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**IDAPA 35
TITLE 01
CHAPTER 04**

35.01.04 - IDAHO ESTATE AND TRANSFER TAX 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 Estate and Transfer Tax Reform Act of 1988. (7-1-98)

001. TITLE AND SCOPE (RULE 001).

These rules shall be cited as IDAPA 35.04.01, "Idaho Estate and Transfer 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 in an amount equal to the federal credit on the transfer of the taxable estate of every resident. (7-1-93)

002. WRITTEN INTERPRETATIONS (RULE 002).

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential by statute or rule, the documents are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address. (3-15-02)

003. ADMINISTRATIVE APPEALS (RULE 003).

This chapter does allow administrative relief of the provisions outlined herein under Section 64-3049, 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, 63-3077, or 9-337 through 9-350, Idaho Code. (3-15-02)

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-800-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.state.id.us". All offices are open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1-800-377-3529. (3-15-02)

006. -- 011. (RESERVED).

012. DEFINITION AND USE OF TERMS (RULE 012).

Federal estate tax return includes any federal form, or other action which establishes, changes, or amends either the federal estate or the generations skipping tax liability. (7-1-93)

013. RESIDENTS--TAX IMPOSED--CREDIT FOR TAX PAID OTHER STATES (RULE 013).

01. Credit. The computed credit allowed by Section 2011, Internal Revenue Code, is a tax liability payable to the state, regardless of the fact that the estate did not utilize the credit on the federal estate tax return. An increased credit created by valuation changes, inclusion of omitted assets or other corrective actions made by the State Tax Commission is a tax liability, even though no corresponding change to the federal taxable estate is made on the federal estate tax return. (7-1-93)

02. Death Taxes. The estate has the obligation to document the amount of death taxes paid to other states before pro rating the federal credit will be allowed. (7-1-93)

014. TAX RETURNS--DATE TO BE FILED--EXTENSIONS (RULE 014).

01. Requirement. A return shall be required to be filed with the Commission by every estate that is required by the laws of the United States to file a federal estate tax return. This requirement extends to nonresident estates which have property interests with situs within Idaho included in the federal estate gross value. (7-1-93)

02. Time Payments. When any estate elects time payments under Section 6166, Internal Revenue Code, the estate will furnish the Commission a copy of the documentation required by Section 6166, Internal Revenue Code. (7-1-93)

015. DATE PAYMENT DUE--DATE DEEMED RECEIVED--INTEREST--ELECTRONIC TRANSFER OF FUNDS (RULE 015).

01. Estimated Final Credit. An estate which has an approved time payment for federal estate taxes shall be required to remit only the estimated final amount of federal credit that will be available after taking into consideration the interest deductions that will be allowed as administrative expenses during the extended payment schedule. The Commission may adjust the estimated final credit amount and bill or refund an amount to the estate at the time of remittance. (7-1-93)

a. Upon final payment to the Internal Revenue Service and the final adjustment to the federal credit, settlement will be made with the Commission which may be payment or refund with applicable interest. (7-1-93)

b. It is recognized that no one will be able to exactly estimate the final federal credit prior to the extended payments due to the variable interest rate the Internal Revenue Service uses. Therefore, there shall be no penalties imposed if a good faith estimate ultimately is found to be an underpayment, though statutory interest will be assessed. (7-1-93)

02. Extended Payment. Extended payment of the state tax will only be approved for good cause such as, the need of a sacrifice sale of assets. The number of years for extended payment will be determined by the Commission on an individual basis, but in no case be longer than fourteen (14) years from the date the tax was due. (7-1-93)

a. Any agreement for extended payment is conditional until such time as the estate enters into a written contractual agreement with the Commission, wherein the distributee agrees to: terms of payment including total period of extension, periodic payments, and interest thereon; waiver of all statutes of limitations for the assessment or collection of the estate tax until such tax is paid in full; that unpaid estate taxes including interest shall remain a lien upon the property passed or transferred until all taxes and interest owing are paid in full and; provisions in case of default by the distributee. (7-1-93)

b. The Commission may file a lien in the real property records of the county wherein the property is located and such other places as may be necessary to protect the Commission's interest. (7-1-93)

03. Loss of Valuation. A credit that is increased due to an increase in federal taxable estate caused by the loss of special use valuation is payable within six (6) months of the date the property ceased to qualify for the special use valuation. (7-1-93)

04. Interest. Interest will accrue on tax beginning six (6) months after the date of disposition or date qualified use ceased. (7-1-93)

05. Electronic Funds Transfer. All taxes due the state 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)

016. AMENDED RETURNS--FINAL DETERMINATION (RULE 016).

01. Amended Return. A copy of any filing by the estate that establishes, changes, or amends the

estate's federal tax liability shall be filed no later than sixty (60) days after the document is filed with the Internal Revenue Service. This section specifically includes, but is not limited to, an Internal Revenue Service Form 706-A. (7-1-93)

02. Final Determination. Final determination of the federal tax must be documented by the estate within sixty (60) days. (7-1-93)

a. In the case of an Internal Revenue Service audit, the estate should submit a copy of an agreed upon adjustment or the decision from an appeal. (7-1-93)

b. In the case of extended payments of federal estate tax, a copy of the final Internal Revenue Service estate closing letter. (7-1-93)

c. In all other cases, a copy of the Internal Revenue Service closing letter. (7-1-93)

017. REFUND FOR OVERPAYMENTS (RULE 017).

As of January 1, 1994, the rate of interest on refunds is determined annually as provided in Section 63-3045, Idaho Code and Idaho Tax Commission Administration and Enforcement Rule 310. Simple interest shall accrue from the day the tax return was required to be filed, or the day the tax was actually paid to the State Tax Commission, whichever is later, to the day the refund is paid by the State Tax Commission. (3-30-01)

018. FAIR MARKET VALUE (RULE 018).

01. Fair Market Value. The tax imposed upon any transfer of property is measured by the fair market value of such property. Fair market value is that amount of United States money or its equivalent that in all probability a property would exchange hands for, between a willing seller under no compulsion to sell, and an informed, capable buyer; a reasonable time being allowed to consummate the sale, and substantiated by a reasonable down payment or full cash payment. (7-1-93)

a. Growing crops, in the case of a farm or tillable land must be appraised separately from the land. (7-1-93)

b. If there is a market for stocks and bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the date of death is the fair market value per share or bond. If there were no sales on the date of death, the fair market value is determined by taking the weighted average of the means between the highest and lowest sales, on the nearest date before and the nearest date after the date of death, on which dates the stock was traded. The average is to be weighted inversely by the respective number of days between the selling date and the valuation date. (7-1-93)

c. Any variation from the quoted market price due to the size of a block of stock shall have supporting documentation attached to the return. (7-1-93)

02. Valuation. Valuation for the purpose of absorbing the maximum allowable state death tax credit will recognize alternate date valuation that is timely elected and allowed by the Internal Revenue Service. (7-1-93)

019. REFERENCE TO RELEVANT INCOME TAX AND ADMINISTRATION AND ENFORCEMENT RULES (RULE 019).

01. Income Tax and Administration and Enforcement Rules. All Income Tax and Administration and Enforcement Rules promulgated by the Commission for collection, enforcement, and administration of the code sections incorporated by reference in Section 14-412, Idaho Code, apply to the administration and enforcement of the estate and transfer tax. (4-5-00)

02. References. References to income tax in the Income Tax and Administration and Enforcement Rules referred to in this rule shall be described as references to estate and transfer tax for purposes of these rules. (4-5-00)

020. - 999. (RESERVED).

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