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**IDAPA 35
TITLE 02
CHAPTER 01**

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

000. LEGAL AUTHORITY (RULE 000).

Section 63-3039, Idaho Code.

(3-20-97)

01. In General. In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Income Tax Act. (3-20-97)

02. Related Taxes. This chapter contains rules relating to provisions of the Idaho Income Tax Act, Title 63, Chapter 30, Idaho Code, that are incorporated by reference into statutes relating to other taxes. These include: (3-20-97)

- a. Sales and Use Taxes, Title 63, Chapter 36, Idaho Code; (3-20-97)
- b. Motor Fuels Taxes, Title 63, Chapter 24, Idaho Code; (3-20-97)
- c. Petroleum Transfer Fee, Title 41, Chapter 49, Idaho Code; (3-20-97)
- d. Estate Taxes, Title 14, Chapter 4, Idaho Code; (3-20-97)
- e. Cigarette and Tobacco Products Taxes, Title 63, Chapter 25, Idaho Code; (3-20-97)
- f. Beer Taxes, Title 23, Chapter 10, Idaho Code; (3-20-97)
- g. Wine Taxes, Title 23, Chapter 13, Idaho Code; (3-20-97)
- h. Illegal Drug Taxes, Title 63, Chapter 42, Idaho Code; (3-20-97)
- i. Mine License Taxes, Title 47, Chapter 12, Idaho Code; (3-20-97)
- j. Kilowatt Hour Taxes, Title 63, Chapter 27, Idaho Code; and (3-20-97)
- k. The Uniform Unclaimed Property Act, Title 14, Chapter 5, Idaho Code. (3-20-97)

001. TITLE AND SCOPE (RULE 001).

Section 63-3039, Idaho Code.

(3-20-97)

01. Title. These rules shall be cited as IDAPA 35.02.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules." (3-20-97)

02. Effective Date. To the extent allowed by statute, rules in this chapter shall be applied on their effective date to all taxable years open for determining tax liability. (3-20-97)

03. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. (3-20-97)

04. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. (3-20-97)

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 Tax Commission. See Rule 005 of these rules for the main office address.

(3-15-02)

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.

(3-20-97)

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 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. 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.idaho.gov." All offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays.

(3-15-02)

02. Regional Field Offices. The address and phone number for each regional field office is listed in Subsections 005.02.a. through 005.02.e.

(3-15-02)

a. Coeur d'Alene Field Office. Suite 100, 1910 Northwest Blvd., Coeur d'Alene, Idaho 83814-2615. The telephone number is (208) 769-1500. The facsimile number is (208) 769-1505.

(3-15-02)

b. Lewiston Field Office. 1118 F Street, P.O. Box 1014, Lewiston, Idaho 83501-1014. The telephone number is (208) 799-3491. The facsimile number is (208) 799-5053.

(3-15-02)

c. Idaho Falls Field Office. Suite 16, 150 Shoup Avenue, Idaho Falls, Idaho 83402-3653. The telephone number is (208) 525-7116. The facsimile number is (208) 525-7154.

(3-15-02)

d. Pocatello Field Office. Suite 5, 611 Wilson Avenue, Pocatello, Idaho 83201-5029. The telephone number is (208) 236-6244. The facsimile number is (208) 233-6134.

(3-15-02)

e. Twin Falls Field Office. Suite C, 1038 Blue Lakes Blvd. N., P.O. Box 5227, Twin Falls, Idaho 83303-5227. The telephone number is (208) 736-3040. The facsimile number is (208) 736-3043.

(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. (RESERVED).

007. PURPOSE OF RULES (RULE 007).

Section 63-3039, Idaho Code. If statutes appear to be clear and unambiguous without need for interpretation, expansion or construction, generally no rules have been promulgated. An effort has been made to prevent the rules from being merely repetitive of statutory provisions. Consequently, the rules do not stand alone as a statement of Idaho tax laws. Instead, each rule shall be read with the statute to which it relates. The title that introduces each rule is provided for the convenience of the reader and is not part of the rule.

(3-15-02)

008. -- 009. (RESERVED).

010. DEFINITIONS (RULE 010).

Section 63-3003, Idaho Code. (3-20-97)

01. Date of Filing or Payment. (4-6-05)

a. When returns or other documents or payments are delivered to the Tax Commission by United States mail, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code. (4-6-05)

b. When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices. (4-6-05)

c. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission. (4-6-05)

d. Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code. (4-6-05)

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. (4-11-06)

a. As used herein, lawful money of the United States means; (4-11-06)

i. Currency or coin of the United States at face value; and (4-11-06)

ii. Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. (4-11-06)

b. The words pay, paid, payable, or payment do not include: (4-11-06)

i. Submission to the Tax Commission of a check or draft that is subsequently dishonored by the institution on which it is drawn. (4-11-06)

ii. Submission to the Tax Commission of a check or draft drawn on a foreign bank or other financial institution in regard to which any processing fees may be incurred by the state of Idaho. (4-11-06)

03. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return. (3-20-97)

04. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code. (3-20-97)

05. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. (3-20-97)

011. -- 099. (RESERVED).

100. PETITIONING FOR PROMULGATION, AMENDMENT OR REPEAL OF RULES (RULE 100). Sections 63-3039 and 67-5230, Idaho Code. (3-20-97)

01. Filing a Petition. Any person may petition the Tax Commission for promulgation, amendment or repeal of a rule pursuant to the Idaho Administrative Procedure Act. A petition for rule-making must be in writing and contain: (3-20-97)

- a. An express statement that it is intended to be a petition; (3-20-97)
- b. Suggested language for the proposed rule; (3-20-97)
- c. A statement of the reasons why the proposal should be adopted; and (3-20-97)
- d. An estimate of the anticipated economic impact to the state of Idaho. (3-20-97)

02. Tax Commission's Response to Petition. If the petition is denied, the Tax Commission shall notify the petitioner of the reasons for denial within twenty-eight (28) days of receiving the petition. If rule-making is initiated, the Tax Commission shall provide the petitioner with written notice of the time and place of any public hearings the Tax Commission holds regarding the proposed rule. (3-20-97)

101. -- 109. (RESERVED).

110. DECLARATORY RULINGS (RULE 110). Sections 67-5232 and 67-5255, Idaho Code. (3-20-97)

01. Findings Pursuant to Section 67-5206, Idaho Code. (4-5-00)

a. The Tax Commission finds that the Attorney General's Administrative Rules on declaratory rulings found at IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 400 through 402 do not adequately address the needs of taxpayers seeking a declaratory ruling on applications of the tax law. The Attorney General's Administrative Rules do not: (4-5-00)

- i. Protect taxpayer confidentiality; (4-5-00)
- ii. Define the taxpayer's right to rely on the ruling; or (4-5-00)
- iii. Identify the circumstances justifying the denial or withdrawal of a ruling. (4-5-00)

b. Accordingly, this rule will govern declaratory rulings issued by the Tax Commission. (4-5-00)

02. Filing a Petition. (3-20-97)

a. Any person, group, or other association may file a written petition with the Tax Commission asking for an interpretation or determination as to the applicability of a statute, rule, or order issued by the Tax Commission to the party filing the petition. To obtain the determination the petitioner's tax liability must be directly affected by the determination or the petitioner must demonstrate a direct financial interest in the determination sought. (3-20-97)

b. A petition must be submitted to the Tax Commission in writing and contain an express statement that it is intended to be a petition for a declaratory ruling pursuant to this rule or the Administrative Procedure Act. (3-20-97)

03. Tax Commission's Response to Petition. After receiving a petition, the Tax Commission shall: (3-20-97)

- a. Issue a written declaratory ruling; (3-20-97)
- b. Require the petitioner to submit additional facts, evidence, or information as the Tax Commission deems necessary to make a declaratory ruling; or (3-20-97)
- c. Decline to make a declaratory ruling. The Tax Commission shall decline to make a declaratory

ruling in the following circumstances: (3-20-97)

- i. The identity of the taxpayer is not disclosed; (3-20-97)
- ii. The request fails to include sufficient facts, evidence, or other information on which a declaratory ruling may be based; (3-20-97)
- iii. The issue on which a declaratory ruling is sought is the subject of pending litigation or administrative appeal; (3-20-97)
- iv. The petitioner is not a person directly affected by a resolution of the issue presented; or (3-20-97)
- v. It appears there are other good or compelling reasons why a declaratory ruling should not be made. (3-20-97)

04. Factual Circumstances. A declaratory ruling applies only to the factual circumstances as submitted by the petitioner and applies only to the petitioner seeking the declaratory ruling. The declaratory ruling may not be relied on by a person not named as a petitioner. The declaratory ruling is void if the facts changed significantly, all relevant facts were not disclosed at the time of the petition, or the facts were not accurately represented to the Tax Commission. If the statutory provisions or administrative rules affecting the declaratory ruling are amended by the legislature or the Tax Commission, the declaratory ruling is void as of the date of the amendment to the statute or rule. (3-20-97)

05. Withdrawal of Ruling. If after issuing a declaratory ruling the Tax Commission believes the declaratory ruling is erroneous, it may withdraw the declaratory ruling by giving written notice to the petitioner at his last known address. If the petitioner has relied on the declaratory ruling in good faith, the Tax Commission may not assess any tax liability accruing between the dates the declaratory ruling was issued and its withdrawal. (3-20-97)

06. Confidentiality. Declaratory rulings by the Tax Commission are information subject to the confidentiality requirements of Sections 63-3076 and 63-3077, Idaho Code and Rule 700 of these rules. Factual, financial, or other information relating to a taxpayer is not public record and may not be disclosed to any person except as provided by Sections 63-3076 and 63-3077, Idaho Code, or as authorized by the taxpayer. (3-20-97)

07. Appeals. Sections 67-5270 through 67-5279, Idaho Code, govern the judicial review of declaratory rulings. (3-20-97)

111. -- 129. (RESERVED).

130. ELECTRONIC TRANSFER OF FUNDS (RULE 130).
Section 67-2026, Idaho Code. (3-15-02)

01. In General. All taxes, interest, penalties, fees, and other amounts due the state of Idaho shall be paid by electronic funds transfer when the amount is one hundred thousand dollars (\$100,000) or greater, in accordance with Sections 67-2026 and 67-2026A, Idaho Code. See Subsection 130.02 for the exception for individuals who pay amounts related to individual income taxes. (3-15-02)

02. Individuals Paying Amounts Pursuant to Section 63-3024, Idaho Code. An individual taxpayer is not required to pay his individual income taxes, fees or amounts payable pursuant to Section 63-3024, Idaho Code, by electronic funds transfer. If an individual elects to pay such amounts by electronic funds transfer, he must comply with the requirements of Section 67-2026, Idaho Code. (3-15-02)

131. UNACCEPTABLE PAYMENTS (RULE 131).
Section 63-3034, Idaho Code. (4-11-06)

01. Checks and Drafts Previously Dishonored. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the institution on which it was drawn. (4-11-06)

02. Checks and Drafts From Foreign Institutions. The Tax Commission may reject a check or draft drawn on a foreign bank or other foreign financial institution. (4-11-06)

03. Checks and Drafts That Result in Processing Fees. The Tax Commission may reject a check or draft that, if accepted, may result in the state of Idaho incurring a processing fee. (4-11-06)

132. -- 139. (RESERVED).

140. APPLICATION OF PARTIAL PAYMENT (RULE 140).
Sections 63-4001 and 63-4007, Idaho Code. (3-15-02)

01. In General. If bad check charges, penalties, or interest accrue as a result of any deficiency in tax, partial payments shall apply in the following order: to bad check charges, interest, tax, and penalty. (3-15-02)

02. Taxpayers With Multiple Tax Obligations. If a taxpayer owes multiple tax obligations, the taxpayer may direct how the Tax Commission will apply payments not made with a tax return. Such directions shall apply to tax types or tax years. (3-15-02)

03. Examples. (3-15-02)

a. A taxpayer has an income tax liability and a sales tax liability for a previous year. The taxpayer directs the Tax Commission to apply a partial payment to his income tax liability. The Tax Commission will apply the payment first to any bad check charge related to the income tax liability, then to interest, next to the income tax, and finally to any penalty for that year as provided in Subsection 140.01. The Tax Commission will apply any remaining payment to the sales tax liability in the same order. (3-15-02)

b. A taxpayer has an income tax liability for three (3) previous tax years. The taxpayer directs the Tax Commission to apply a partial payment to his income tax liability for the earliest year. The Tax Commission will apply the payment to the income tax liability in the earliest year by first applying the payment to any bad check charge related to that year, then to interest, next to the income tax, and finally to any penalty for that year as provided in Subsection 140.01. (3-15-02)

141. -- 149. (RESERVED).

150. REQUIREMENTS OF A VALID TAX RETURN (RULE 150).

01. In General. All tax returns filed with the Tax Commission shall be complete and copies of all pertinent schedules or computations shall be attached. (3-20-97)

02. Supporting Computations and Schedules. The results of supporting computations shall be carried forward to applicable lines on the tax forms. A statement referencing an attached schedule is not acceptable if the taxpayer does not enter the necessary information from the attachments on the tax form. For purposes of this subsection, a return shall be deemed valid if the Tax Commission does not reject the return by mailing it back to the taxpayer. (3-20-97)

03. Information to Compute Tax. A return that does not provide sufficient financial information to compute a tax liability is not a valid tax return. (3-20-97)

04. Accuracy and Required Information. A return need not be totally accurate to be a valid return. However, for the return to be valid it must: (3-20-97)

a. Be identified as a return; (3-20-97)

b. Be filed using the proper form prescribed by the Tax Commission; (3-20-97)

c. Include the taxpayer's social security number, federal employer identification number, or Internal

- Revenue Service processing number; (7-1-99)
- d. Include the taxpayer's name and address; (7-1-99)
 - e. Include the taxpayer's Idaho permit or license number, if applicable; (7-1-99)
 - f. Identify the reporting or tax period; (7-1-99)
 - g. Contain a computation of the tax liability and sufficient supporting information to show how the taxpayer reached that result; and (3-20-97)
 - h. Reflect the taxpayer's honest and genuine effort to satisfy the requirements of the law. For purposes of determining if these requirements are met, documents that contain the following are clearly insufficient: (3-20-97)
 - i. Broad unspecified constitutional claims; (3-20-97)
 - ii. Unsupported statements that claim no Idaho activity or income exists; and (3-20-97)
 - iii. Language that demonstrates a protest against the tax law or its administration. (3-20-97)
- 05. Signing of Returns.** (3-20-97)
- a. Paper Returns. The taxpayer or an authorized officer or representative shall manually sign the tax return. Both spouses shall sign a joint return. If a taxpayer is deceased or cannot sign his name, a duly authorized person, such as a surviving spouse, executor, administrator or person holding power of attorney may sign the return, indicating his status or relationship. If a taxpayer signs with an X, a witness shall attest his mark. The signature of the taxpayer constitutes a written declaration of the return's accuracy. (3-20-97)
 - b. Electronically Filed Returns. The name of the taxpayer, the name of the taxpayer's authorized agent, the taxpayer's identification number, or personal identification number, shall constitute a signature when transmitted as part of an electronically filed return by the taxpayer or at the taxpayer's direction. The tax preparer shall keep a copy of the tax return on file for the applicable statute of limitations as required by Section 48-603B, Idaho Code. (7-1-99)
- 06. Reproduced and Substitute Forms.** Any reproduced or substitute form or schedule must meet the requirements of the Tax Commission's original form. (3-20-97)
- a. Specific instructions for substitute forms are available on request from the Tax Commission. The use of substitute forms requires prior approval of the Tax Commission. The Tax Commission may reject nonapproved forms. (3-20-97)
 - b. Reproduced forms and photocopies of official Tax Commission forms are acceptable if the weight and size of the paper are comparable to that used in the official forms. These forms and schedules must be sufficiently legible so they may be reproduced. (3-20-97)
- 151. -- 154. (RESERVED).**
- 155. TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY (RULE 155).** Sections 63-115, 63-3039, and 9-328, Idaho Code. (4-2-08)
- 01. Tax Returns Filed Electronically.** Pursuant to Section 63-115, Idaho Code, a taxpayer may file a tax return with the Tax Commission electronically only when the Tax Commission has established and implemented procedures permitting electronic filing of a specific tax return. A return may only be filed electronically by using the procedures and formats established by the Tax Commission for the particular return. (7-1-99)
 - 02. Signatures.** See Rule 150 of these rules. (7-1-99)

03. Acknowledgment of Data Transmissions. Persons filing returns by electronic data stream may be sent an acknowledgment of receipt of a successfully transmitted return. An acknowledgment means only that the Tax Commission received the return. An acknowledgment is not a finding by the Tax Commission about the correctness of the return. If any transmission is received in an unintelligible or garbled form and the Tax Commission cannot identify the taxpayer, no acknowledgment will be sent. (7-1-99)

156. -- 199. (RESERVED).

200. EXAMINATION OF BOOKS AND WITNESSES AND DISCOVERY (RULE 200).
Sections 63-3042 and 63-3043, Idaho Code. (3-20-97)

01. Retention of Working Papers. Each taxpayer shall retain and make available on request all business records and working papers used in the preparation of, or relevant to the correctness of, any tax return subject to examination by the Tax Commission. (3-20-97)

02. Failure to Comply. In addition to other enforcement provisions provided by statute, failure to produce records supporting amounts or information shown on a return may result in appropriate adjustments by the Tax Commission, including either or both of the following: (3-20-97)

a. The disallowance of claimed deductions, credits, or exemptions to which the requested information relates; (3-20-97)

b. The presumption that the information not provided is prejudicial to the taxpayer's position in regard to the issue or issues to which the requested information relates. (3-20-97)

03. Discovery. The Tax Commission may engage in all forms of discovery permitted by the Idaho Rules of Civil Procedure by attaching the appropriate discovery request to a summons issued pursuant to Section 63-3042, Idaho Code. Discovery requests may include interrogatories, depositions, and requests for production or inspection. Failure to respond to a discovery request in the manner required by the Idaho Rules of Civil Procedure results in the reissuance of a summons to the taxpayer and the imposition of sanctions permitted by statute or these rules for failure to respond to the summons. (3-20-97)

04. Cost Reimbursement to a Third-Party. If the Tax Commission summonses a third-party to produce records, the Tax Commission may reimburse the third-party at a rate not to exceed seventy-five cents (\$0.75) per copy. The Tax Commission may require the originals to be produced pursuant to the summons. (3-20-97)

201. -- 204. (RESERVED).

205. ACTION TO COLLECT UNPAID TAX OR DEFICIENCY (RULE 205).
Section 63-3050, Idaho Code. (3-20-97)

01. In General. A debtor-creditor relationship exists between the taxpayer and the state of Idaho with regard to taxes imposed by the state of Idaho. The only exception is if a trust relationship is imposed. (3-20-97)

02. Authority for Collection. Sections 63-3050, 63-3063, and 63-3064, Idaho Code, authorize the Tax Commission to pursue any legal action for the payment of taxes owing. This authority is in addition to the specific collection authority granted by Sections 63-3051 through 63-3061, Idaho Code. (3-20-97)

206. -- 209. (RESERVED).

210. PROPERTY SUBJECT TO LIEN (RULE 210).
Section 63-3051, Idaho Code. (3-20-97)

01. Statutory Lien. A statutory lien is created when demand for payment of any assessed deficiency in tax, interest, penalties, or other charges is made and the taxpayer fails to pay the assessment. The lien extends to all real and personal property, or rights therein, owned or acquired by the taxpayer from the date the lien is created until the time it expires. The lien is deemed to be created on the date demand for payment is made. The lien is not effective

as to third-parties until a notice of lien is filed. (3-20-97)

02. Duration of Lien. A notice of lien remains in effect for five (5) years from the date the lien notice is first filed in the Secretary of State's office. The lien may be extended by filing an amendment to continue the tax lien with the office of the Secretary of State within that period. The lien, as extended, is valid and applies against only the real property of the taxpayer. (4-6-05)

211. -- 214. (RESERVED).

215. RELEASE OR SUBORDINATION OF TAX LIEN (RULE 215).
Section 63-3055, Idaho Code. (3-20-97)

01. Request for Release of Lien. A request for a release of all or a portion of the property subject to a state tax lien, must be in writing and addressed to the Tax Commission. The request must include: (3-20-97)

a. The lien number and date; (3-20-97)

b. The reasons for the request; and (3-20-97)

c. Supporting documentation. (3-20-97)

02. Erroneous Lien. If a lien is filed in error, the lien shall be released as soon as possible. The statement "This release is based on a finding that the lien herein released was filed in error" shall be shown on the release filed. (3-20-97)

216. -- 219. (RESERVED).

220. LEVY OR DISTRAINT WARRANT (RULE 220).
Section 63-3059, Idaho Code. (3-20-97)

01. In General. Levy and distraint is the summary method of collecting taxes when the assessment and lien remain unsatisfied. The Idaho Income Tax Act provides that if the taxpayer fails to pay assessed taxes or deficiencies, the tax may be collected by levy on all property or property rights belonging to the taxpayer. (3-20-97)

02. Serving of Levy. A levy or notice of levy may be served on a person in possession of or obligated with respect to property rights of the taxpayer. Property identified as belonging to the taxpayer may be levied on. The authority to execute a levy or warrant is vested in a member of the Tax Commission, a deputy commissioner, a sheriff, constable, or a deputy of the Tax Commission. (3-20-97)

03. Surrender of Property. A person in possession of property or property rights on which a levy has been made shall surrender the property to the process server on demand. If the holder fails to surrender the property, he may be personally liable to the Tax Commission for the amount or value of the property so held and retained. (3-20-97)

221. -- 224. (RESERVED).

225. PROCEEDINGS ON LEVY OR DISTRAINT (RULE 225).
Section 63-3060, Idaho Code. (3-20-97)

01. In General. The proceedings on levy or distraint have the same force and effect as a writ of execution issued by a court on final judgment except that the right to claim exemption from execution is limited by Section 63-3058, Idaho Code. The sale or liquidation of property seized shall proceed in the manner provided by the general statutes of the state of Idaho relating to execution on judgment. See Title 11, Idaho Code. (3-20-97)

02. Sale of Property. All costs of execution and sale are the responsibility of the taxpayer and shall be collected as part of the obligation owing the state. Any moneys obtained on the sale of the taxpayer's property shall be applied in the following order: to costs incurred, penalty, interest, and principal or tax owing. Any moneys

received in excess of the total obligation shall be paid to the taxpayer unless, prior to disbursement, other creditors file a claim on the state. See Section 11-202, Idaho Code. (3-20-97)

226. -- 229. (RESERVED).

230. JEOPARDY ASSESSMENTS (RULE 230).

Section 63-3065, Idaho Code.

(3-20-97)

01. Termination of Tax Periods. The Tax Commission may terminate the tax period of a taxpayer at any time when payment of a tax is in jeopardy. This termination causes the tax for the terminated period, and any unpaid tax for the preceding tax period, to be immediately due and payable. (3-20-97)

a. No particular form of notice of the jeopardy assessment is required. Notice may be served on the taxpayer or his authorized agent, or mailed to his last known address. (3-20-97)

b. Notwithstanding any action by the Tax Commission pursuant to Section 63-3065, Idaho Code, and this rule, a taxpayer shall file a tax return at the end of his regular accounting period. Any tax collected as a result of termination pursuant to this statute is applied against the tax due at the end of the current tax period. (3-20-97)

02. Appeals Procedure. If the taxpayer does not agree with the jeopardy assessment, the taxpayer may file a petition for redetermination. The petition must be in writing and filed within sixty-three (63) days after notice of the jeopardy assessment. The taxpayer must either pay the assessment in full or file with the Tax Commission a bond in the manner set forth in Section 600 of these rules. The bond must be conditioned on the payment of any tax, penalty, and interest that may be found due. (3-20-97)

03. Property Under Distraint. Property under distraint that has not been sold or otherwise disposed of may be returned to the taxpayer on payment of the assessment in full, plus the costs of the distraint. Property may also be returned if the taxpayer files with the Tax Commission a bond in the amount of the assessment, executed by a surety licensed and authorized to do business in Idaho and conditioned on payment of the full amount of the assessment plus the interest and costs. Either action shall begin within the time prescribed by Section 63-3065(b), Idaho Code, or an extension ordered by the Tax Commission. (3-20-97)

04. Request for Return of Seized Property. A taxpayer may file a written petition for the return of property seized to satisfy a jeopardy assessment. The petition must be filed prior to the Tax Commission or a sheriff posting or publishing a notice of sale or other disposition of property, or within fifteen (15) days from the date of seizure, whichever time is greater. The Tax Commission may grant the petition based on facts disclosed or found that indicate the taxpayer will pay the assessment within a reasonable time. (3-20-97)

231. -- 299. (RESERVED).

300. ASSESSMENT OF TAX (RULE 300).

Sections 63-3045 and 63-3045A, Idaho Code.

(3-30-07)

01. In General. When a tax return is filed, tax and interest are assessed on the date the return showing tax owing is received, even if the return is corrected by the Tax Commission for mathematical errors. If the taxpayer does not compute a tax on an otherwise properly filed return, any tax calculated by the Tax Commission to be owed is assessed the date payment was due. (3-30-07)

02. Deficiency of Tax. If the Tax Commission determines a deficiency of tax, the additional tax is assessed when the deficiency determination becomes final. A deficiency determination becomes final when the taxpayer fails to timely petition for redetermination of the deficiency or to timely appeal the decision of the Tax Commission. If the taxpayer timely appeals the decision of the Tax Commission, the deficiency determination becomes final when the decision of the Board of Tax Appeals, or the judgment of the court, becomes final and can no longer be appealed. (3-20-97)

03. The Record of Assessment. The record of assessment shall be the Notice and Demand for payment of taxes that also functions as the required notice for the distraint and sale of a taxpayer's personal property

pursuant to Section 63-3057, Idaho Code. For a jeopardy assessment as provided for in Sections 63-3065, 63-3630, and 63-4208, Idaho Code, the Notice of Jeopardy Assessment is the record of assessment. In cases where the tax is self-assessed and no Notice and Demand is issued, the record of assessment shall be the Tax Commission's processing record of the filing of the self-assessed return. (3-20-97)

04. Admission to Understatement of Tax. A taxpayer may admit to an understatement of tax at any time. An admission is not considered a compromise of tax, and does not affect the statutory period of limitations for an audit or additional assessment or for a claim for refund filed by the taxpayer. (3-20-97)

301. -- 309. (RESERVED).

310. INTEREST RATES (RULE 310).

Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57

(4-2-08)

311. -- 319. (RESERVED).

320. NOTICE OF DEFICIENCY -- FILING A PROTEST (RULE 320).

Section 63-3045, Idaho Code.

(3-20-97)

01. In General. If a taxpayer does not agree with a deficiency determination, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest must be in writing and filed within sixty-three (63) days from the date the Notice of Deficiency is mailed. The protest must contain the following information to be perfected: (3-20-97)

a. Name, address and pertinent identification number; (3-20-97)

b. The period to which the deficiency relates; (3-20-97)

c. The specific item or items in the Notice of Deficiency to which the taxpayer objects; and (3-20-97)

d. The factual or legal basis for the objections made. (3-20-97)

02. Receipt of Protest. Once a protest is received by the Tax Commission, the sixty-three (63) day period ends. (3-20-97)

03. Unperfected Protest. (3-20-97)

a. If the Tax Commission determines the protest does not include all the items required by this rule, the Tax Commission shall notify the taxpayer of the items needed to perfect the protest. The taxpayer has twenty-eight (28) days from the date the notice is mailed to provide the information. (3-20-97)

b. Example. A Notice of Deficiency is mailed to a taxpayer on August 31. He has sixty-three (63) days from August 31 to protest his deficiency determination. The Tax Commission receives his protest on September 10. The sixty-three (63) day period stops on September 10. The Tax Commission determines the protest is not perfected and mails notification to the taxpayer on September 15. The taxpayer has twenty-eight (28) days or through October 13 to perfect the protest. After October 13, he may no longer perfect his protest or submit a new protest even though the original sixty-three (63) day period would have run through November 2. (3-20-97)

04. Failure to Timely Perfect a Protest. Failure to perfect a protest within twenty-eight (28) days is treated the same as if no protest had been filed, pursuant to Section 63-3045(5), Idaho Code. (3-20-97)

321. -- 324. (RESERVED).

325. NOTICE OF DEFICIENCY -- PROTEST PROCEDURES (RULE 325).

Sections 63-3045 and 63-3045B, Idaho Code.

(4-5-00)

01. In General. Once a perfected protest has been filed with the Tax Commission, the taxpayer may: (3-20-97)

a. Request a hearing; (3-20-97)

b. Submit additional documents; or (3-20-97)

c. Request a final decision from the Tax Commission. (3-20-97)

02. Hearings. A Commissioner or other person designated by the Tax Commission shall conduct a hearing in the form of an informal conference. If the taxpayer chooses to be represented by another person, a valid power of attorney form must be provided to the Tax Commission. The taxpayer has the right to be accompanied by another person, however, the Tax Commission may limit the number of people accompanying the taxpayer. If a protestant fails to comply with a summons or subpoena or fails to appear for the informal conference, the Tax Commission may issue a decision without further hearing. (3-20-97)

03. Submission of Additional Documents. A taxpayer may submit additional statements, documents,

or other materials he desires to have the Tax Commission consider before deciding the protest. If the one hundred eighty (180) day period for issuing a final decision has begun, the Tax Commission may require that a taxpayer execute an extension of the one hundred eighty (180) day period before the additional information or documentation will be considered. The one hundred eighty (180) day period is provided by Section 63-3045B, Idaho Code. (3-20-97)

04. Request for a Final Decision. A request for a final decision must be in a letter addressed to the employee or agent of the Tax Commission from whom the acknowledgment of the protest was received or to the individual subsequently assigned to resolve the protest. The request must be the sole subject of the letter and must clearly identify the taxpayer and the Notice of Deficiency. (3-20-97)

05. Simultaneous Request for a Final Decision and a Hearing. If the taxpayer makes a simultaneous request for both a final decision and a hearing, the Tax Commission shall treat this as a request for a hearing. The one hundred eighty (180) day period begins when the hearing concludes. (3-20-97)

06. Issues. Redetermination of any tax or refund due is not limited to the specific issue or issues protested for the taxable year, unless limited by Section 63-3068(f), Idaho Code. (3-20-97)

07. Amended Return After Audit. An amended return will be accepted for a taxable year for which a protest is pending only in the following circumstances: (3-20-97)

a. The taxpayer demonstrates that the changes on the amended return are unrelated to issues examined in the audit; (3-20-97)

b. The changes are the result of federal audit adjustments; or (3-20-97)

c. The amended return is submitted as part of the procedure for resolving the protest. (3-20-97)

08. Failure to Schedule a Hearing. The Tax Commission may issue a decision after forty-two (42) days from the date the notification of right to request a hearing is mailed to the taxpayer; if (4-5-00)

a. The taxpayer does not request a hearing; (4-5-00)

b. The taxpayer requests a hearing but does not schedule a date for the hearing; or (4-5-00)

c. A hearing is scheduled but later cancelled by the taxpayer and the taxpayer does not reschedule. (4-5-00)

326. -- 399. (RESERVED).

400. PENALTIES -- GENERAL RULES (RULE 400). Sections 63-3033 and 63-3046, Idaho Code. (3-20-04)

01. Penalty Presumed Appropriate. If a taxpayer becomes liable to pay the Internal Revenue Service a penalty similar to one provided in Section 63-3046, Idaho Code, it shall be presumed the penalty is appropriate as part of the related state tax deficiency. (3-20-97)

02. Computation of Tax Due Amounts for Extension of Time Criteria. For purposes of computing whether the taxpayer has met the extension of time criteria provided in Section 63-3033, Idaho Code, the terms, total tax due on the income tax return when it is filed, total tax due on the income tax return for the prior year, and total tax due under the provisions of this chapter shall mean amounts computed as follows: (3-20-04)

a. Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax credits, and any income tax credits. (3-20-04)

b. Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. Payments for the amounts

included in Subsection 400.02.a. are also excluded for purposes of this calculation. (3-20-04)

03. Computation of Tax Due Amounts for Failure to File, Failure to Pay, Delinquent Filing, and Extension Penalties. For purposes of computing the failure to file, failure to pay, or delinquent filing penalties, provided by Section 63-3046, Idaho Code, and the penalty for failing to meet the extension criteria, provided by Section 63-3033, Idaho Code, the terms tax shown thereon to be due and tax due on such return, and the amount on which the extension penalty is applied shall mean amounts computed as follows: (3-20-04)

a. Include the income tax, the permanent building fund tax, tax from recapture of Idaho income tax credits, income tax credits, and any payments for these taxes for that year. (3-20-04)

b. Exclude items reported on the income tax return that are not included in Title 63, Chapter 30, Idaho Code, such as sales or use tax due, fuels tax due, and special fuels or gasoline tax refunds. (3-20-04)

04. Net Operating Loss and Capital Loss Carrybacks. If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the penalty shall be computed on the tax due prior to the application of the carryback. (5-3-03)

05. Minimum Penalty. A ten dollar (\$10) minimum penalty applies to each penalty imposed by Subsection (a), (b), (c)(1), (d) or (e) of Section 63-3046 and by Section 63-3033, Idaho Code. For example, if a taxpayer fails to file only one (1) withholding tax statement, which generally results in a penalty of two dollars (\$2) pursuant to Section 63-3046(e)(1), Idaho Code, a penalty of ten dollars (\$10) will be applied. (3-15-02)

06. Dishonored Checks. The charge provided by Section 63-3046(h), Idaho Code, for each dishonored check or instrument is: (2-23-01)

a. Ten dollars (\$10) if dishonored prior to July 1, 2001. (2-23-01)

b. Twenty dollars (\$20) if dishonored on or after July 1, 2001. (2-23-01)

c. This charge may be added even if sufficient funds are in the taxpayer's account after the date of dishonor. (2-23-01)

401. -- 409. (RESERVED).

410. NEGLIGENCE PENALTIES (RULE 410). Section 63-3046(a), Idaho Code. (3-20-97)

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-20-97)

02. Imposition of Penalty. A five percent (5%) negligence penalty shall be imposed if the deficiency results from either negligence by the taxpayer or from disregard by the taxpayer or his agent of state or federal tax laws, rules of the Tax Commission, or Treasury Regulations. Examples of situations that justify the penalty include the following: (3-20-97)

a. Taxpayer continues to make errors in reporting income, sales or assets, or claims erroneous deductions, exemptions, or credits even though these mistakes have been called to his attention in previous audit reports. (3-20-97)

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (3-20-97)

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-20-97)

d. Taxpayer fails to offer any explanation for understating taxes. (3-20-97)

- e. Unreported taxable income is a material amount as compared with the reported income. (3-20-97)
 - f. Taxpayer exhibits a careless disregard of his tax obligations. (3-20-97)
 - g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-20-97)
 - h. Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-20-97)
 - i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination within sixty (60) days of the date of the determination. See Rule 890 of the Income Tax Administrative Rules. (3-20-97)
 - j. Taxpayer fails to file an Idaho amended return within sixty (60) days after filing a federal amended return. (3-20-97)
 - k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-20-97)
 - l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. (7-1-98)
- 03. Negligence Penalty for Sales and Use Tax Deficiencies.** For sales tax purposes, pertinent computations relating to substantial errors in Subsection 410.02.b. or material amount in Subsection 410.02.e., might include the following: (3-20-97)
- a. The ratio of untaxed sales that should have been taxed to total taxable sales; (3-20-97)
 - b. The ratio of untaxed sales that should have been taxed to total sales; (3-20-97)
 - c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; (3-20-97)
 - d. Other computations bearing on negligence. (3-20-97)
- or
- 04. Waiver of Negligence Penalty.** (3-20-97)
- a. The Tax Commission may waive the penalty if the taxpayer can show reasonable cause for the failure that resulted in the deficiency. (3-20-97)
 - b. The Tax Commission shall consider all factors when determining whether to waive a negligence penalty. One (1) factor is the taxpayer's record for filing and paying state taxes. A good record for filing and paying tax on returns filed annually is not by itself a sufficient reason to waive the penalty. (3-20-97)
- 05. Circumstances Precluding Waiver of Penalty.** The following circumstances do not constitute sufficient cause to waive the penalty: (3-20-97)
- a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-20-97)
 - b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-20-97)
 - c. Inability to pay the tax. (3-20-97)
- 411. -- 419. (RESERVED).**

420. FRAUD PENALTIES (RULE 420).

Section 63-3046(b), Idaho Code. (3-20-97)

01. In General. In determining fraud penalties, the Tax Commission shall review all facts and circumstances surrounding preparation of a taxpayer's return including all of the following: (3-20-97)

- a.** Public and private statements regarding income or sales of the taxpayer; (3-20-97)
- b.** Business and financial practices of the taxpayer; (3-20-97)
- c.** Taxpayer's knowledge of principles of finance, accounting, law, or taxation; (3-20-97)
- d.** Objective and subjective evidence showing or tending to show intent to evade payment of taxes. (3-20-97)

02. Interaction Between Fraud and Negligence Penalties. Assessment of the fraud penalty precludes assessment of the negligence penalty on the deficiency. (3-20-97)

421. -- 429. (RESERVED).

430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING (RULE 430).
Sections 63-3033 and 63-3046, Idaho Code. (3-15-02)

01. In General. (2-23-01)

- a.** As used in this rule, due date means the date prescribed for filing without regard to extensions. (2-23-01)
- b.** A penalty of two percent (2%) of the tax due per month may be imposed on a taxpayer who fails to meet the extension criteria provided in Section 63-3033, Idaho Code. (2-23-01)
- c.** A penalty of five percent (5%) of the tax due per month, may be imposed on a taxpayer who files a delinquent return or who fails to file a return as provided in Section 63-3046, Idaho Code. (2-23-01)
- d.** If a taxpayer files a return but does not pay the tax due, a penalty of one-half percent (0.5%) of the tax due per month may be imposed. (2-23-01)
- e.** The penalties computed in this subsection may not exceed twenty-five percent (25%) of the tax due. (2-23-01)
- f.** For purposes of computing the penalties in Subsection 430.01, tax due includes subsequent adjustments. (2-23-01)

02. Calculations of Penalty When a Taxpayer Satisfies the Extension of Time Criteria. (2-23-01)

- a.** A taxpayer is entitled to an automatic extension of time for filing the Idaho income tax return if, by the due date, the taxpayer satisfies either of the following extension criteria provided in Section 63-3033, Idaho Code: (2-23-01)
 - i.** Paying eighty percent (80%) of the total tax due on his income tax return when it is filed; or (2-23-01)
 - ii.** Paying the total tax due on the income tax return for the prior year if one was filed. (2-23-01)
- b.** If the payment computed in Subsection 430.02.a. is fifty dollars (\$50) or less, a payment is not required to qualify for the extension. (3-15-02)

c. If the taxpayer satisfies the extension criteria, files the return on or before the extended due date, and pays the tax with the return or before filing the return, no penalties apply. (3-30-07)

d. If the taxpayer satisfies the extension criteria and files the return on or before the extended due date, but pays the tax after filing the return, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. For returns filed in 2006, if the return is filed before July 1, 2006, but the tax due is not paid by that date, the late payment penalty shall apply from July 1, 2006 to the date the tax is paid. (3-30-07)

e. If the taxpayer satisfies the extension criteria but fails to file the return and pay the tax due on or before the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the return's extended due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed until the date the tax is paid. (3-15-02)

03. Calculations of Penalty When a Taxpayer Fails to Satisfy the Extension of Time Criteria. If a taxpayer fails to satisfy the extension criteria, the following penalties may apply: (2-23-01)

a. If the return is filed by the due date, but the tax is paid after the due date, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

b. If the return is filed and the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (2-23-01)

c. If the return is filed after the extended due date but the tax is paid on or before the extended due date, a penalty of two percent (2%) of the tax due per month shall apply from the return's due date to the date the tax is paid. (2-23-01)

d. If the return is filed after the extended due date and the tax is paid after the extended due date, a penalty of five percent (5%) of the tax due per month shall apply from the due date of the return to the earlier of the date the return is filed or the date the tax is paid. If the tax is paid after the return is filed, a penalty of one-half percent (0.5%) of the tax due per month shall apply from the date the return is filed to the date the tax is paid. (3-15-02)

04. Other Penalties. Imposing a penalty for failure to meet the extension criteria, failure to file a return timely, or failure to pay the tax due timely does not preclude the imposition of another penalty pursuant to Section 63-3046, Idaho Code. (2-23-01)

05. Insufficient Postage. The proper amount of prepaid postage is required on returns mailed to the Tax Commission. If a tax return is returned to the sender due to insufficient postage, it may result in the return becoming delinquent and subject to the delinquency penalty specified by Section 63-3046(c), Idaho Code. (3-20-97)

06. Month Defined. If the due date falls on the last day of a calendar month, each succeeding calendar month, or fraction of it, during which the failure to file continues constitutes a month. If the due date is not the last day of the calendar month, the period that ends with the same date of the next month constitutes a month. If the succeeding month has no corresponding date, the last day of the month is substituted. Any fraction of a month from the date ending the preceding monthly period to the date of payment constitutes a full month. (3-20-97)

431. -- 499. (RESERVED).

500. SETTLEMENTS (RULE 500). Sections 63-3047 and 63-3048, Idaho Code. (3-20-97)

01. Grounds for Settlement. The Tax Commission may settle the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist: (11-1-08)T

a. Disputed liability. (11-1-08)T

i. A disputed liability exists where there is a reasonable disagreement as to the existence or amount of the correct tax liability under the law. A disputed liability does not exist where the liability has been established by a final court judgment concerning the existence of the liability. (11-1-08)T

ii. An offer to settle a disputed liability generally will be considered acceptable if it reasonably reflects the likelihood the Commission could expect to collect through litigation. This analysis includes consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the Commission. (11-1-08)T

b. Doubt as to collectibility. (11-1-08)T

i. Doubt as to collectibility exists in any case where the taxpayer's assets and income may not satisfy the full amount of the liability. (11-1-08)T

ii. An offer to settle based on doubt as to collectibility generally will be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the Commission could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the Commission will take into account the taxpayer's reasonable basic living expenses. In some cases, the Commission may accept an offer of less than the total reasonable collection potential of a case if there are special circumstances. (11-1-08)T

c. Economic hardship of the taxpayer. (11-1-08)T

i. The Commission may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer economic hardship. Economic hardship is defined as the inability to pay reasonable basic living expenses. (11-1-08)T

ii. An offer to settle based on economic hardship generally will be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the Commission can collect without causing the taxpayer economic hardship. The determination to accept a particular amount will be based on the taxpayer's individual facts and circumstances. (11-1-08)T

d. Promotion of effective tax administration. (11-1-08)T

i. The Commission may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this paragraph will be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid his liability in full. (11-1-08)T

ii. The State Tax Commission may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws. (11-1-08)T

02. Agreement Final. A settlement agreement relates to the issues agreed to for the tax periods in question. The agreement is final and conclusive and neither the Tax Commission nor the taxpayer shall be permitted to open the case again except in the case of changes to the federal return or a showing of fraud or malfeasance or misrepresentation of a material fact or as provided in the agreement. Recalculation of carryback or carryover items may not be construed as opening the case and will not affect the tax liability of a closed period or closed issue. (11-1-08)T

03. Form of Settlement. The taxpayer must submit an offer to settle in writing. An offer may not be considered accepted until the taxpayer is notified in writing. Acceptance may be made only by a Tax Commissioner or an authorized delegate. If the offer is rejected, the Tax Commission shall promptly notify the taxpayer. (11-1-08)T

04. Withdrawal of Offer. A taxpayer may withdraw his offer to settle at any time prior to its acceptance by the Tax Commission. (11-1-08)T

501. -- 599. (RESERVED).

600. JUDICIAL REVIEW -- REQUIRED SECURITY (RULE 600).

Section 63-3049(b), Idaho Code. (3-20-97)

01. Acceptable Security. For purposes of obtaining judicial review, the taxpayer must submit one (1) of the following securities: (3-20-97)

a. Cash in the form of a cashier's check, money order, or other certified funds that are payable to the Tax Commission. (3-20-97)

b. A bond executed by a surety company licensed and authorized to do business in Idaho, conditioned on the payment of any tax, penalty, and interest that may be found due by the court. (3-20-97)

c. Bearer bonds or other similar obligations of the United States having a market value not less than twenty percent (20%) of the amount asserted. (4-11-06)

d. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation. They must be made in the name of the depositor, payable to the Tax Commission, and contain a provision that interest earned shall be payable to the depositor. (3-20-97)

e. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in Idaho and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Tax Commission, along with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Tax Commission. (3-20-97)

f. Irrevocable letters of credit not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Tax Commission. The terms of the letter of credit must permit the Tax Commission to make demand directly against the issuer of the letter of credit for not less than twenty percent (20%) of the amount asserted, on which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. (4-11-06)

02. Other Security. Other security may be accepted by the Tax Commission to secure a taxpayer's right of appeal if the Tax Commission has previously agreed in writing to accept the other security in lieu of a cash payment. (3-20-97)

03. Amount Asserted. For purposes of this rule, amount asserted is defined in Section 63-3049, Idaho Code. (4-11-06)

601. -- 699. (RESERVED).

700. DISCLOSURE OF INFORMATION -- SCOPE (RULE 700).

Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

01. In General. Rules 700 through 709 of these rules provide guidelines for disclosure of information gained by the Tax Commission in administering and enforcing tax laws when the information is confidential pursuant to Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

02. Information That Is Not Return Information. The following are examples of information not considered return information for purposes of Rules 700 through 709 of these rules: (3-20-97)

- a. Decisions published pursuant to Section 63-3045B, Idaho Code; (3-20-97)
- b. Data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. (3-20-97)

03. Auditing Standards. Standards used when selecting returns for examination and data used when determining these standards may not be disclosed. (3-20-97)

701. (RESERVED).

702. DISCLOSURE OF INFORMATION -- THIRD PARTIES (RULE 702). Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

01. In General. The Tax Commission may not disclose returns or return information about a taxpayer to any person other than that taxpayer or an authorized representative of the taxpayer except as provided by statute or rule. (3-20-97)

02. Written Authorization to Disclose Information. (3-20-97)

a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. (3-20-97)

b. The written authorization must contain: (3-20-97)

i. The taxpayer's name, address and social security number, employer identification number, or other identifying number that relates to the returns or return information to be disclosed; (4-5-00)

ii. The name and address of the person to whom disclosure is authorized; (3-20-97)

iii. Language indicating the taxpayer's consent to disclosure of information; (3-20-97)

iv. The tax period or periods for which disclosure may be made; and (3-20-97)

v. The signature of the taxpayer, or if the taxpayer is a corporation or other business organization or an entity other than an individual, the signature of an authorized employee or officer of the taxpayer. (3-20-97)

c. A written complaint or inquiry by a taxpayer to an elected official of the executive or legislative branches of state or federal government relating to the Tax Commission's actions or positions relating to that taxpayer is an authorization for the Tax Commission to disclose information relevant to the complaint or inquiry to the official, or the official's delegate. (3-20-97)

03. Audits or Investigations. Tax Commission employees and authorized agents may make inquiries of any person or any employee of a person to collect or ascertain any tax liability, to determine the correctness of a return or return information, or for any other purpose relating to the Tax Commission's duties of administering or enforcing Idaho tax laws. Disclosures necessary to these inquiries are authorized. (3-20-97)

04. Testimony in Judicial or Administrative Proceedings. If a Tax Commissioner, Tax Commission employee or agent is required to appear in court in an action where the Commission, employee or agent is not a party or where taxation is not in issue, by subpoena or otherwise, he may appear but shall refuse to testify without written authorization from the taxpayer, and may object to his appearance on the basis of this rule and Section 63-3076, Idaho Code. Information requested in a subpoena issued by a United States Grand Jury shall be provided. (3-20-97)

703. DISCLOSURE OF INFORMATION -- GENERAL PUBLIC (RULE 703). Sections 63-3076 and 63-3077, Idaho Code. (3-20-97)

01. Public Information. The Tax Commission may disclose information about a taxpayer that is public information. This includes information introduced as evidence in any court, before the Board of Tax Appeals, through the filing of liens, or through publication other than by the Tax Commission. (3-20-97)

02. Correction of Information. The Tax Commission, after notifying the taxpayer, may disclose information necessary to correct misleading statements or misrepresentations publicized by the taxpayer or his agents or employees regarding his liability to the state of Idaho, his conduct in relation to the Tax Commission, or proceedings, audits or investigations of the taxpayer by the Tax Commission. (3-20-97)

03. Written Decisions of the Tax Commission. Written decisions of the Tax Commission shall be available to the public as required by Section 63-3045B, Idaho Code. Before publishing a decision, the taxpayer shall first have the opportunity to review the decision and request in writing that specific information be deleted. If the Tax Commission does not receive a written request from the taxpayer for deletions within ninety-one (91) days following the date of the final decision, it will be presumed that the taxpayer does not object to publication of any information in the decision. (3-20-97)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).
Sections 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3634A, and 67-4917C, Idaho Code. (3-30-07)

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)

b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)

c. County assessors, limited to: (3-20-04)

i. Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)

ii. Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)

d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)

e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)

f. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)

g. Idaho Transportation Department, relating to: (3-20-04)

- i. Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
- ii. Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- i. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k. Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l. Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
- n. County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
- o. The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)

705. -- 799. (RESERVED).

800. DEFINITIONS FOR PURPOSES OF THE TAXPAYERS' BILL OF RIGHTS (RULE 800).
Title 63, Chapter 40, Idaho Code. (3-20-97)

01. Collection and Enforcement. For purposes of the taxpayers' bill of rights, the terms collection and enforcement include only post-assessment processes. (3-20-97)

02. Publication. For purposes of the taxpayers' bill of rights, publication means communicating to the general public. Publication does not include internal communication or communication with other governmental agencies as provided for by statute. (3-20-97)

03. Written Notification of Representation. A taxpayer's written notification that he will be represented by another person must include the information required for a valid power of attorney. If the notification is not valid, the revenue officer shall communicate with the taxpayer. The revenue officer should exercise reasonable care in determining whether a power of attorney exists. (3-20-97)

801. -- 809. (RESERVED).

810. ACQUISITION OF LOCATION INFORMATION (RULE 810).
Section 63-4002, Idaho Code. A revenue officer may contact a person again if it is reasonable to believe that the person may have acquired new location information since the prior contact. (3-20-97)

811. -- 819. (RESERVED).

820. COMMUNICATION IN CONNECTION WITH TAX COLLECTION (RULE 820).
Section 63-4003, Idaho Code. A revenue officer may contact a taxpayer before 8 a.m. or after 9 p.m. if it is reasonable to believe that these times are more convenient for the taxpayer. (3-20-97)

821. -- 999. (RESERVED).

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