

MOTOR FUELS TAX RULES COMMITTEE
Negotiated Rulemaking
AGENDA

The Committee convenes on May 10, 2016, at 1:30PM at:

Idaho State Tax Commission
Room 5CR4 / Plaza IV / 800 Park Ave / Boise, Idaho

1:30 pm – Call to order

1. Committee Chair report Don Williams
non-negotiated Draft
2. The following is the only negotiated rule this year:
 - a. **Rule 130, Distributor’s Fuel Tax Reports (Draft 1),**
3. The comment period is open for the following non-negotiated rules:
 - a. **Rule 003 Administrative Appeals (Draft 2),**
 - b. **Rule 004, Incorporation by Reference (Draft 1),**
 - c. **Rule 140, Deductions (Draft 1),**
 - d. **Rule 311, IFTA License Bond (Draft 2),**
 - e. **Rule 400, IFTA Licensing And Special Fuels Permitting Requirements For Motor Vehicles Over Twenty-Six Thousand Pounds Maximum Gross Weight (Draft 2)**
4. Next meeting is to be determined.
5. Adjourn

For more information, please contact the Committee Chair at don.williams@tax.idaho.gov or call (208) 334-7855; or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or call 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

MOTOR FUELS TAX RULE 130 (NEGOTIATED RULE DRAFT)

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

Sections 63-2406, 63-2407, and 67-402 Idaho Code.

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and ~~or~~ outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01) ()

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels ~~includes natural gasoline, gasoline blend stocks, ethanol, ethanol blended with motor fuel,~~ and other petroleum products received during the month. ~~See Rule 130.06 of these Rules;~~ (4-7-11) ()

c. The total quantity of motor fuels and other petroleum products disbursed during the month. A disbursement is motor fuel that is: (4-7-11)

i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)

ii. Exported tax and transfer fee exempt; (4-7-11)

iii. Delivered to the Idaho National Guard tax exempt; (4-7-11)

iv. Delivered to a tribe or an Indian-owned retail outlet fuels tax and transfer fee not collected because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007; or (4-7-11)

v. Delivered to an Idaho pipeline terminal and placed into storage fuels tax and transfer fee not collected. (4-7-11)

d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)

- e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g. The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h. The tax-paid purchases; (7-1-98)
- i. The net taxable gallons; (7-1-98)
- ~~j. The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This Subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009); (3-29-10)~~
- ~~k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)~~
- ~~l. The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)~~
- ~~m. The tax computation; (7-1-98)~~
- ~~n. The bad debt amounts; refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (3-29-10)~~
- ~~o. The gaseous fuels permit fees; and (4-11-06)~~
- ~~p. The net tax due. (4-11-06)~~

02. Exemption from Licensing and Monthly Reporting. See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. (3-29-10)

03. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be

granted written authorization to use that format.

(7-1-98)

~~**04. — Supplemental Reports.** In addition to a timely filed original monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due.~~

~~(4-7-11)~~

054. Timely Reporting. Any motor fuel and other petroleum product shipments that are:

(4-7-11)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty.

(7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty.

(7-1-99)

065. Motor Fuels Receipts. All gasoline, natural gasoline, gasoline blend stocks, ethanol, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 132 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles.

(4-7-11)

06. Motor Fuels and Petroleum Products Presumed To Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products.

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07. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following:

()

a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the

exported product is destined; and ()

b. Common carrier shipping documents, bills of lading, manifests, and cost billings;
or ()

c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or ()

d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. ()

e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. ()

MOTOR FUELS TAX RULE 003 (NON-NEGOTIATED DRAFT)
THE COMMENT PERIOD IS OPEN MAY 4 TO MAY 25

003. ADMINISTRATIVE APPEALS (RULE 003).

Sections 63-2434, 63-2442A, 63-2470, 41-4909, 49-439, and 63-3045 through 63-3049, Idaho Code.

This chapter ~~does~~ allows administrative relief ~~in the provisions outlined~~ as provided under Sections 63-2434, 63-2442A, 63-2470, 41-4909, 49-439, and 63-3045 through 63-3049, Idaho Code and pursuant to Rules promulgated by the Commission found in the Commission's administration and enforcement rules relating to income taxation, IDAPA 35.02.01. ~~(4-6-05)~~ ()

MOTOR FUELS TAX RULE 004 (NON-NEGOTIATED DRAFT)
THE COMMENT PERIOD IS OPEN MAY 4 TO MAY 25

004. INCORPORATION BY REFERENCE (RULE 004).

Sections 63-2434, 63-2442A, 41-4909, and 49-439, Idaho Code. ~~The following documents are incorporated by reference:~~ (3-25-16) ()

01. Income Tax Administration and Enforcement Rules. These rules incorporate the sections of IDAPA 35.02.01, “Tax Commission Administration and Enforcement Rules,” relating to the statutes authorized by Section 63-2434, Idaho Code. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (3-25-16)

02. International Fuel Tax Agreement. These rules incorporate the International Fuel Tax Agreement (IFTA) governing documents: the IFTA Articles of Agreement (revised ~~July 1, 2013~~ ~~January 1, 2017~~), the IFTA Procedures Manual (revised January 1, 201~~5~~7), and the IFTA Audit Manual (revised January ~~20, 2012~~ ~~1, 2017~~). IFTA is an international agreement between jurisdictions to encourage use of the highway system by uniformly administering fuels use tax laws. The IFTA governing documents are equally binding on all IFTA member jurisdictions and licensees. Motor fuels users licensed or required to be licensed to operate under an Idaho IFTA license must comply with all applicable rules contained in these rules. These documents can be found on the IFTA website at <http://www.iftach.org>. (3-25-16) ()

03. International Registration Plan. These rules incorporate the International Registration Plan (IRP) governing documents: The IRP Plan (revised January 1, 201~~5~~7) and IRP Audit Procedures Manual (revised July 1, 2013). IRP is an international registration reciprocity agreement. The documents are included to aid the Commission in complying with IRP registration application audits authorized in Chapter 4, Title 49, Idaho Code. These documents can be found on the IRP website at <http://www.irponline.org>. (3-25-16) ()

MOTOR FUELS TAX RULE 140 (NON-NEGOTIATED DRAFT)
THE COMMENT PERIOD IS OPEN MAY 4 TO MAY 25

140.—DEDUCTIONS (RULE 140).
Section 63-2407, Idaho Code.

01.—Motor Fuels and Petroleum Products Presumed To Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

02.—Distributor's and Retail Dealer's Allowances for Motor Fuels. (This Subsection only applies to sales of motor fuels made before December 1, 2007.) The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for motor fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of motor fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: (4-2-08)

- a.—That the amount of the allowance has been passed on; or (7-1-98)
- b.—A statement that the allowance has been deducted in determining the price. (7-1-98)

03.—Distributor's Allowance for Motor Fuels. (This subsection only applies to sales of motor fuels made on and after December 1, 2007.) The State Tax Commission will allow a two percent (2%) allowance granted in Section 63-2407, Idaho Code, to reimburse the licensed distributor for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty. (4-2-08)

04.—Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)

- a.—Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)

~~b. Common carrier shipping documents, bills of lading, manifests, and cost billings; (7-1-98)~~
or

~~e. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)~~

~~d. Accounts payable or receivable information for verifying payments to common carriers or payment by out of state parties to verify receipt of exported product. (7-1-98)~~

~~e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)~~

~~**05. Bad Debt Write-Off.** (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.) A distributor may take a bad debt tax credit for fuel taxes paid on sales made after July 1, 1995. After the debt has been written off for income tax purposes in the distributor's records, the distributor may claim the credit on its fuel tax report for the month in which it made the bad debt adjustment. (4-2-08)~~

~~a. First in/first out method for partial payments. When a distributor receives partial payments on a fuel account that includes taxable and nontaxable fuel sales, the distributor must apply the payments to the unpaid fuel sales on a first in/first out basis before calculating the amount of the bad debt credit. (4-11-06)~~

~~b. Proration of partial payments. When a distributor receives partial payments on a fuel account, before and/or after claiming a bad debt credit on its fuel tax report, the distributor must prorate the taxable and nontaxable fuel sales that occurred on the same day or on the same invoice for each such account. (4-11-06)~~

~~c. Amount of credit allowed. A distributor may claim a credit or refund on its monthly fuels tax report for fuels tax that is found to be uncollectible. If both nontaxable and taxable fuel sales are included in the fuel account, a distributor may take credit only for the portion of the bad debt that represents unpaid fuels tax. (4-11-06)~~

~~d. Multiple accounts—allocation of unspecified payments. If a distributor receives an unspecified payment from a customer that may be applied to an unpaid fuel account and nonfuel accounts, the distributor must allocate the payment to the various accounts upon receipt of the partial payment. If the distributor fails to make the allocation at the time the payment is received, the entire amount of the payment will be allocated to the customer's fuel account for purposes of calculating the amount of the credit. (4-11-06)~~

~~e. Statute of limitations for bad debt claim. A distributor may receive a credit or refund of fuels taxes in Subsection 140.04 of this rule if a written claim is filed with the State Tax Commission within three (3) years from the date the tax was paid to the State Tax Commission.~~

MOTOR FUELS TAX RULE 311 (NON-NEGOTIATED DRAFT)

THE COMMENT PERIOD IS OPEN MAY 4 TO MAY 25

311. IFTA LICENSE BOND (RULE 311).

Sections ~~63-2442A~~, and 63-2470 Idaho Code.

01. General. The State Tax Commission (Commission) may require an International Fuel Tax Agreement (IFTA) licensee to post a bond following the requirements of the IFTA Agreement in order to maintain his license. A bond may be required when he files returns or remits taxes, separately or in combination, after the due date at least three times within a three year period. When a bond is required, the licensee must post the bond within thirty (30) days from the date of the request. When no bond is posted within the thirty (30) days, the license is automatically revoked and it must be surrendered to the Commission. An assessment may be made for any unreported tax liability based on actual records or an estimate. (4-11-15)

02. Reinstating Revoked Licenses. An applicant may be required to post a bond when he has previously had his IFTA license revoked or is related to a person who has previously had his IFTA license revoked. An applicant is related to a person who has previously had his IFTA license revoked when: (4-11-15)

a. The applicant is owned at least twenty-five percent (25%) by a person or persons who has previously had his IFTA license revoked. (4-11-15)

b. The applicant is operated or controlled by a person, or persons, who has previously had his IFTA license revoked. Operation and control includes, but is not limited to, an officer or director or other person authorized by the applicant to engage in the business or commercial activity of the applicant. (4-11-15)

03. Amount and Type of Bond. The amount of the bond will be one thousand dollars (\$1,000) or twice the estimated tax liability for the licensee's quarterly tax reporting period, whichever is greater, without regard to actual or anticipated tax-paid credits. Any type of bond allowed by the IFTA Agreement or these rules may be secured. The bond amount will be reviewed annually, but may be reviewed at any time, thereafter. The licensee's returns and records may be reviewed to determine if the bond amount will be raised, lowered, or remain unchanged. (4-11-15)

04. Bond Waiver Request. The licensee may request a waiver of bond requirement within thirty (30) days from the approval of the license renewal request. The licensee must be a quarterly filer. The licensee must have submitted the quarterly returns and paid the tax due by the due date for one calendar year. An annual filer may not request a bond waiver. (4-11-15)

05. Denial of Bond Waiver Request and Appeal of Denial. The Commission may deny a bond waiver request when it determines that waiving the bond requirement puts the financial interests of IFTA jurisdictions in jeopardy. The licensee must follow the appeal procedure in Section R1400, IFTA Articles of Agreement (revised July 2013) Section 63-2470, Idaho Code

to appeal the denial of a bond waiver request.

(4-11-15) ()

MOTOR FUELS TAX RULE 400 (NON-NEGOTIATED DRAFT)

THE COMMENT PERIOD IS OPEN MAY 4 TO MAY 25

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS ~~FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT~~ (RULE 400).

~~The following rules relate to the special fuels tax licensing system provided in Sections **49-434, 63-2401, 63-2434**, 63-2438 through 63-2440, **and 63-2442A** Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA.~~ (7-1-98) ()

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels as defined in Section 63-2401, Idaho Code, on the highways of this state without having obtained one (1) of the following: (3-30-07)

a. A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)

b. A temporary fuel tax permit from the Idaho Transportation Department. ~~(3-15-02)~~ ()

c. An IFTA license. (7-1-98)

~~**d.** In the case of vehicles powered by gaseous fuels, a gaseous fuels permit as provided by Section 63-2424, Idaho Code.~~ (4-7-11)

02. Federal or In-State Governmental Vehicles. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (3-15-02)

03. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

04. Temporary Fuel Tax Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a temporary fuel tax permit from the Idaho Transportation Department in the manner provided and required by that department. ~~(3-30-07)~~ ()

05. Failure to Obtain an IFTA License, or Temporary Fuel Tax Permit, ~~or a Gaseous Fuels Permit.~~ Operation of a motor vehicle over twenty-six thousand (26,000) pounds

maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license, or an Idaho temporary fuel tax permit, ~~or a gaseous fuels permit for motor vehicles powered by gaseous fuels as provided by Section 63-2424, Idaho Code,~~ is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections ~~63-2434 and 63-3065,~~ Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a temporary fuel tax permit. ~~(4-7-11)~~ ()