

**SALES TAX RULES COMMITTEE MEETING
PRELIMINARY AGENDA**

The Committee convenes on Thursday, August 21, 2014, at 1:30 p.m. in Room 1CR5

Idaho State Tax Commission
Room 1CR5 / Plaza IV / 800 Park Blvd / Boise, Idaho

1. Welcome & Introductions
2. Review of Rulemaking Process
3. Negotiated Rulemaking Discussion
 - a. **Rule 049.** Warranties and Service Agreements – We need to amend the rule to address service agreements which include guaranteed and routine provision of consumable items rather than a service agreement in which property is only provided in the event of a repair. In addition, overage charges levied when the customer exceeds a certain amount of usage of the property in question need to be addressed.
 - b. **Rule 102.** Logging – A recent decision from the Board of Tax Appeals determined that a contractor did not owe use tax for planting tree seedlings provided by a project owner that did not pay sales tax on its purchase of the seedlings. The Board decided that the logging exemption applied due to language in subsection 07 of this rule. In reviewing the decision and its reliance on the rule, the Commission feels that the rule oversteps the statute by extending the logging exemption beyond its statutory bounds. The logging exemption in Idaho Code § 63-3622JJ along with the definition of logging in Idaho Code § 63-3605A applies to certain equipment and materials used in the tree harvesting process alone rather than the whole process of raising and maintaining trees. The production exemption (Idaho Code § 63-3622D) is a wholly separate exemption that has applicability in the broader scope of a full tree farm. However, the references to a “tree farm” in subsection 07 of this rule do not make this connection to the production exemption clear. In fact, the rule implies that materials and equipment used on a tree farm can qualify for the logging exemption even if they are used outside of the harvesting process which contradicts the statute. The rule needs to be amended to make it clear that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

- c. **Rule 128.** Certificates for Resale and Other Exemption Claims – The sales tax audit staff proposes that we amend subsection 05 to clarify that Form ST-104-HM *must* be used in claiming an exemption on a sale of lodging accommodations. Currently, the rule allows the seller to use either Form ST-104HM or Form ST-101. However, the ST-101 does not provide enough information to determine whether the exempt organization or the non-exempt employee would be billed for the payment. The ST-104-HM provides detail and explanations so that the retailer can easily determine whether the lodging or other charges should be taxed, and the detail also gives the Tax Commission enough information to hold the paying guest liable for unpaid taxes in the event that it is determined the sale is not exempt.
- 4. Any Additional Items for Discussion?
 - 5. Upcoming Meetings
 - a. None currently scheduled

For more information, please contact the Committee Chair, or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.