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**IDAPA 35
TITLE 01
CHAPTER 07**

35.01.07 - KILLOWATT HOUR TAXES

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-105 and 63-2701, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Kilowatt Hour Tax Act. The rules relating to the administration and enforcement of kilowatt hour taxes, as well as other taxes, are promulgated as IDAPA 35.02.01. (7-1-97)

001. TITLE AND SCOPE (Rule 001).

These rules shall be cited as IDAPA 35.01.07.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.07, "Kilowatt Hour Tax Administrative Rules". They 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. (7-1-97)

002. WRITTEN INTERPRETATIONS (Rule 002).

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, the Tax Commission has written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. To the extent that these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code, they are available for public inspection and copying at the main office of the Tax Commission. (7-1-97)

003. ADMINISTRATIVE APPEALS (Rule 003).

This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. (7-1-98)

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code, to the extent these documents are not confidential pursuant to Section 63-3076 or 9-340, Idaho Code. (7-1-97)

005. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

01. Idaho Customer. Idaho customer means a customer who has a point of delivery for the transfer of power and energy that is located in Idaho. This includes wholesale power transactions with customers or wheeling agents that have a delivery point located in Idaho. (7-1-97)

02. Point of Delivery. Point of delivery means 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. (7-1-97)

03. These Rules. The term these rules refers to IDAPA 35.01.07, relating to Idaho kilowatt hour tax. (7-1-97)

04. Wheeling Agent. Wheeling agent means an entity that receives kilowatt hours from a source or sources of supply and makes power or energy available at another point on its system for a delivering entity or a third party. (7-1-97)

011. -- 019. (RESERVED).

020. ELECTRICAL PRODUCERS SUBJECT TO TAX (Rule 020).

01. In General. Title 63, Chapter 27, Idaho Code, and these rules apply to all producers of electricity who generate electricity from hydroelectric sources in Idaho, except as provided in Subsection 020.02. 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. (7-1-97)

02. Municipal Corporations. The tax does not apply to power generated by facilities owned and operated by a municipal corporation organized pursuant to the laws of Idaho. Municipal corporations are not required to file kilowatt hour tax returns or to pay tax. As used in these rules, the term municipal corporation does not include a producer, as defined in Section 63-2701, Idaho Code, who produces electricity pursuant to a contract with a governmental entity. (7-1-97)

021. -- 029. (RESERVED).

030. KILOWATT HOUR TAX RETURNS (Rule 030).

01. In General. The statement required by Section 63-2701, Idaho Code, and by these rules shall be made on the kilowatt hour tax return, Form 48, 48C, or 48CM, provided by the Tax Commission. All information requested on the return must be provided and the return must be signed. (7-1-97)

02. Monthly Returns. All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Tax Commission no later than the last day of the month following the month to which the return relates. (7-1-97)

03. Quarterly Returns. 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 Tax Commission no later than the last day of the month following the end of the calendar quarter to which the return relates. (7-1-97)

04. Previous Year's Annual Tax Liability. If the previous year's annual tax liability is not available, the estimated current year's liability may be used. (7-1-97)

031. -- 039. (RESERVED).

040. COMPUTATION OF KILOWATT HOURS SUBJECT TO TAX AND CALCULATION OF TAX (Rule 040).

01. Kilowatt Hours Subject to Tax Before Exemptions. To compute kilowatt hours subject to tax before exemptions, the taxpayer shall begin with gross hydroelectric generation in Idaho. The number of kilowatt hours generated shall be measured at the point of production. From kilowatt hours generated, deduct the amounts in Subsections 040.01.a. and 040.01.b.: (7-1-97)

a. Kilowatt hours used by the facility and kilowatt hours lost by the transformer during the hydroelectric generating period. These net kilowatt hours are known as the Idaho hydroelectric generated kilowatt hours to system. (7-1-97)

b. 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 shall be adjusted as follows: (7-1-97)

i. Divide the total of the kilowatt hours bartered, sold, or exchanged out by the total of the kilowatt hours the taxpayer generated, purchased, or exchanged in; and (7-1-97)

ii. Multiply the percentage derived by Subsection 040.01.b.i., by the Idaho hydroelectric generated kilowatt hours to system. (7-1-97)

02. Kilowatt Hours Subject to Tax. Kilowatt hours subject to tax is computed by subtracting the exemption amount as computed in Rule 045.02 of these rules from the kilowatt hours calculated in Subsection 040.01. (7-1-97)

03. Calculation of Kilowatt Hour Tax. The kilowatt hours subject to tax are multiplied by one-half mill (\$0.0005) to calculate the total tax due for that period. (7-1-97)

041. -- 044. (RESERVED).

045. EXEMPTIONS (Rule 045).

01. In General. An exemption shall be allowed from the kilowatt hours calculated in Subsection 040.01. of these rules for that portion of kilowatt hours used by the taxpayer or sold to Idaho customers for use in: (7-1-97)

- a. Manufacturing, mining, milling, smelting, refining, and processing; or (7-1-97)
- b. Pumping water for irrigation or pumping water for drainage on or from lands in Idaho. (7-1-97)

02. Computing the Exemption. The amount of the exemption shall be determined by multiplying the exempt sales in Subsection 045.01, by the percentage of Idaho customer sales from Idaho hydroelectric generation. This percentage is derived by dividing the Idaho hydroelectric kilowatt hours as computed in Subsection 040.01 of these rules by the total kilowatt hours sold to Idaho customers. (7-1-97)

03. Wheeled Energy. (7-1-97)

a. If the taxpayer is a wheeling agent for another entity, the wheeled energy may not be included in the calculation of the exemptions. (7-1-97)

b. Example. Assume that Company A sells kilowatt hours to Company B and delivers 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 Idaho. (7-1-97)

046. -- 049. (RESERVED).

050. PAYMENT OF TAX (Rule 050).

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 as provided in Rule 310 of the Administration and Enforcement Rules. (7-1-97)

051. -- 059. (RESERVED).

060. NOTICE OF DEFICIENCY -- ENFORCEMENT (Rule 060).

If the Tax Commission or its authorized agents or employees finds that a taxpayer has failed to file the returns required by these rules or to pay any kilowatt hour tax due, the Tax Commission shall issue a notice in substantially the same form as required for a notice of deficiency determination pursuant to Section 63-3045, Idaho Code, and related rules. The taxpayer may protest the notice of deficiency within the time and in the manner provided by Section 63-3045, Idaho Code, and related rules. If the taxpayer fails to file a protest or the Tax Commission rules against the protest, in whole or in part, and the tax is not paid, the Tax Commission shall direct its legal representative to commence the action authorized in Section 63-2708, Idaho Code. (7-1-97)

061. -- 999. (RESERVED).