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**IDAPA 35
TITLE 01
Chapter 11**

35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (Rule 000).

In accordance with Sections 63-105 and 14-539, Idaho Code, the State Tax Commission shall promulgate rules implementing the provisions of the Idaho Unclaimed Property Act. (7-1-98)

001. TITLE AND SCOPE (Rule 001).

These rules shall be cited as IDAPA 35.01.11, "Idaho Unclaimed Property Administrative Rules". These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to take custody of any unclaimed property pursuant to Section 14-503(3)(b), Idaho Code. (7-1-93)

002. (RESERVED).

003. ADMINISTRATIVE APPEALS (Rule 003).

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

004. PUBLIC RECORDS (Rule 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-3076 or 9-340, Idaho Code. (7-1-98)

005. UNCLAIMED EXPENSES AND CHECKS (Rule 005).

Intangible property required to be reported and delivered to the state includes outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks and drafts. The term "check" also includes items referred to as "warrants". The term "payroll" includes commissions and any other form of monetary payment to an employee in exchange for services. (7-1-98)

01. Confirmation. A confirmation letter by the payee which claims that the amount is due and owing to the payee should be accompanied by a facsimile instrument issued by the holder in payment of the amount due and owing before the account will be considered not abandoned. (8-24-94)

02. Clearance. A confirmation letter signed by the payee which states that the amount is not due and owing to the payee will be deemed sufficient to relieve the holder of the liability even if the check with which the holder paid the liability has not yet cleared the holder's bank. (7-1-98)

006. -- 009. (RESERVED).

010. DEFINITIONS (Rule 010).

01. Credit Memo. Credit Memo shall include all types of refunds and credit balances unless specified elsewhere in Title 14, Chapter 5, Idaho Code. (7-1-93)

02. Owner. Owner includes a depositor in case of a deposit; a beneficiary or insured in case of a trust, an insurance policy or an annuity policy; the purchaser in case of travelers checks and money orders; a creditor, claimant, or payee in case of other instruments; and any other person having a legal or equitable interest in property subject to the Unclaimed Property Act. (7-1-93)

011. PROPERTY PRESUMED ABANDONED GENERAL RULE (Rule 011).

An owner's interest may be converted only with the owner's consent or by operation of law. (7-1-93)

01. Books Of Holder. Property presumed abandoned includes items that have been converted to income, reversed back to the account upon which the check or draft was drawn or any other method used to convert the unclaimed property to an asset of the holder. The books and records of the holder shall provide presumptive

evidence of the existence of such intangible property. Evidence which may rebut any presumption arising from the books and records of the holder may include stop payment orders or items that can be verified as accounting errors or which establish that the original check or draft was issued in error or reissued to the original payee. (8-24-94)

02. Holding Period Determined By Type Of Liability. The allowable holding period shall be determined by the type of liability, or property payable, not the method of payment. For example, an uncleared cashier's check that paid wages would be reportable after one (1) year. (8-24-94)

03. Notice. (7-1-98)

a. A notice must be mailed by a holder pursuant to Section 14-517, Idaho Code, to an owner at the last known address, according to the records of the holder. (7-1-98)

b. Return of the notice by the Postal Service or other delivery service for any reason will create a presumption of abandonment. To overcome the presumption, the apparent owner must provide to the holder a statement that meets the requirements of Section 14-517, Idaho Code. (7-1-98)

c. A notice that has been signed by the apparent owner and returned to the holder shall be retained by the holder for seven (7) years after the year in which the property would have become reportable. (7-1-98)

012. GENERAL RULES FOR TAKING CUSTODY OF UNCLAIMED PROPERTY (Rule 012).

01. In General. Under the rule established by the United States Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), a holder of unclaimed property must report and remit that property to the state of the owner's last known address as shown in the holder's books and records. If the holder does not have a last known address for the owner, then the holder must report and remit the property to the state where the holder is incorporated. The unclaimed property laws of the state where the property is reportable govern the holding period and what is reportable. (7-1-98)

02. Reciprocity Agreements. A holder located in Idaho may report and remit property reportable to another state to the administrator of the Idaho Unclaimed Property Act if the administrator has entered into a reciprocity agreement with the other state. A list of those states that the administrator has entered into reciprocity agreements with can be obtained from the Idaho State Tax Commission. If property reportable to another state is reported and remitted to the administrator, that property will be transferred to the other state in accordance with the reciprocity agreement. (7-1-98)

013. SERVICE CHARGES AND INTEREST (Rule 013).

01. Service Charges. Funds which are reportable to the administrator are required by the act to be transmitted to the administrator. Deductions for service charges incurred after the report date are contrary to the statute requiring delivery of all reportable amounts. Holders deducting such charges will be subject to proceedings to collect the deficiency and any applicable penalty and interest. (7-1-93)

02. Interest. Interest accruing on reportable amounts is payable in addition to the reportable amounts, unless the holder and owner have a contract, meeting the criteria of the act and providing for cessation of interest. Funds which are received as non-interest bearing as a result of such contracts will be non-interest bearing when claimed by the owner. (7-1-93)

03. Burden Of Proof. The burden of proof of proper notice is on the holder. The holder shall maintain a record of any notice of charges imposed or interest cessation. (7-1-93)

04. Holding Period. Communication from an owner of a dormant savings account stating his desire to maintain the account will restart the allowable holding period. The notice must be from the owner or the owner's duly authorized agent, provided that the agent is not also the holder. (7-1-93)

014. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING REPOSITORY (Rule 014).

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the

ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remains unclaimed by the owner for the period allowed in Section 14-516, Idaho Code, is presumed abandoned. Safekeeping repositories include boxes, lockers, and safes made available by hospitals, hotels, and transportation companies. (7-1-93)

015. REPORT OF ABANDONED PROPERTY (Rule 015).

01. Incomplete Report. A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in Administrative and Enforcement Rule 150. A report that does not meet the requirements of a valid tax return may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (7-1-98)

02. Voluntary Payments Of Unclaimed Property. A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of less than fifty dollars (\$50) to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state. (7-1-98)

03. Underlying Shares And Cumulative Dividends. The holder must report and remit total cumulative dividends to date, together with the stock certificate, when the certificate is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is fifty dollars (\$50) or more. (7-1-98)

016. FILING A CLAIM WITH ADMINISTRATOR (Rule 016).

01. Interest. Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

02. Payment Of Claims - Claims Process. (8-24-94)

a. Warrants will be authorized and payment made: (8-24-94)

i. In the name of, and mailed to, the established owner; or (8-24-94)

ii. To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

iii. To the court appointed guardian; or (8-24-94)

iv. In accordance with a court decree of distribution; or (8-24-94)

v. To an heir for distribution to other heirs; if any. (8-24-94)

b. Owner, Cashier's Checks: (8-24-94)

i. The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashier's check. (8-24-94)

ii. A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)

c. It shall be the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)

d. When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the State Tax Commission, there is no requirement that the State

Tax Commission pay other subsequent claimants. The State Tax Commission is not required to locate all heirs of owners of unclaimed property. (7-1-98)

e. If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the State Tax Commission shall pay each owner an equal share of the account. (7-1-98)

f. Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the State Tax Commission against claims by third parties. (7-1-98)

g. Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid. (7-1-98)

017. ADDITIONS AND PENALTIES (Rule 017).

Penalties and interest may be applied on all delinquent amounts reported or resulting from an audit. These additions and penalties are applicable, even though the delinquent account may be remitted directly from the holder to the owner. Interest is to be computed from the original due date of the report regardless of any extension of time to file granted by the administrator under Section 14-517(4), Idaho Code. A penalty may be imposed if the report is filed after the approved extension date. In the appropriate circumstances, the State Tax Commission may waive penalties imposed. (7-1-98)

018. AGREEMENT TO LOCATE REPORTED PROPERTY (Rule 018).

An approved claim for an account that the state has held less than twenty-four (24) months shall be remitted directly to the owner. (7-1-93)

019. PAYMENT OF ABANDONED PROPERTY (Rule 019).

All payments of abandoned property to the administrator must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with Sections 67-2026 and 67-2026A, Idaho Code. (4-5-00)

020. WELFARE AND PENSION PLANS COVERED UNDER ERISA (Rule 020).

01. In General. An obligation to pay a benefit under a welfare benefit plan normally does not arise until a demand is made by the participant (or beneficiary) which is honored (or required to be honored) by the plan administrator. With respect to pension benefit plans, an obligation to pay a benefit normally does not become fixed and certain until payment of the benefit is required under ERISA or under the plan, whichever is earlier. (7-1-98)

02. Special Rule Relating To Unclaimed Pension Benefits. Account balances otherwise payable to a participant or beneficiary under a qualified retirement plan are not required to be reported to or paid over to the state of Idaho if the participant or beneficiary cannot be located and the plan document provides for the treatment of the unclaimed account balance. For example, an ERISA covered pension benefit plan or trust subject to, and in compliance with, the anti-forfeiture provisions of Section 411(a), Internal Revenue Code, is not required to report or pay over to Idaho any accrued benefit that is not payable to the participant or beneficiary under a plan provision that qualifies as a "permitted forfeiture" under Section 411(a)(3), Internal Revenue Code, and Treasury Regulation Section 1.411(a)-4(b). (7-1-98)

021. -- 999. (RESERVED).

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