IDAPA 35 – IDAHO STATE TAX COMMISSION

Tax Policy – Taxpayer Resources Unit

35.02.01 – Tax Commission Administration and Enforcement Rules

Who does this rule apply to?
The general public.

What is the purpose of this rule?
This rule provides information on:

- Declaratory rulings
- Requirements of a valid tax return
- Recordkeeping requirements
- Liens and levies
- Notice of deficiency protest procedures
- Appeal rights
- Penalties
- Settlements
- Disclosure of information

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Revenue and Taxation -
Department of Revenue and Taxation:
- Section 63-105, Idaho Code – Powers and Duties - General

Income Tax:
- Section 63-3039, Idaho Code – Rules and Regulations – Publication of Statistics and Law

Who do I contact for more information on this rule?

State Tax Commission
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This rule chapter will be reviewed in compliance with Section 67-5292, Idaho Code, and in accordance with the 8-year rule review schedule linked here.

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000. LEGAL AUTHORITY.
Section 63-3039, Idaho Code

01. In General. In accordance with Sections 63-105 and 63-3039, Idaho Code, the Tax Commission has authority to promulgate rules implementing the provisions of the Idaho Income Tax Act. (3-15-22)

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: (3-15-22)

a. Sales and Use Taxes, Title 63, Chapter 36, Idaho Code; (3-15-22)

b. Motor Fuels Taxes, Title 63, Chapter 24, Idaho Code; (3-15-22)

c. Petroleum Transfer Fee, Title 41, Chapter 49, Idaho Code; (3-15-22)

d. Cigarette and Tobacco Products Taxes, Title 63, Chapter 25, Idaho Code; (3-15-22)

e. Beer Taxes, Title 23, Chapter 10, Idaho Code; (3-15-22)

f. Wine Taxes, Title 23, Chapter 13, Idaho Code; (3-15-22)

g. Mine License Taxes, Title 47, Chapter 12, Idaho Code; (3-15-22)

h. Kilowatt Hour Taxes, Title 63, Chapter 27, Idaho Code; (3-15-22)

i. Oil and Gas Taxes, Title 47, Chapter 3, Idaho Code. (3-15-22)

001. SCOPE.
Section 63-3039, Idaho Code

01. Effective Date. To the extent allowed by statute, rules in this chapter are applied on their effective date to all taxable years open for determining tax liability. (3-15-22)

02. 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. (3-15-22)

03. 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. (3-15-22)

002. ADMINISTRATIVE APPEALS.
This chapter allows administrative relief as provided in Sections 63-3045, 63-3045A, 63-3045B, and 63-3049, Idaho Code. (3-15-22)

003. – 009. (RESERVED)

010. DEFINITIONS.
Section 63-3003, Idaho Code

01. Date of Filing or Payment. 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. (3-15-22)

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. (3-15-22)

a. As used herein, lawful money of the United States means; (3-15-22)

i. Currency or coin of the United States at face value; and (3-15-22)

ii. Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. (3-15-22)

b. The words pay, paid, payable, or payment do not include: (3-15-22)

i. Submission to the Tax Commission of a check or draft that is subsequently dishonored by the institution on which it is drawn. (3-15-22)

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. (3-15-22)

011. – 109. (RESERVED)

110. DECLARATORY RULINGS.
Sections 67-5232, 67-5255, Idaho Code

01. Findings Pursuant to Section 67-5206, Idaho Code. (3-15-22)

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: (3-15-22)

i. Protect taxpayer confidentiality; (3-15-22)

ii. Define the taxpayer's right to rely on the ruling; or (3-15-22)

iii. Identify the circumstances justifying the denial or withdrawal of a ruling. (3-15-22)

b. Accordingly, this rule will govern declaratory rulings issued by the Tax Commission. (3-15-22)

02. Filing a Petition. (3-15-22)

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. (3-15-22)

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. (3-15-22)

03. Tax Commission's Response to Petition. After receiving a petition, the Tax Commission shall: (3-15-22)

a. Issue a written declaratory ruling; (3-15-22)

b. Require the petitioner to submit additional facts, evidence, or information as the Tax Commission deems necessary to make a declaratory ruling; or (3-15-22)

c. Decline to make a declaratory ruling. The Tax Commission shall decline to make a declaratory ruling in the following circumstances: (3-15-22)

i. The identity of the taxpayer is not disclosed; (3-15-22)

ii. The request fails to include sufficient facts, evidence, or other information on which a declaratory ruling may be based; (3-15-22)

iii. The issue on which a declaratory ruling is sought is the subject of pending litigation or administrative appeal; (3-15-22)

iv. The petitioner is not a person directly affected by a resolution of the issue presented; or (3-15-22)

v. It appears there are other good or compelling reasons why a declaratory ruling should not be made. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

07. Appeals. Sections 67-5270 through 67-5279, Idaho Code, govern the judicial review of declaratory rulings. (3-15-22)

111. – 130. (RESERVED)

131. UNACCEPTABLE PAYMENTS.
Section 63-3034, Idaho Code

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

132. – 139. (RESERVED)

140. APPLICATION OF PARTIAL PAYMENT.
Sections 63-4001, 63-4007, Idaho Code
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. (3-15-22)

141. – 149. (RESERVED)

150. REQUIREMENTS OF A VALID TAX RETURN.
Section 63-3076(5), Idaho Code

01. In General. All tax returns filed with the Tax Commission shall be complete and include attached copies of all pertinent schedules or computations. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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: (3-15-22)

a. Be identified as a return; (3-15-22)

b. Be filed using the proper form prescribed by the Tax Commission; (3-15-22)

c. Include the taxpayer's social security number, federal employer identification number, or Internal Revenue Service processing number; (3-15-22)

d. Include the taxpayer's name and address; (3-15-22)

e. Include the taxpayer's Idaho permit or license number, if applicable; (3-15-22)

f. Identify the reporting or tax period; (3-15-22)

g. Contain a computation of the tax liability and sufficient supporting information to show how the taxpayer reached that result; and (3-15-22)

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: (3-15-22)

i. Broad unspecified constitutional claims; (3-15-22)

ii. Unsupported statements that claim no Idaho activity or income exists; and (3-15-22)

iii. Language that demonstrates a protest against the tax law or its administration. (3-15-22)

05. Signing of Returns. 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. (3-15-22)

06. Reproduced and Substitute Forms. Any reproduced or substitute form or schedule must meet the requirements of the Tax Commission's original form. (3-15-22)

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. (3-15-22)

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. (3-15-22)

151. – 152. (RESERVED)

153. TAX PREPARERS -- ALTERNATIVE METHODS OF SIGNING INCOME TAX RETURNS.
A tax preparer, as defined in Section 48-603B, Idaho Code, may sign an Idaho income tax return in a manner allowed by Internal Revenue Service Notice 2004-54. The requirements for using the alternative methods under Internal Revenue Service Notice 2004-54 must be followed for Idaho income tax purposes if this method of signing a return is used for the Idaho return. Use of the alternative signature for the tax preparer does not alter the requirement for the taxpayer or authorized officer or representative to sign the return as provided in Rule 150 of these rules or to follow the requirements of Section 48-603B, Idaho Code. Section 63-3002, Idaho Code (IRS Notice 2004-54) (3-15-22)

154. (RESERVED)

155. TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY.
Sections 63-115, 63-3039, 74-107, Idaho Code

01. 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, unreadable, or corrupted form and the Tax Commission cannot identify the taxpayer, no acknowledgment will be sent. (3-15-22)

02. Methods Allowed for Filing Motor Fuels Tax Returns Electronically. The following methods are acceptable methods for filing motor fuels tax returns electronically. (3-15-22)

a. Secured methods. Encrypted e-mail secured through public or private key encrypting. (3-15-22)

b. Unsecured methods. Non-encrypted e-mail. (3-15-22)

03. Risks of Disclosure. By filing a return electronically, the taxpayer agrees to the risks of disclosure in submitting information electronically. A taxpayer or third party may not hold the Tax Commission responsible for any loss, liability, damage, whether direct, indirect or consequential, personal injury, or expenses of any nature whatsoever that may be suffered by the taxpayer or any third party as a result of or which may be attributable, directly or indirectly, from transmitting the taxpayer's information to the Tax Commission. (3-15-22)

156. – 199. (RESERVED)

200. EXAMINATION OF RECORDS: RECORDKEEPING AND PRODUCTION REQUIREMENTS.
Sections 63-3042, 63-3043, Idaho Code
A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. Required records must be made available on request by the Tax Commission or its authorized representatives. (3-15-22)

201. – 299. (RESERVED)

300. ASSESSMENT OF TAX.
Sections 63-3045, 63-3045A, Idaho Code

01. 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. (3-15-22)

02. 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. (3-15-22)

301. – 309. (RESERVED)

310. INTEREST RATES.
Sections 63-3045, 63-3073, Idaho Code
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 are listed at https://tax.idaho.gov/interest. 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. (3-15-22)

311. – 319. (RESERVED)

320. NOTICE OF DEFICIENCY: FILING A PROTEST.
Section 63-3045, Idaho Code

01. Perfected Protest. The protest must contain the information in Paragraphs a. through d. of this rule to be perfected. A protest meets the requirements of Paragraphs c. and d. of this rule if the allegations of fact or contentions of law, viewed in the light most favorable to the taxpayer, raise factual or legal issues that, if correct, would entitle the taxpayer to relief. (3-15-22)

a. Name, address and pertinent identification number; (3-15-22)

b. The period to which the deficiency relates; (3-15-22)

c. The specific item or items in the Notice of Deficiency to which the taxpayer objects; and (3-15-22)

d. The factual or legal basis for the objections made. (3-15-22)

321. – 324. (RESERVED)

325. NOTICE OF DEFICIENCY: PROTEST PROCEDURES.
Sections 63-3045, 63-3045B, Idaho Code

01. Hearings. The taxpayer may be accompanied by more than one 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. (3-15-22)

02. 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. (3-15-22)

03. 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. (3-15-22)

04. 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. (3-15-22)

05. 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: (3-15-22)

a. The taxpayer demonstrates that the changes on the amended return are unrelated to issues examined in the audit; (3-15-22)

b. The changes are the result of federal audit adjustments; or (3-15-22)

c. The amended return is submitted as part of the procedure for resolving the protest. (3-15-22)

06. 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 (3-15-22)

a. The taxpayer does not request a hearing; (3-15-22)

b. The taxpayer requests a hearing but does not schedule a date for the hearing; or (3-15-22)

c. A hearing is scheduled but later cancelled by the taxpayer and the taxpayer does not reschedule. (3-15-22)

326. – 327. (RESERVED)

328. OPPORTUNITY TO PARTICIPATE: NOTICE TO PETITIONER.
Section 63-3045, Idaho Code

01. Notification and Participation. If an appeals officer believes a discussion with staff from the originating division is warranted to review matters restricted by Subsection 327.02 of these rules, an appeals officer shall provide petitioner reasonable notice of the time and date of any discussion. Such notice may be provided to the petitioner by telephone, mail or electronic form and pursuant to Section 63-4003, Idaho Code. An appeals officer shall make a reasonable effort to accommodate the petitioner's schedule but will not unduly delay the discussion. The petitioner may participate by telephone or in-person at the State Tax Commission office in Boise, Idaho, and any discussion will be held during normal business hours. (3-15-22)

02. Additional Petitioner Participation Information. Any discussion held under this rule that includes petitioner participation is not an informal hearing under Rule 325 of these rules and does not start the one hundred and eighty (180) day period for issuing a final decision. (3-15-22)

329. – 399. (RESERVED)

400. PENALTIES: GENERAL RULES.
Sections 63-3033, 63-3046, Idaho Code

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. (3-15-22)

02. Computation of Tax Due Amounts for Failure to File, Failure to Pay, Delinquent Filing, Substantial Understatement, and Extension Penalties. For purposes of computing the failure to file, failure to pay, substantial understatement, 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, tax required to be shown on the return, tax due on such return, and the amount on which the extension penalty is applied shall mean amounts computed as follows: (3-15-22)

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. (3-15-22)

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. (3-15-22)

03. 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. (3-15-22)

401. – 409. (RESERVED)

410. NEGLIGENCE PENALTIES.
Section 63-3046(a), Idaho Code

01. Negligence Defined. Negligence is the breach of a duty or obligation, recognized by law, that requires conformance to a certain standard of conduct. (3-15-22)

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. Situations that justify the penalty include but aren't limited to the following: (3-15-22)

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. (3-15-22)

b. Taxpayer fails to maintain proper records and files returns containing unsubstantiated claims or substantial errors. (3-15-22)

c. Taxpayer makes unsubstantiated or exaggerated claims of deductions or exemptions. (3-15-22)

d. Taxpayer fails to offer any explanation for understating taxes. (3-15-22)

e. Unreported taxable income is a material amount as compared with the reported income. (3-15-22)

f. Taxpayer exhibits a careless disregard of his tax obligations. (3-15-22)

g. For sales or use tax deficiencies, failure to keep valid files of resale and exemption certificates. (3-15-22)

h. Failure to make the required estimated payment when requesting an extension of time for filing a return. (3-15-22)

i. Taxpayer fails to provide the Tax Commission with a copy of a final federal determination according to Section 63-3069, Idaho Code. (4-6-23)

j. Taxpayer fails to file an Idaho amended return according to Section 63-3069, Idaho Code. (4-6-23)

k. Taxpayer fails to respond to requests to produce records substantiating items shown on the return. (3-15-22)

l. Taxpayer fails to make available the fifty-one (51) state apportionment factor detail when requested. (3-15-22)

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: (3-15-22)

a. The ratio of untaxed sales that should have been taxed to total taxable sales; (3-15-22)

b. The ratio of untaxed sales that should have been taxed to total sales; (3-15-22)

c. The ratio of untaxed purchases subject to use tax to total taxable purchases and to total purchases; or (3-15-22)

d. Other computations bearing on negligence. (3-15-22)

04. Waiver of Negligence Penalty. 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. (3-15-22)

05. Circumstances Precluding Waiver of Penalty. The following circumstances do not constitute sufficient cause to waive the penalty: (3-15-22)

a. An invalid or unapproved request for an extension of time to file or to do acts required by Idaho tax laws; (3-15-22)

b. An unsettled dispute between the Tax Commission and the taxpayer concerning a tax liability; or (3-15-22)

c. Inability to pay the tax. (3-15-22)

411. – 419. (RESERVED)

420. FRAUD PENALTIES.
Section 63-3046(b), Idaho Code
Assessment of the fraud penalty precludes assessment of the negligence penalty on the deficiency. (3-15-22)

421. – 429. (RESERVED)

430. PENALTY FOR FAILURE TO FILE, FAILURE TO PAY, OR DELINQUENT FILING.
Sections 63-3033, 63-3046, Idaho Code

01. In General. Due date means the date prescribed for filing without regard to extensions. (3-15-22)

02. 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. (3-15-22)

03. 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. (3-15-22)

431. – 499. (RESERVED)

500. SETTLEMENTS.
Sections 63-3047, 63-3048, Idaho Code

01. Grounds for Settlement. The Tax Commission may settle any taxes, penalties, or interest of a case if one (1) or more of the following circumstances exist: (3-15-22)

a. Disputed liability, (3-15-22)

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. (3-15-22)

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. (3-15-22)

b. Doubt as to collectibility; (3-15-22)

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. (3-15-22)

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. (3-15-22)

c. Economic hardship of the taxpayer. (3-15-22)

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. (3-15-22)

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. (3-15-22)

d. Promotion of effective tax administration. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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 will 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. (3-15-22)

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 will promptly notify the taxpayer. (3-15-22)

04. Withdrawal of Offer. A taxpayer may withdraw his offer to settle at any time prior to its acceptance by the Tax Commission. (3-15-22)

501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS.
Section 63-3048, Idaho Code

01. Amount in Issue. The amount in issue is defined as the Notice of Deficiency amount, plus or minus any adjustments previously communicated in writing to the taxpayer, minus the proposed settlement amount. For purposes of the amount in issue, interest will be updated to the date of the offer. (3-15-22)

02. Written Summary. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. Such files may not be disclosed or inspected under the public records law. (3-15-22)

03. Final Review When the Offer to Settle is Based on Inability to Pay. If the taxpayer's offer is based on inability to pay, a representative of the Collection Division will be provided a copy of the Written Summary and given an opportunity to participate in the final review. The representative attending the final review on behalf of the Collection Division will be the division administrator or the designee. (3-15-22)

502. – 699. (RESERVED)

700. DISCLOSURE OF INFORMATION: SCOPE.
Sections 63-3076, 63-3077, Idaho Code

01. Examples.The following are examples of information not considered return information for purposes of Rules 700 through 709 of these rules: (3-15-22)

a. Decisions published pursuant to Section 63-3045B, Idaho Code; (3-15-22)

b. Data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. (3-15-22)

701. (RESERVED)

702. DISCLOSURE OF INFORMATION: THIRD PARTIES.
Sections 63-3076 and 63-3077, Idaho Code

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. (3-15-22)

02. Written Authorization to Disclose Information. (3-15-22)

a. The Tax Commission may disclose a taxpayer's returns or return information to a person designated in writing by that taxpayer. (3-15-22)

b. The written authorization must contain: (3-15-22)

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; (3-15-22)

ii. The name and address of the person to whom disclosure is authorized; (3-15-22)

iii. Language indicating the taxpayer's consent to disclosure of information; (3-15-22)

iv. The tax period or periods for which disclosure may be made; and (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

703. DISCLOSURE OF INFORMATION: GENERAL PUBLIC.
Sections 63-3076, 63-3077, Idaho Code

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. (3-15-22)

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. (3-15-22)

704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS.
Sections 23-907, 39-8405, 49-326, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3077G, 63-3077H, 63-3634A, 67-4917C, Idaho Code

01. Legislature. The Tax Commission will 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 will disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-15-22)

02. Government Agencies or Officials. The Tax Commission will 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. (3-15-22)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (3-15-22)

a. The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-15-22)

b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (3-15-22)

c. Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (3-15-22)

d. Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-15-22)

e. Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (3-15-22)

705. DISCLOSURE OF INFORMATION -- IDENTITY THEFT.
Section 63-3077F, Idaho Code

01. Written Information Request. The Tax Commission may disclose the name and address to the victim upon receipt of a valid written information request. (3-15-22)

a. The written request must contain: (3-15-22)

i. The victim's name, address, and social security number or other tax identification number; (3-15-22)

ii. The tax year affected; (3-15-22)

iii. The signature of the victim or legal representative; (3-15-22)

iv. Copies of the victim's driver's license and social security card or passport, if applicable. (3-15-22)

v. If the victim is a minor, a copy of the birth certificate along with the driver's license or passport of the parent or legal guardian. (3-15-22)

vi. If the victim is deceased, a copy of the legal document authorizing the executor of the estate along with the executor's driver's license or passport. (3-15-22)

706. -- 799. (RESERVED)

800. DEFINITIONS FOR PURPOSES OF THE TAXPAYERS' BILL OF RIGHTS.
Title 63, Chapter 40, Idaho Code

01. Collection and Enforcement. The terms collection and enforcement include only post-assessment processes. (3-15-22)

02. Publication. Publication means communicating to the general public. Publication does not include internal communication or communication with other governmental agencies as provided for by statute. (3-15-22)

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. (3-15-22)

801. -- 999. (RESERVED)