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**IDAPA 35
TITLE 01
Chapter 07**

35.01.07 - KILOWATT HOUR TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY.

In accordance with Sections 63-513 and 63-2701, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Kilowatt Hour Tax Products Act. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 35, Chapter 07, Title 01, "Idaho Kilowatt Hour Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on producers of electricity from hydroelectric generation who sell all the power they produce for sale to another producer. (7-1-93)

002. (RESERVED).

003. ADMINISTRATIVE APPEALS.

This chapter does allow administrative relief of the provisions outlined herein under Section 63-3049, Idaho Code. (7-1-93)

004. PUBLIC RECORDS.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 1, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075 or 9-340, Idaho Code. (7-1-93)

005. -- 009. (RESERVED).

010. DEFINITIONS.

01. Idaho Customer. Idaho Customer shall be defined as those customers who have a point of delivery for the transfer of power and energy that is located within the state of Idaho. This shall include wholesale power transactions with customers or wheeling agents that have a delivery point located within the state of Idaho. (7-1-93)

02. Point of Delivery. Point of Delivery shall be defined as the point at which a change in ownership of electrical facilities occurs between the filing party and the wholesale customers or wheeling agents for the transfer of power and energy. (7-1-93)

03. Wheeling Agent. Wheeling Agent shall be defined as that entity that receives kilowatt hours from a source or sources of supply and makes such power or energy available at another point on its system for a delivering entity or a third party. (7-1-93)

011. ELECTRICAL PRODUCERS SUBJECT TO TAX.

The provisions of Chapter 27, Title 63, Idaho Code, and the provisions of these rules apply to all producers of electricity who generate any electricity from hydroelectric sources in Idaho, except as provided herein. Producers of electricity from hydroelectric generation who sell all the power they produce for sale to another producer, for example, cogeneration, are required to file returns and remit the kilowatt hour tax. The tax does not apply to power generated by facilities owned and operated by a municipal corporation organized under the laws of Idaho. Municipal corporations are not required to file kilowatt hour tax returns or to make payment of tax. As used in these rules, the term municipal corporation does not include any producer, as defined in Section 63-2701, Idaho Code, who produces electricity pursuant to a contract with any governmental entity. (7-1-93)

012. KILOWATT HOUR TAX RETURNS.

The statement required by Section 63-2701, Idaho Code, and by these rules shall be made on the kilowatt hour tax return, Form 48 or 48C, provided by the Commission. The return must be verified or include a statement that the information supplied is true and correct to the best information and belief of the signer, and that the signer makes this statement under penalty of perjury. All information requested on the form must be provided. (7-1-93)

013. MONTHLY AND QUARTERLY RETURNS, COMPUTATION OF KILOWATT HOURS SUBJECT TO TAX, AND CALCULATION OF TAX.

01. Statement. A monthly or quarterly statement must be filed by each producer of hydroelectric power in Idaho and shall be made on a kilowatt hour tax return in the manner required by this rule. All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Commission no later than the last day of the month following the month to which the return relates. All producers whose previous year's annual tax liability was equal to or less than fifteen thousand dollars (\$15,000) must file a quarterly return with the Commission no later than the last day of the calendar month following the end of the calendar quarter to which the return relates. If the previous year's annual tax liability is not available, then the estimated current year's liability may be used. (7-1-93)

02. Computation. In order to compute net kilowatt hours subject to tax before exemptions, the taxpayer must begin with gross hydroelectric generation within the state of Idaho. The number of kilowatt hours generated shall be measured at the point of production. From the above, deduct kilowatt hours for Idaho hydroelectric generating facility USE during the generating period and kilowatt hours of Idaho hydroelectric transformer LOSS during the generating period. These net kilowatt hours are known as the Idaho hydroelectric generated kilowatt hours to system. In addition, deduct the Idaho hydroelectric kilowatt hours consumed or lost in transmission and distribution services, including substations, during the generating period. To determine the transmission and distribution losses, the Idaho hydroelectric generated kilowatt hours to system must then be adjusted by: (7-1-93)

a. Dividing the total of the kilowatt hours bartered, sold, or EXCHANGED OUT by the total of the kilowatt hours the taxpayer has generated, purchased, or EXCHANGED IN, and then by, (7-1-93)

b. Multiplying the percentage derived by a. above, by the Idaho hydroelectric generated kilowatt hours to system. (7-1-93)

03. Result. The result of the above computation is the amount of the Idaho hydroelectric kilowatt hours, net of use and loss, subject to tax before exemptions. (7-1-93)

04. Subtract the product of ISTC 14.02 from the Idaho hydroelectric kilowatt hours calculated in subsection 02 of this rule. The resulting kilowatt hours are to be multiplied by one half (1/2) mill (\$0.0005) to determine the total tax due for that period. (7-1-93)

014. EXEMPTIONS.

01. In General. An exemption shall be allowed from the kilowatt hours derived in ISTC 13.02 for that portion of kilowatt hours sold to Idaho customers of the taxpayer for use in: (7-1-93)

a. Manufacturing, mining, milling, smelting, refining, and processing, or (7-1-93)

b. Pumping water for irrigation or pumping water for drainage on or from lands in Idaho. (7-1-93)

02. Computing the Exemption. The amount of the above exemption shall be determined by multiplying the exempt sales in 01 above, by the percentage of Idaho customer sales which were generated by Idaho hydroelectric. This percentage is derived by: Dividing the Idaho hydroelectric kilowatt hours as computed in ISTC 13.02 by the total kilowatt hours sold to Idaho customers. (7-1-93)

03. Wheeled Energy. If the taxpayer is a wheeling agent for another entity, the wheeled energy shall not be included in the calculation of the exemptions. Example: Assume that Company A were to sell kilowatt hours to Company B and deliver this energy to Company C for wheeling and delivery to Company B at an Idaho delivery point. Company C, as a wheeling agent, would not include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales. Company A would include these kilowatt hours in the denominator of the percentage to be applied to the exempt sales if the transfer between Companies A and C was at a delivery point in the state of Idaho. (7-1-93)

015. PAYMENT OF TAX.

The full amount of tax shall be due and payable on the due date of the return and shall accompany the return when it is filed. Delinquent taxes shall be subject to interest at the rate applicable to delinquent taxes under the Idaho Income Tax Act in addition to the penalty provided by Section 63-2708, Idaho Code. (7-1-93)

016. ENFORCEMENT METHOD OF ASSESSMENT.

In the event that the State Tax Commission or any of its authorized agents or employees finds that any taxpayer has failed to file the returns required by these rules or to pay any kilowatt hour tax due, the Commission shall issue a notice in substantially the same form as is required for a notice of deficiency determination under the provisions of the Idaho Income Tax Act and this Commission's rules relating thereto. The notice will assert tax in triple the amount of tax due, plus interest thereon from the due date of the return. The taxpayer to whom such a notice is addressed may protest the proposed assessment within the time and in the manner provided in ISTC 108 of the Income Tax Regulations, 35.01.01108. In the event the taxpayer fails to file a protest or the Commission rules against the protest, in whole or in part and the tax is not paid, the Commission will direct its legal representative to commence the action authorized in Section 63-2708, Idaho Code. (7-1-93)

017. -- 999. (RESERVED).