

SALES TAX RULES

ATTENDANCE:

Idaho State Tax Commission staff: McLean Russell, Leah Parsons, Doug Harrie, Erick Shaner, Susan Foster, Ken Roberts, Mike Chakarun, Sherry Briscoe

GUESTS: Benjamin Davenport (Assoc. Taxpayers of ID), Kate Haas (Kestrel West representing Apple), Ron Williams (Williams Bradbury representing Idaho Cable Telecommunications Association), Trent Wright (Idaho Automobile Dealers Assoc.)

Attending via phone: Diane Holman (Netflix), Celynda Roach (Cable One), Brian Smith (Direct TV), David Rosen (Akerman Senterfit), Jane (Direct TV)

027 – Computer Equipment, Software, and Data Services

Diane reviewed the letter from Netflix that she had emailed. Their position is that streamed movies and programs should not be taxed, as it is not something that is downloaded and left on anyone's system. "It is an exempt service." She emphasized that the customer doesn't have control of the product, there's no ability to save the movie, there's no hardware provided by Netflix. A message goes out much like cable or satellite broadcasts which are not taxed. "There is no temporary delivery." In addition, the Netflix service offers recommendations to customers using complex algorithms which are more like a service.

Ron reviewed existing statutory definitions for several specific terms used in the cable industry (from Idaho Code Section 50-3002 and 47 U.S. Code Section 522). He suggested that perhaps these definitions could be used to outline in rule exactly what was exempt.

Ken responded to Ron's proposal with a couple concerns. He noted that definitions in other statutes may or may not apply for sales tax purposes. He also pointed out that the definitions are specific to the cable industry when the same taxability questions apply to the satellite t.v. industry. Finally, he noted that the statute was somewhat ambiguous and wondered if we could even address these issues in rule.

Brian will look to see if there is any code that applies to satellite t.v.

In answer to the question from McLean, 'what issues do you wish were specifically addressed in the rule?'

Diane – determine the format the video is received, if it is streamed it is not taxed, if it is a disc it is taxed

Ron – a declaratory statement from Idaho Code with definitions of what is not taxable. He pointed out again that the definitions from existing Idaho and federal code might work for this purpose.

Brian – satellite should be treated the same as cable; he feels that everything they provide is exempt; don't ignore how it is brought to market or delivered, spell out what type of video on demand they're getting and its taxability