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**IDAPA 35
TITLE 01
CHAPTER 13**

35.01.13 - IDAHO ILLEGAL DRUG TAX ADMINISTRATIVE RULES

000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 63-513, 63-4208, and 63-3039, Idaho Code, the Tax Commission shall promulgate rules implementing the provisions of the Idaho Illegal Drug Tax Act. (7-1-93)

001. TITLE AND SCOPE (RULE 001).

These rules shall be cited as IDAPA 35.13.01, "Idaho Illegal Drug Tax Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on every person, who in violation of Idaho law, possesses a controlled substance within the state of Idaho. The tax applies to each possession, no matter how often the same substance may be transferred. (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 1, Title 74, Idaho Code, to the extent that these documents are not confidential under Sections 63-3075 or 74-105, Idaho Code. (7-1-93)

005. -- 010. (RESERVED)

011. SCOPE OF RULES (RULE 011).

These rules apply to the possession of controlled substances subject to Idaho Illegal Drug Taxes. A controlled substance is defined by Section 37-2701, Idaho Code, with the additional requirement imposed by Section 63-4202(2), Idaho Code, that the substance be possessed in the following quantities: More than forty-two and five tenths (42.5) grams of marijuana; or one (1) or more growing marijuana plants; or seven (7) or more grams of any other controlled substance sold by weight; or ten (10) or more dosage units of any controlled substance which is not sold by weight. (7-1-93)

012. SCOPE OF TAX (RULE 012).

Every person, who in violation of Idaho law, possesses a controlled substance, as defined in Rule 011 above, within the state of Idaho, is subject to Illegal Drug Taxes, to be paid in the manner indicated hereafter. The tax applies to each possession, no matter how often the same substance may be transferred. (7-1-93)

013. AMOUNT OF TAX (RULE 013).

01. Calculation. Illegal Drug Taxes are calculated at the following rates: (7-1-93)

a. On each gram of marijuana, or each portion of a gram three dollars and fifty cents (\$3.50), that is, at the rate of one hundred dollars (\$100) per ounce; (7-1-93)

b. On each gram of any other controlled substance sold by weight, or each portion of a gram two hundred dollars (\$200), five thousand six hundred dollars (\$5,600) per ounce; (7-1-93)

c. On each fifty (50) dosage units of a controlled substance that is not sold by weight, or portion thereof two thousand dollars (\$2,000); (7-1-93)

d. On each growing marijuana plant seven hundred seventy-five dollars (\$775) per plant. (7-1-93)

02. Measurement Without Regard to Quality. A quantity of a controlled substance, whether sold by

weight or by dosage units, is measured without regard to its purity. The tax is imposed on the total quantity of the substance once the required quantity of a controlled substance is reached for Illegal Drug Tax purposes. For example, the tax will be imposed on all of forty-three (43) grams of marijuana possessed, not just the amount exceeding forty-two and five tenths (42.5) grams. The prevailing practice for the sale of a controlled substance, other than for growing marijuana plants, shall determine whether a substance is sold by weight or by dosage units. (7-1-93)

014. MANNER OF PAYMENT (RULE 014).

The taxes are paid by purchasing from the Commission and attaching to a growing controlled substance or package forming the taxable unit a stamp in a sufficient amount and appropriate for the controlled substance. (7-1-93)

015. KINDS OF STAMPS (RULE 015).

An Illegal Drug Tax Stamp shall be issued in the following form: (7-1-93)

01. Means for Attaching Stamp to Package or Plant. Each stamp shall have a means for attaching the stamp to the substance's package or plant, as the case may be. The stamp shall be designed by the Idaho State Tax Commission and shall be numbered, bear the seal of the state of Idaho, and the name of the Idaho State Tax Commission. A stamp for growing marijuana plants shall be in the form of two (2) parts, with each part bearing indicia identical to the other, and each part capable of being separated from the other. (7-1-93)

02. Colors of Stamps. The stamps shall be of the following colors: Green for marijuana; blue for controlled substances sold by weight; red for controlled substances sold by dosage units; and yellow for growing marijuana plants. (7-1-93)

03. Spaces on Stamps for Information. Each stamp shall have spaces for stating the quantity or dosage units and the dollar amount of the controlled substance covered by the stamp, and the name or the employee code of the person issuing the stamp. (7-1-93)

04. Waterproof Stamps. Stamps issued for a growing controlled substance shall be waterproofed to prevent deterioration by the elements. (7-1-93)

016. ISSUANCE OF STAMPS (RULE 016).

01. Purchasing Stamps. Illegal Drug Tax Stamps may only be purchased through the Boise office of the Commission, either by mail or in person. However, purchase application forms and instructions for the purchase of the stamps shall be available in each regional office of the Commission. (7-1-93)

02. Nondisclosure of Information. No information obtained from any person who is applying to purchase or purchasing Illegal Drug Stamps may be disclosed to any other person, except that to the extent necessary, information may be disclosed or communicated with the Commission, among Commission employees, for the limited purpose of processing an application for stamps or facilitating a stamp transaction. (7-1-93)

03. Issuing Stamps. Upon filing a properly executed application on Form MCS-1 or MCS-2 of the Commission, together with full remittance, the Commission will issue the appropriately designated quantity of Illegal Drug Stamps. (7-1-93)

04. Minimum Purchase of Stamps. Tax stamps will be sold in denominations determined by the package or container size or number of marijuana plants. However, the total tax stamp order must equal or exceed the minimum quantities of controlled substances, the possession of which requires payment of drug tax stamps. For harvested marijuana, the minimum purchase is one hundred fifty dollars (\$150), forty-two and five tenths (42.5) grams x three dollars and fifty cents (\$3.50) per gram; for a growing marijuana plant, seven hundred seventy-five dollars (\$775); for controlled substances sold by weight, one thousand four hundred dollars (\$1,400) seven (7) grams x two hundred dollars (\$200) per gram; and for controlled substances sold by dosage units, two thousand dollars (\$2,000) fifty (50) dosage units. (7-1-93)

05. Quantity or Dosage on Stamps. At the time a stamp is issued, the person issuing the stamp shall write or print on the stamp the quantity or dosage and the dollar amount covered by the stamp, and the employee code of the persons issuing the stamp and approving the issuance of the stamp. (7-1-93)

06. Payment. Payment for purchase of drug stamps shall be made to the Idaho State Tax Commission in cash, cashier's check, certified check, or money order. No personal check will be accepted. (7-1-93)

017. PACKAGING REQUIREMENT (RULE 017).

All controlled substances, except those growing, shall be contained in a package or container which shall be of such construction as will securely contain the substances therein and maintain the Illegal Drug Tax Stamp thereon. (7-1-93)

018. AFFIXING AND DISPLAYING STAMPS (RULE 018).

01. Attaching Stamps. Except for growing controlled substances, the appropriate stamp for a controlled substance shall be so attached as to securely seal the package, container, or wrapper containing the substance so that when the controlled substance is removed from the package, the removal will render the stamp unfit for reuse. (7-1-93)

02. Removing Stamps. The stamp once affixed to one (1) package, container, or wrapper cannot lawfully be removed and affixed to another. (7-1-93)

03. Attaching Marijuana Stamps. The two (2) part stamp issued for growing marijuana must be attached directly and securely to the stalk so that the top part of the stamp cannot be removed intact while the plant is growing. So long as the plant is growing, the top part of the stamp must not be removable from the plant without destroying the plant or the stamp. Prior to harvesting a growing marijuana plant, the bottom part of the tax stamp shall be removed from the plant and returned to the Commission for a credit of seven hundred seventy-five dollars (\$775) towards the purchase of tax stamps for harvested marijuana. Upon issuance of the harvested marijuana tax stamps, the tax stamp for the growing marijuana plant, for which the credit is given, shall become void with such invalidity to take effect ten (10) days after issuance by the Commission of the tax stamps for harvested marijuana. The part of the tax stamp for growing marijuana retained by the grower shall be rendered unfit for reuse by the grower at the time the stamp becomes void. (7-1-93)

04. Other Growing Controlled Substances. A stamp issued for other growing controlled substances must be attached directly and securely to the stalk of the plant so that it cannot be removed intact while the plant is growing. No credit is given for any other tax stamp issued for a growing controlled substance. Upon harvesting of such other growing substance, the stamp affixed thereto shall be rendered unfit for reuse. (7-1-93)

05. Stamps Readily Visible. A stamp attached to a package, container, or wrapping of a controlled substance shall be readily visible to the naked eye. A stamp attached to a growing marijuana plant or controlled substance shall be readily discoverable to a person inspecting the plant. (7-1-93)

019. JEOPARDY ASSESSMENT AND REDETERMINATION PROCEEDINGS (RULE 019).

01. Jeopardy Assessments. Upon the discovery of a controlled substance not bearing valid Illegal Drug Tax Stamps, the Commission shall make a jeopardy determination assessing the taxes and penalties against the person subject to the taxes. Written notice of the amount of the tax and penalty and demand for immediate payment shall be mailed, by certified or registered mail, to the last known address of, or served in person upon, the person subject to the Illegal Drug Taxes and penalties. (7-1-93)

02. Protests. (7-1-93)

a. A person aggrieved by an assessment if he desires a redetermination of the assessment must within thirty (30) days after mailing or service of the notice of the jeopardy assessment petition the Commission for a redetermination of the assessment. (7-1-93)

b. No particular form of protest to the Commission is required except that the protest must be in writing. The protest should contain: Name, address, and pertinent identification number; the period to which the assessment relates; the specific item or items in the jeopardy assessment to which the taxpayer objects; and the factual or legal basis for the objections made. (7-1-93)

03. Filing Protests. Upon timely filing of a protest with the Commission, the taxpayer shall be granted a redetermination of the jeopardy assessment and if requested an opportunity to be heard, in the form of an informal conference. (7-1-93)

a. Informal conferences. The Commission or any person designated by it shall conduct informal conferences. These conferences are informal with or without any official record at the exclusive discretion of the Commission or its designate. If any petitioner fails to comply with a summons or subpoena or fails to appear for the informal conference, the Commission may affirm the jeopardy assessment without further hearing or conference. (7-1-93)

b. Submission of additional documents in lieu of hearing or conference. If the taxpayer does not wish to appear in person, he may submit such additional statements, documents, or other materials he desires to have the Commission consider before deciding the protest, and no personal appearance by the taxpayer before the Commission will be required. (7-1-93)

c. Formal hearing. In the Commission's discretion it may grant a formal hearing of the redetermination. If the Commission exercises its discretion and grants a formal hearing, it will give written notice to the petitioner stating the time and place for hearing and also the issues involved, if known. Such notice shall be given at least twenty (20) days prior to the time and date set for hearing. Mailing by the Commission to the taxpayer's last known address shall constitute giving of the notice. The Commission or its duly designated representative has the power to issue summonses or subpoenas to require witnesses to appear at hearings or to produce books, records, or any other pertinent data in accordance with Section 63-3042, Idaho Code. If any petitioner fails to comply with a summons or subpoena or fails to appear for the hearing, the Commission may affirm the assessment without further hearing or conference. The Commission shall conduct all hearings. An official record is kept by the Commission. However, it shall not be necessary to transcribe the shorthand or recorded notes, unless requested by the Commission. The petitioner may order a copy of the recorded tape after payment of the reasonable costs therefor. The Commission will certify, after examination, transcription of such tapes. The Commission or its designate shall have power at such hearing to; administer oaths or affirmations; examine witnesses and receive evidence; take or cause depositions to be taken; regulate the course of hearing; make procedural and evidentiary rulings; make decisions or proposals for decisions; and take any other appropriate action reasonable in the premises. Formal proceedings before the Commission shall be governed by the rules of evidence prescribed by Section 67-5210, Idaho Code. (7-1-93)

04. Finality of Assessment. If a petition for redetermination of a jeopardy assessment or a decision redetermining a jeopardy assessment is not made within the thirty (30) day period after mailing by certified mail or service of the jeopardy assessment or decision, as provided herein, the jeopardy assessment becomes final. If receipt is not accepted, the date of first notice by the Post Office to the petitioner shall be deemed the date of receipt. (7-1-93)

a. Commission decisions may be reviewed by the Board of Tax Appeals or by a District Court in Idaho. (7-1-93)

b. A Commission decision may not be appealed to the Board of Tax Appeals when the amount of dispute exceeds twenty five thousand dollars (\$25,000) at the time the jeopardy assessment is made. (7-1-93)

c. Judicial review of Commission decisions is governed by Section 63-3049, Idaho Code. (7-1-93)

05. Confidentiality and Disclosure. Proceedings for redetermination by the Commission of a jeopardy assessment are confidential and no Commissioner, deputy, clerk, agent, or employee of the Commission, and no person formerly holding such a position, may divulge or make known to any person any information obtained from a person seeking a redetermination by the Commission of an assessment of Illegal Drug Taxes or penalties imposed in this chapter, except to a person designated by the petitioner in a validly executed Power of Attorney or in an action before the Board of Tax Appeals or in court brought for the collection, remission, cancellation, or refund, in whole or in part, of the taxes or penalties. (7-1-93)

a. Power of Attorney. The Commission may disclose information to a third party who has delivered to the Commission a Power of Attorney-in-fact, executed by a petitioner and authorizing such party to receive specified

information about the petitioner. The Power of Attorney may be made with forms provided by the Commission. Any such Power of Attorney must contain: The taxpayer's name, address, and social security number; the name and address of the attorney-in-fact; language indicating the taxpayer's consent to disclosure of information to the attorney-in-fact; the tax period or periods for which disclosure may be made to the attorney-in-fact; and the signature of the taxpayer. (7-1-93)

06. Collection Action Not Stayed. Upon issuance of a jeopardy assessment as provided above, collection procedures may be instituted immediately. However, no property seized pursuant to a jeopardy assessment shall be sold until an assessment becomes final, unless: Its owner consents; the expenses of maintenance of the property will gravely reduce the net proceeds of its sale; or the property is perishable. (7-1-93)

020. OTHER REGULATIONS APPLICABLE (RULE 020).

Income Tax Regulations enacted under Sections 63-3038, 63-3039, 63-3042, 63-3043, 63-3047, 63-3048, 63-3049, and 63-3050 through 63-3064, Idaho Code, shall apply to cases involving Illegal Drug Taxes so far as they are consistent with the provisions of the Illegal Drug Tax Act and the rules enacted herein. (7-1-93)

021. -- 999. (RESERVED)

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