/buyer;

(c) Provides that activities and equipment excluded from the logging sales tax exemption in Section 63-3622JJ, Idaho Code, may qualify under the production exemption in Section 63-3622D, Idaho Code; and

(d) Requires exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations. The Commission states that the forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed and the Commission will have the information needed to verify the exemption claim.

The Commission states that there is a positive fiscal impact of \$50,000 to the state general fund on an annual basis as a result of the change to Rule 102 relating to logging.

Negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

(4) IDAPA 35.01.02 - Idaho Sales and Use Tax Administrative Rules - Proposed Rule (Docket No. 35-0102-1404): The State Tax Commission's proposed rule makes the following changes:

(a) Revises the definition of "contractor improving real property" to include any person acting as a speculative builder and remove any person acting as a speculation contractor;

(b) Removes the requirements that if the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment, and the reports and checks should be sent separately to the Commission; and

(c) Revises provisions relating to the use tax exemption for new residents and military personnel, which the Commission states reflect legislative changes and more closely aligns the rule with the statutory exemption.

Negotiated rulemaking was not conducted because of the simple nature of the proposed rule changes.

The proposed rule is within the authority granted to the Commission in Section 63-105, Idaho Code.

cc: State Tax Commission - Sales Tax
Sherry Briscoe