

## IDAPA 35 – IDAHO STATE TAX COMMISSION

### Tax Policy – Taxpayer Resources Unit

#### 35.01.06 – Hotel/Motel Room and Campground Sales Tax Administrative Rules

##### **Who does this rule apply to?**

*The general public.*

##### **What is the purpose of this rule?**

*To provide information to the general public on:*

- Lodging accommodations tax types
- Auditorium or community center district tax
- Sales tax
- Travel and convention tax
- Short-term rental marketplaces
- Exempt lodging rentals
- Requirements
- Collecting
- Reporting
- Record-keeping
- Deficiencies

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Revenue and Taxation -

Department of Revenue and Taxation:

- [Section 63-105, Idaho Code](#) – Powers and Duties - General

Short-Term or Vacation Rental Marketplaces:

- [Section 63-1804, Idaho Code](#) – Limiting Tax Duties of Short-Term Rental Marketplaces – Collection of Tax

Sales Tax:

- [Section 63-3624, Idaho Code](#) - Administration

State Government and State Affairs -

Department of Commerce:

- [Section 67-4718, Idaho Code](#) – Assessment – Council Account

Auditorium Districts:

- [Section 67-4917C, Idaho Code](#) – Collection and Administration of Hotel/Motel Room Sales Tax by State Tax Commission

##### **Who do I contact for more information on this rule?**

State Tax Commission

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**35.01.06 – HOTEL/MOTEL ROOM AND CAMPGROUND  
SALES TAX ADMINISTRATIVE RULES**

**000. LEGAL AUTHORITY (RULE 000).**

In accordance with Sections 63-105, 67-4718, and 67-4917B, Idaho Code, the Commission has promulgated rules implementing the provisions of the Idaho Code relating to hotel/motel room charges. These rules do not apply to sales taxes imposed by resort cities, unless such taxes are administered by the Commission. (7-1-98)

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

Sections 63-3612, 67-4711, 67-4718, 67-4902, 67-4917B & C, 63-1801 through 63-1804, Idaho Code

**01. Title.** These rules will be titled IDAPA 35.01.06, “Hotel/Motel Room and Campground Sales Tax Administrative Rules.” (3-28-18)

**02. Scope.** These rules are construed to reach the full jurisdictional extent of the state of Idaho’s authority for accommodations. The imposition of a tax for providing a place to sleep or occupy. (3-20-20)

**002. ADMINISTRATIVE APPEALS (RULE 002).**

**01. Administrative Relief.** This chapter allows administrative relief as provided in Sections 63-3626, 63-3631, 63-3633, 63-3634, and 63-3049, Idaho Code. (4-11-19)

**02. Cross Reference.** (4-11-19)

**a.** See IDAPA 35.01.02.121, “Idaho Sales and Use Tax Administrative Rules.” (4-11-19)

**b.** See IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules.” (4-11-19)

**003. LODGING OPERATORS AND SHORT-TERM RENTAL MARKETPLACES (RULE 003).**

Sections, 63-1801 through 63-1804, 63-3612, 63-4711, 67-4718, 67-4917B, Idaho Code

**01. In General.** These rules apply to the Short-term Rental and Vacation Rental Act, Section 63-1801 through 63-1804, Idaho Code. (3-28-18)

**02. Applicable Taxes.** Any state or local government taxes imposed according to Section 63-1804, Idaho Code, will be collected, reported, paid, and administered according to these rules or as further explained by the Commission’s rules in IDAPA 35.01.02, “Idaho Sales and Use Tax Administrative Rules.” (3-28-18)

**03. Registration.** Registration with the Commission will be in the same manner and in the same form as is required for obtaining a seller’s permit for state sales tax. However, a short-term rental marketplace that has not facilitated a lodging transaction in Idaho has forty-five (45) days from the completion of their first lodging transaction in Idaho to register to collect room sales tax. (3-20-20)

**004. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 010).**

**01. Campground.** Campground means a person, partnership, trustee, receiver, or other association, regularly engaged in the business of renting, for a consideration, or which holds itself out as being in the business of renting, for a consideration, any area, space or place for camping, parking campers, travel trailers, motor homes or tents when such areas, spaces or places are to be rented for the purpose of providing an individual or individuals a place to sleep. (7-1-93)

**02. Hotel or Motel.** The words hotel or motel means any person, partnership, corporation, trustee, receiver, or other association, regularly engaged in the business of furnishing rooms for use or occupancy, whether personal or commercial, in return for a consideration or which holds itself out as being regularly engaged in such business. (7-1-93)

**a.** Providing rooms for consideration includes rooms rented for personal occupancy and rooms rented for meeting, convention, or other commercial purposes. (3-20-20)

**b.** The following rentals are taxable, unless exempted under the provisions of Rule 016 of these rules. (3-20-20)

- i. Condominiums or townhouses (3-20-20)
- ii. Rooms that a public or private educational institution rents (3-20-20)
- iii. Rooms that hospitals, nursing homes, or similar institutions rent to nonpatients. (3-20-20)

**011. ACCOMMODATIONS TAX (RULE 011).**

Sections 50-1046, 63-3612, 67-4711, 67-4718, 67-4902, 67-4917B & C, 63-1801 through 63-1804, Idaho Code

**01. In General.** These rules apply to: (7-1-93)

**a. Room Sales Tax.** The room sales tax includes Travel and Convention Tax and Auditorium or Community Center District Tax when those taxes are administered by the Tax Commission. In these rules, they are referred to collectively as the room sales tax: (3-20-20)

i. **Travel and Convention Tax.** The tax imposed by Section 67-4718, Idaho Code, is a gross receipts type sales tax on the receipts derived from providing a place to sleep to an individual by operators of hotels, motels, and campgrounds as defined in these rules. (3-20-20)

ii. **Auditorium or Community Center District Tax.** The tax imposed by Section 67-4917B, Idaho Code, is a retail sales tax levied upon the user or occupant of a hotel/motel room collected by the hotel or motel from the occupant or user and remitted to the Commission. (3-20-20)

**b. Sales Tax for Accommodations.** These rules explain the application of the state sales tax on accommodations. See also IDAPA 35.01.02.028, "Idaho Sales and Use Tax Administrative Rules." (3-20-20)

**012. DISTRICT BOUNDARIES (RULE 012).**

Maps showing the district boundaries for each of the auditorium or community center districts administered by the Commission can be found on our website and are available upon request. (3-20-20)

**013. REGISTRATION (RULE 013).**

Registration with the Commission will be in the same manner and in the same form as is required for obtaining a seller's permit for state sales tax. (3-20-20)

**014. ROOM OR CAMPGROUND CHARGE DEFINED (RULE 014).**

**01. Room or Campground Charge Definition.** As used in these rules, the charge for providing rooms or campground spaces is to the total paid, whether in money or otherwise, for the rental of the room or space. This includes amounts charged for temporary use of tangible personal property used in conjunction with the room such as a charge for an extra bed. In the case of campgrounds any charges for water, electrical or sewer hookups are part of the charge for the use of the space and are included in the amount subject to tax. (3-20-20)

**02. Not Included.** Separately stated charges that are not part of the rental of the room or campground space. Examples include separately stated charges for telephone, food, beverage or laundry charges. (3-20-20)

**015. SEPARATE STATEMENT OF TAX (RULE 015).**

**01. Amount of Tax Charged.** The total tax charged for lodging accommodations needs to be separately stated from all other charges on the customers receipt and can appear on the receipt as either; (3-20-20)

**a. Separate Statement.** A separate line item for each of the applicable taxes. (3-20-20)

**b. Combined Statement.** A single line item that includes all applicable taxes. (3-20-20)

**02. Fractional Parts of One Cent.** If the amount of tax computed in accordance with this rule is a fractional part of one cent (\$.01), the amount will be rounded to the nearest full cent. (7-1-93)

**016. EXEMPTIONS (RULE 016).**

Sections, 63-3612(g), 63-3624, 63-3622O, 67-4718, 67-4917B & C, 63-1804, Idaho Code.

**01. Exemptions.** Except as otherwise provided in this rule, all charges for room occupancy which are exempt from Idaho sales tax are also exempt from the room sales tax. (7-1-93)

**02. Exempt Entities.** Rooms or campground spaces furnished to governmental entities, educational institutions, or hospitals are exempt from the taxes if and only if the charge for the room or campground space occupancy is billed directly to and paid directly by the governmental entity, educational institution, or hospital. (7-1-93)

**a.** “Governmental entity” includes the federal government and any of its instrumentalities, the state of Idaho and any of its agencies or any city, county or taxing district of the state of Idaho. Governmental entity does not include states other than Idaho or their political subdivisions. (7-1-96)

**b.** “Educational institution” means any nonprofit colleges, universities, primary, and secondary schools in which systematic instruction in the usual branches of learning is given. The exemption does not include educational institutions that operate for profit or schools primarily teaching special accomplishments, such as business or cosmetology. (7-1-96)

**c.** “Hospital” means a nonprofit institution licensed as a hospital by any state. This exemption does not include hospitals that operate for profit, nursing homes, or similar institutions. (7-1-96)

**d.** “Billed directly to” means a contractual agreement between the facility operator and the governmental entity, educational institution, or hospital whereby the charge for the room or campground space is directed to and is the responsibility of the governmental agency or institution. “Billed directly to” also includes credit card charges billed to an account opened by an exempt agency, educational institution, or hospital. (7-1-96)

**e.** “Paid directly by” means a remittance tendered directly by the governmental entity, educational institution, or hospital to the facility operator. It does not include a payment by the governmental entity or institution to an employee or agent for reimbursement of expenses incurred during business travel. However, “paid directly by” does include payments made by an exempt entity to a financial institution for credit card charges made on a charge account in the name of the exempt entity with a credit card issued to the entity itself and not to any individual or employee. (7-1-96)

**f.** Credit cards issued to employees of governmental agencies are NOT considered to be billed directly to and paid directly by the governmental entity when the employee is responsible for making payment to the credit card company. (7-1-93)

**03. Continuous Occupancy Exemptions.** All hotel/motel room sales and campground space rentals are presumed to be short term unless evidence can be provided documenting continuous occupancy. Continuous occupancy means maintaining residency under the terms of a lease or similar agreement for a continuous period of time by the same individual or individuals. The continuous occupancy exemption does not apply when a room or campground space is furnished to a business enterprise that rotates numerous employees as occupants of the room or space with no one (1) employee remaining continuously for the minimum number of days required to meet the continuous stay requirements. (3-20-20)

**a.** Hotels and Motels. The room charges are exempt from the following taxes when continuous residency is maintained in a hotel or motel by the same individual or individuals for a period that exceeds thirty (30) days: (3-20-20)

i. Sales and Use Tax; (3-20-20)

ii. Travel and Convention Tax; and (3-20-20)

iii. Auditorium or Community Center District Tax if the hotel or motel is located within the boundaries

of the auditorium or community center district. (3-20-20)

**b.** Campgrounds. The rental of a campground space is exempt from the following taxes when continuous residency is maintained by the same individual or individuals in a campground space for a period that exceeds thirty (30) days: (3-20-20)

i. Sales and Use Tax; (3-20-20)

ii. Travel and Convention Tax; and (3-20-20)

iii. Auditorium or Community Center District Tax does not apply to campground spaces. See Subsection 016.05 of this rule. (3-20-20)

**c.** This can be documented by a lease or other documentation that shows the period the occupancy is maintained. A guest registration card verifiable by a billing document is acceptable documentation. See Rule 017 of these rules for documentation requirements. (3-20-20)

**04. Rooms Rented for Purposes Other Than Sleeping.** Travel and Convention tax applies only to rooms rented to an individual as a place to sleep. The tax does not apply to rooms rented for other purposes, such as for meetings. However, both the state sales tax and the Auditorium or Community Center District tax apply to rooms rented by a hotel or motel for purposes other than sleeping. Rooms supplied with beds are presumed to be rented for the purpose of sleeping unless the contrary is established by the operator. Rooms, other than dormitory rooms, rented by an educational institution for purposes other than sleeping, are not taxable as a sale of lodging; however, it is possible that renting such a room may be taxable as a fee for the privilege of using a facility for a recreational purpose. (3-20-20)

**05. Campgrounds Exempted.** The Auditorium District or Community Center tax does not apply to campground charges. The state sales tax and the travel and convention tax apply to the charge for campground spaces. Sales of spaces in campgrounds owned or operated by the state of Idaho, its agencies or political subdivisions are subject to the state sales tax but not the travel and convention tax. (3-20-20)

**06. Foreign Diplomats.** The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The card bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Vendors document an exempt charge to a foreign diplomat by: (7-1-93)

**a.** Retaining a photocopy of the front and back of the federal tax exemption card; or (7-1-93)

**b.** Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

**07. Direct Pay Authority.** A taxpayer granted direct pay authority as provided by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 112 may not use this authority for hotel/motel room or campground space charges. State sales tax, Travel and Convention tax, and, when applicable, Auditorium or Community Center District tax is charged by the hotel, motel, or campground and paid to the hotel, motel, or campground by the direct pay authority permittee. (3-20-20)

**017. RECORDS REQUIRED (RULE 017).**

Sections 63-3622, 63-3624, 67-4711, 67-4718, 67-4917C, Idaho Code

Any person that provides accommodations subject to the accommodations tax will maintain the records required in IDAPA 35.01.02.111, and the records and exemption certificates required in IDAPA 35.01.06.016 necessary to document exemptions from the accommodations tax. These records are to be maintained for a period of four (4) years and are subject to audit by the Commission or, Auditorium and Community Center Districts organized under chapter 49, title 67, Idaho Code. (3-20-20)

**018. RETURNS (RULE 018).**

**01. Filing Returns.** Each hotel, motel, campground, lodging operator, and short-term rental marketplace providing taxable accommodations files with the Commission on forms prescribed by the Commission returns showing the amount of tax required to be paid to the Commission and such other information as the Commission requires. The return, together with the remittance shown to be due thereon, is to be received by the Commission or postmarked on or before the twentieth (20th) day of the month following the period to which the return relates. All taxable sales made to the user or occupant are to reported on the return for the period during which such use or occupancy occurred without regard to whether the charge was a cash or credit transaction. (3-20-20)

**019. DEFICIENCIES, COLLECTIONS, AND ENFORCEMENT (RULE 019).**

Sections 63-3629, 63-3634, Idaho Code

**01. Remittance of Taxes.** In the event that taxes required to be collected and remitted by a hotel, motel, campground, lodging operator, and short-term rental marketplace are not remitted to the Commission together with a return in a timely manner or in the event that the Commission finds any deficiency in the amount of tax reported to or remitted to the Commission, the Commission will issue a Notice of Deficiency Determination pursuant to the provisions of Section 63-3629, Idaho Code. A hotel, motel, campground, lodging operator, and short-term rental marketplace to which such a Notice of Deficiency Determination has been issued may file a written protest requesting a redetermination of the deficiency pursuant to the provisions of IDAPA 35.02.01.320 - 328, "Tax Administration and Enforcement Administrative Rules." (3-28-18)

**02. Penalties.** In the event that any deficiency in reporting or remitting taxes by a hotel, motel, campground, lodging operator, and short-term rental marketplace is due to negligence, failure to comply with this Commission's rules, or fraud, or in the event that any hotel, motel, campground, lodging operator, and short-term rental marketplace required to file a return with the Commission fails to do so, the penalties provided in the Idaho Income Tax Act as applicable to the Idaho Sales Tax Act applies to the room sales tax. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 410. (3-28-18)

**03. Cross Reference.** See Rule 003 of these rules, Administrative Appeals. (3-20-20)

**020. DISTRIBUTION (RULE 020).**

Sections 67-4710 through 67-4718, 67-4917C, Idaho Code

**01. Travel and Convention Tax.** Amounts collected by the Commission for the state Travel and Convention tax will be paid distributed according to Section 67-4718, Idaho Code. (3-20-20)

**02. Auditorium or Community Center District Tax.** The amounts collected by the Commission for any Auditorium or Community Center District will be distributed by the Commission to the Auditorium or Community Center District according to Section 67-4917C, Idaho Code. Funds to be distributed according to Section 67-4917C(2)(c), Idaho Code will be distributed no later than one month following receipt by the Commission of the revenues from such district. (3-20-20)

**021. SALES TAX RULES APPLY UNLESS OTHERWISE PROVIDED (RULE 021).**

The rules promulgated by the Commission relating to the enforcement and collection of the Idaho sales tax applies to the room sales tax unless the provisions of Sections 67-4710 through 67-4719, Idaho Code, inclusive or Sections 67-4917A, 67-4917B or 67-4917C, Idaho Code, or these rules are expressly contrary to the Sales Tax Rules. (7-1-93)

**022. -- 999. (RESERVED)**

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