

**MOTOR FUELS TAX RULES COMMITTEE
PRELIMINARY AGENDA**

The Committee convenes on Thursday, August 8, 2013, at 1:30 p.m. at:

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

1:30 pm – Call to order and Roll Call

1. Committee Chair report

Don Williams

As chair of the motor fuels rules committee, I appreciate the attendance and contribution of all private sector and industry members who attend the meeting. Negotiated rulemaking is meant to include the participation of all those present. During the meetings, the committee will seek public input by taking unofficial votes on changes to rules. The unofficial vote on a draft rule may be followed by an official vote by the committee members.

The committee voted during the last meeting to vacate Rules 110, 115, and 290.

The committee voted during the last meeting to accept the final drafts of Rules 105 (new 132), 292, and 410.

The rules accepted and approved by the committee and the commissioners must be submitted to the Office of the Administrative Rules Coordinator, Department of Administration by August 30 for publication in the October 2, 2013 Bulletin (the schedule is at http://adminrules.idaho.gov/bulletin_publication_schedule.html).

2. Discussion on whether to accept or vacating the following rules:

- a. **Rule 270 (Draft 6)**. This rule gives instruction on what records are required for refund claims. Changes include clarifying the instructions for fuel refunds from single storage tanks and removal of the 60% refund percentage for diesel and 25% refund percentage for gasoline. The alternate percentage will remain. Other changes will add clarification of what can be audited.
- b. **Rule 510 (Draft 4)**. This rule gives instruction on how the transfer fee from the “Petroleum Clean Water Trust Act” is to be administered. Changes include a clarification of receipt of petroleum and petroleum products. A definition of used oil is included.

3. **Motor Fuels Forms Review.**
4. Local reports and items committee members may wish to discuss.
5. The next public meeting will be after the 2014 Legislative session sine die.
6. Adjourn

For more information, please contact the Committee Chair, 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 270 (DRAFT 6)

Clean Version Motor Fuel Rule 270.6.a

a. Use of Fuel from a Single Storage Tank. Idaho tax-paid fuel purchased and delivered into a single bulk storage tank and withdrawn for both taxable and nontaxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. No refund is allowed under this paragraph for fuel purchased for use in: motor vehicles licensed under the authority of the International Fuel Tax Agreement (IFTA); non-IFTA motor vehicles for which a refund for nontaxable use is granted using either Rule 290 or 292 of these rules; or, when the claimant has both undyed (tax paid) and dyed (untaxed) diesel tanks. Taxpayers may claim a refund using a proration percentage instead of claiming actual use. The State Tax Commission must authorize a taxpayer's proration percentage before he may receive a refund using any percentage when filing a refund claim. The authorization request shall itemize all taxable and nontaxable uses by vehicle and type of equipment based on previous experience or anticipated use. The State Tax Commission will allow a refund of fuel taxes paid for nontaxable uses based on an authorized percentage which represents reasonable nontaxable use. When using an authorized percentage, certain records must be maintained and made available upon request. Acceptable records of refunds based on an authorized percentage include, but are not limited to: fuel purchase invoices and equipment lists. Equipment lists must be supported by documentation. Acceptable equipment list documentation includes, but is not limited to: equipment purchase, sales, or rental receipts and depreciation schedules.

Full Version Motor Fuel Rule 270

270. REFUND CLAIMS -- DOCUMENTATION (RULE 270).

01. Refunds to Consumers. Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following, in addition to the requirements outlined above:(4-11-06)

- a. A preprinted identification number; (4-11-06)
- b. Name and address of seller; (7-1-98)
- c. Name of purchaser; (7-1-98)
- d. Date of delivery; (7-1-98)
- e. Type of motor fuel; (7-1-98)

- f. Gallons invoiced; (7-1-98)
- g. Price per gallon; (7-1-98)
- h. At least one (1) of the following to establish that tax has been charged: (7-1-98)
 - i. The amount of Idaho state fuels tax; (7-1-98)
 - ii. The rate of Idaho state fuels tax; or (7-1-98)
 - iii. A statement that the Idaho state fuels tax is included in the price. (7-1-98)

02. Indian-Owned Retail Outlet. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. (4-2-08)

03. Corrected Invoices. No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided ~~and retained by the seller for at least three (3) years from the date issued.~~ (7-1-98) ()

04. Invoice Retention. ~~The~~ Original, altered, or corrected invoices required by ~~Subsections 270.01 of~~ this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98) ()

05. Refund Documents. ~~For refund claims under Section 63-2410(5)(c), Idaho Code,~~ a An original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document. (7-1-98) ()

06. Records Required for Motor Fuels Tax Refunds. Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both taxable and nontaxable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax-paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund. (4-11-06)

- a. Use of Fuel from a Single Storage Tank. Idaho tax-paid fuel ~~(other than fuel~~

~~purchased by persons who operate motor vehicles that are licensed under IFTA or by persons who operate non-IFTA motor vehicles who claim refunds for nontaxable uses of motor fuels in motor vehicles granted in Rule 290 and Rule 292 of these rules)~~ purchased and delivered into a single bulk storage tank and withdrawn for both ~~nontaxable~~ and nontaxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. No refund is allowed under this paragraph for fuel purchased for use in: motor vehicles licensed under the authority of the International Fuel Tax Agreement (IFTA); non-IFTA motor vehicles for which a refund for nontaxable use is granted using either Rule 290 or 292 of these rules; or, when the claimant has both undyed (tax paid) and dyed (untaxed) diesel tanks. If the proration is used, sixty percent (60%) of all taxed diesel fuel or twenty-five percent (25%) of all taxed gasoline delivered into bulk storage shall be presumed to be for exempt uses unless an alternate percentage is requested by the taxpayer and authorized by the taxpayer. Taxpayers may claim a refund using a proration percentage instead of claiming actual use. The State Tax Commission must authorize a taxpayer's proration percentage before he may receive a refund using any percentage when filing a refund claim. The authorization request shall itemize ~~anticipated~~ all taxable and nontaxable uses by vehicle and type of equipment based on previously experienced or anticipated use. The State Tax Commission will allow a refund of fuel taxes paid for nontaxable uses based on the an authorized percentage of taxed fuel presumed to be exempt which represents reasonable nontaxable use. ~~If refunds are claimed based on records of actual use, the records must be made available upon request. In either case, invoices showing the fuel purchases on which tax was paid must be retained to support each refund claim. The proration or another percentage granted by this paragraph cannot be used if you have separate storage tanks for undyed diesel and dyed diesel.~~ When using an authorized percentage, certain records must be maintained and made available upon request. Acceptable records of refunds based on an authorized percentage include, but are not limited to: fuel purchase invoices and equipment lists. Equipment lists must be supported by documentation. Acceptable equipment list documentation includes, but is not limited to: equipment purchase, sales, or rental receipts and depreciation schedules. (3-30-07) ()

b. Use of Fuel from Multiple Storage Tanks. When separate bulk storage tanks are maintained and identified for both ~~exempt and~~ taxable and nontaxable uses, the seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Detailed withdrawal records will only be required if fuel ~~is purchased by persons who operate~~ from these tanks are used in motor vehicles that are licensed under IFTA or ~~by persons who operate in~~ non-IFTA motor vehicles ~~who claim refunds~~ for which refunds are granted for nontaxable uses of motor fuels in motor vehicles granted ~~in using either~~ Rule 290 and or Rule 292 of these rules. All fuel invoices must be retained as required by ~~Subsection 270.03 of~~ this rule. ~~Exempt fuel may not be used in motor vehicles registered or required to be registered.~~ (3-30-07) ()

c. Use of Fuel for Other Than Bulk Storage. Fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than registered motor vehicles, must be identified on the purchase invoice. No other records will be required. (3-30-07)

7. Under the provisions of section 63-2421, Idaho Code, untaxed motor fuel may not be used in motor vehicles registered or required to be registered unless authorized elsewhere in

these rules. Under the audit and enforcement provisions of sections 63-2410 and 63-2434, Idaho Code, all fuel tax refund claims are subject to audit by the State Tax Commission and no part of these rules may be construed to imply that an audit may not be performed. ()

MOTOR FUELS TAX – RULE 510 (DRAFT 5)

510. ERROR! BOOKMARK NOT DEFINED. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).

01. Application. (6-23-94)

a. The Petroleum Transfer Fee applies to the first receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$0.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. Only licensed Idaho fuel distributors may receive refunds or credits of the transfer fee. The refunds or credits must be claimed on the distributor report required in Section 63-2406, Idaho Code, according to Rule 180.(7-1-99) ()

b. The legal incidence of the fee is on the first distributor which receives any petroleum or petroleum product. This distributor is required to report ~~it~~ and pay the transfer fee to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94) ()

02. **Receipt of Petroleum Products.** Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. Receipt is determined by the movement of petroleum or petroleum products and not storage. Storage of petroleum or petroleum products is incidental to the movement of the petroleum or petroleum products.(7-1-99) ()

03. **Exemption to Application of the Transfer Fee.** The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are “received” by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation.(7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. Casualty and Handling Loss and Shrinkage Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. ~~The d~~ Deductions allowed to motor fuel distributors in Section 63-2407, Idaho Code, for ~~fuel lost by fire or similar~~ accidental fuel casualty loss, see Section 63-2407(3), Idaho Code; and the two percent (2%) ~~discount for~~ fuel handling loss ~~by shrinkage or evaporation, see Section 63-2407(4), Idaho Code;~~ are not deductions applicable to the Petroleum Transfer Fee. ~~(4-2-08)~~ ()

05. Petroleum and Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. Ethanol (E00), natural gasoline, and biodiesel (B00) are also defined as petroleum and petroleum products that are subject to the Petroleum Transfer Fee. (4-7-11)

06. Exclusion of Petroleum and Petroleum Products on which the fee has previously been paid. Used oil as defined by 40 CFR Part 279 (July 1, 2000) is presumed to be comprised of petroleum or petroleum products on which the transfer fee has previously been paid when generated in Idaho. The distributor shall not report used oil generated in Idaho on the distributor report nor shall a distributor pay or receive a credit of the transfer fee on used oil generated in Idaho. When used oil is not generated in Idaho it is presumed to be subject to the transfer fee. The distributor must report and pay the transfer fee unless an exemption or exclusion applies. ()

06 07. Licensed Distributors and Limited Licenses. Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

07 08. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (5-3-03)

b. Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

c. The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

08. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

09 10. Incorporation of Other Relevant Rules. Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. 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. (4-6-05)