

TITLE 63
REVENUE AND TAXATION

CHAPTER 25
CIGARETTE AND TOBACCO PRODUCTS TAXES

63-2501. PURPOSE. It is the intent and purpose of this act to levy a tax on all cigarettes sold, used, consumed, handled or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes.

[63-2501, added 1974, ch. 211, sec. 1, p. 1548.]

63-2502. DEFINITIONS. For the purpose of this act, unless otherwise required by the context:

(a) The word "wholesaler" means and includes every person who purchases, sells or distributes cigarettes to other wholesalers or to retailers for the purpose of resale and "delivery sellers" as defined in 15 U.S.C. section 375.

(b) The word "retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes at retail, irrespective of quantity or amount, or the number of sales.

(c) The phrase "wholesale sale" means a sale of cigarettes by a wholesaler to a retailer.

(d) The word "cigarette" shall be taken in the ordinary context of that word and shall be any roll for smoking, made wholly or in part of tobacco, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco.

(e) The phrase "package of cigarettes" means the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made. A package shall contain no less than twenty (20) cigarettes and be packaged in increments of five (5).

[63-2502, added 1974, ch. 211, sec. 2, p. 1548; am. 1984, ch. 228, sec. 1, p. 548; am. 2011, ch. 2, sec. 1, p. 4.]

63-2503. PERMITS. (1) It shall be unlawful for a person to act as a wholesaler of cigarettes without a permit. The permit shall be obtained by application to the state tax commission upon a form furnished by it, accompanied by a fee of fifty dollars (\$50.00). The wholesaler permit shall be nonassignable and shall continue in force until surrendered or canceled.

(2) It shall be unlawful for any retailer to purchase, sell, offer for sale, distribute, store or possess any cigarettes without first applying for and receiving a seller's permit under section [63-3620](#), Idaho Code.

(3) A permit shall be held only by persons actively engaged in making wholesale sales of cigarettes. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation.

(4) Whenever any person fails to comply with any provision of this chapter relating to the purchase, sale or offering for sale or distribution of cigarettes or any rules of the state tax commission relating to the cigarette tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any permit held by the person or may deny a new permit to such person.

(5) The state tax commission may revoke the permit of a person not actively engaged in activities requiring a permit under this section.

(6) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section [63-3629](#), Idaho Code, which shall be subject to review as provided in section [63-3631](#), Idaho Code.

(7) A permit, held by a person who for a period of twelve (12) consecutive months files reports showing no cigarette activity reportable under this chapter, shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the permit was issued.

(8) A person who engaged in activities requiring a permit under this section without a permit or after a permit has been revoked or suspended, and any person who is a responsible person, as defined in section [63-3627](#), Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section [63-2516](#), Idaho Code.

[63-2503, added 1986, ch. 193, sec. 2, p. 489; am. 2006, ch. 60, sec. 2, p. 187; am. 2008, ch. 20, sec. 1, p. 31; am. 2013, ch. 5, sec. 1, p. 13.]

63-2504. QUALIFICATIONS OF WHOLESALERS. No wholesaler may be issued a permit or otherwise engage in and carry on business as a wholesaler of cigarettes until he first shall qualify under the rules promulgated by the state tax commission with reference to financial ability. Such restriction shall not apply to any wholesaler lawfully in business on the date this act is passed and approved. In addition no wholesaler's permit shall be issued unless:

- (1) in the case of a natural person, he be an Idaho resident, or
- (2) in case of a corporation, it is an Idaho corporation or a foreign corporation holding a certificate of authority issued by the secretary of state and maintaining a registered office and registered agent pursuant to the Idaho business corporation act, [chapter 1, title 30](#), Idaho Code.

[63-2504, added 1974, ch. 211, sec. 4, p. 1548; am. 1986, ch. 193, sec. 3, p. 489; am. 1998, ch. 43, sec. 1, p. 188.]

63-2505. TRANSPORTATION OF CIGARETTES. (1) It shall be unlawful for any person to transport into, export from or receive in this state or carry or move from place to place within this state, except as provided in this section, any cigarettes which do not have affixed thereto Idaho stamps.

(2) Any wholesaler engaged in interstate business, who shall furnish surety bond in a sum satisfactory to the state tax commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every wholesaler, at the time of shipping or delivering cigarettes, shall make a duplicate invoice, showing complete details of the sale, and shall retain the duplicate for inspection by the state tax commission or its agent.

(3) Except as provided in subsection (4) of this section, every person who shall transport cigarettes not stamped as required in this chapter upon the public highways, waterways, airways, roads or streets of this state

shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show:

- (a) The true name and the complete and exact address of the consignor or seller; and
 - (b) The true name and complete and exact address of the consignee or purchaser; and
 - (c) The quantity and brands of the cigarettes transported; and
 - (d) Either:
 - (i) The true name and complete and exact address of the wholesaler licensed under this chapter who has or shall assume payment of taxes under this chapter; or
 - (ii) The true name and complete and exact address of the person authorized to receive unstamped cigarettes by the law of the state or foreign country to which the cigarettes are destined.
- (4) Any common or contract carrier, as defined in 18 U.S.C. section 2341, who transports cigarettes under a proper bill of lading or freight bill which states the quantity, source and destination of such cigarettes and who is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required in this chapter shall be deemed to have complied with this section.

[63-2505, added 1974, ch. 211, sec. 5, p. 1548; am. 1995, ch. 43, sec. 1, p. 64.]

63-2506. IMPOSITION OF TAX. (1) On and after July 1, 2005, a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of fifty-seven cents (57¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler and collected by the state tax commission. Beginning July 1, 2014, and every year thereafter, of the tax collected pursuant to this subsection, three million three hundred fifteen thousand dollars (\$3,315,000) shall be subject to appropriation to the public school income fund to be utilized to develop and implement school safety improvements and to facilitate and provide substance abuse prevention programs in the public school system and the Idaho bureau of educational services for the deaf and the blind. Beginning July 1, 2014, and every year thereafter, of the tax collected pursuant to this subsection, three million three hundred fifteen thousand dollars (\$3,315,000) shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services.

(2) Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(3) The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section [63-2520](#), Idaho Code.

[63-2506, added 1974, ch. 211, sec. 6, p. 1548; am. 1987, ch. 254, sec. 1, p. 517; am. 1994, ch. 447, sec. 2, p. 1432; am. 1995, ch. 160, sec. 1, p. 638; am. 1995, ch. 368, sec. 2, p. 1282; repealed 1995, ch. 368, sec. 4, p. 1283; new section added 1995, ch. 368, sec. 5, p. 1283; am. 1997, ch. 268, sec. 4, p. 771; am. 2003, ch. 362, sec. 1, p. 966; am. 2005, ch. 404, sec. 1, p. 1377; am. 2014, ch. 115, sec. 2, p. 329; am. 2018, ch. 94, sec. 1, p. 201.]

63-2507. STAMPS TO BE PRINTED -- AFFIXED TO INDIVIDUAL PACKAGES. The state tax commission is hereby authorized and required to design and have printed Idaho cigarette stamps which are to be affixed to each individual package of cigarettes, which stamps shall be in the amount of the tax imposed by section [63-2506](#), Idaho Code. Except as otherwise prescribed by the state tax commission, each stamp shall be affixed in such a manner that it cannot be removed without being mutilated or destroyed. Stamps may be obtained only from the state tax commission, or its authorized agent, and only by a holder of a valid and current wholesaler permit.

[63-2507, added 1974, ch. 211, sec. 7, p. 1548; am. 1986, ch. 193, sec. 4, p. 490; am. 1995, ch. 43, sec. 2, p. 65.]

63-2508. STAMPS TO BE AFFIXED BY PERSON FIRST RECEIVING CIGARETTES IN STATE. No cigarettes may be purchased, sold, distributed, stored or held on hand or in possession of any person without Idaho stamps having been affixed thereto, within a reasonable time after receipt thereof.

No person may import cigarettes, nor hold or have in possession unstamped cigarettes, unless he shall have qualified under this act as a wholesaler and obtained a permit, as provided for in section [63-2503](#), Idaho Code.

[63-2508, added 1974, ch. 211, sec. 8, p. 1548; am. 1986, ch. 193, sec. 5, p. 490.]

63-2509. COMPENSATION FOR AFFIXING STAMPS. On and after July 1, 2005, wholesalers shall be allowed as compensation for affixing stamps, three and three-tenths percent (3.3%) of the face value of the stamps purchased by them.

[63-2509, added 1974, ch. 211, sec. 9, p. 1548; am. 2003, ch. 362, sec. 2, p. 966; am. 2005, ch. 404, sec. 2, p. 1378.]

63-2510. PAYMENT OF TAX -- RETURNS -- ACCOUNTING FOR STAMPS. (1) The cigarette taxes imposed in section [63-2506](#), Idaho Code, are due from the person required under section [63-2508](#), Idaho Code, to affix stamps, and are payable to the state tax commission monthly, together with the return required in this section.

(2) Every person owing cigarette taxes and every wholesaler shall file a return with the state tax commission in such form as the commission shall prescribe. The return shall report all taxes due regarding cigarettes received during the month or other reporting period, approved by the state tax commission, to which the return relates. The return shall contain such other information as the state tax commission shall require, and shall be signed by the person required to file the return or by such person's duly authorized agent. The return shall be filed on or before the twentieth day of the month following the end of the taxable period to which the return relates.

(3) The amount allowed as compensation for affixing stamps under section [63-2509](#), Idaho Code, shall be separately stated on the return as a credit against taxes due on the return.

(4) In addition to reporting the tax due as provided in this section, the return shall provide an accounting of all cigarette stamps acquired, held, and affixed by the wholesaler. The return shall include:

- (a) The number of stamps which were held at the beginning of the reporting period and were not affixed to packages;
- (b) The number of stamps acquired during the reporting period;
- (c) The number of stamps affixed to packages during the reporting period;
- (d) The number of unaffixed stamps held at the end of the reporting period; and
- (e) The number, if any, of stamps lost or destroyed. If stamps are lost or destroyed, a statement describing the circumstances giving rise to the loss or destruction shall accompany the return.

(5) In the event that any stamps obtained by a wholesaler are lost, destroyed, or otherwise unaccounted for, the wholesaler shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed, unless the wholesaler can establish, by clear and convincing evidence, that a specific number of stamps were actually destroyed or mutilated in such a manner as to render them unusable.

(6) In the event that a wholesaler or any other person in possession of unused cigarette stamps shall cease doing business as a wholesaler of cigarettes, such wholesaler or other person shall return all unused stamps to the state tax commission or shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed.

(7) A wholesaler may claim a credit against taxes due on the tax return for taxes previously paid on cigarettes, which after stamps are affixed, become unmarketable and are returned to the manufacturer. When such return is verified in such manner as the state tax commission may, by rule provide, the credit applies to the tax return for the month in which the verification occurs; except that, any amount of credit exceeding the tax due on the tax return may be carried forward to the succeeding tax return, in chronological order until exhausted.

(8) Taxes paid on cigarettes sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a subsequent payment of the tax on cigarettes or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected.

[63-2510, as added by 1988, ch. 224, sec. 2, p. 430; am. 1991, ch. 2, sec. 1, p. 13; am. 1994, ch. 43, sec. 1, p. 71; am. 2000, ch. 163, sec. 2, p. 413.]

63-2510A. BONDING. (1) At the time an application for a wholesaler's license or permit, under section [63-2503](#), Idaho Code, is submitted to the state tax commission, the applicant shall file a bond, in such form as the commission may determine, conditioned upon faithful performance of all of the requirements of this chapter. The total amount of the bond shall be fixed by the commission and shall be the greater of twice the estimated average tax liability for the reporting period for which the applicant will be required to file a return, under section [63-2510](#), Idaho Code, or the value of stamps in the wholesaler's inventory including the value of stamps ordered but not yet received. The total amount required to be secured by the bond may be increased or reduced by the commission at any time. Any bond given in conjunction with the provisions of this section shall be a continuing instrument, and shall cover the period during which the license or permit in connection with which the bond is given is in effect, unless the surety on the bond is released or discharged by the commission. Any surety on any bond furnished

by a wholesaler shall be discharged only by the commission. Any surety on any bond furnished by a wholesaler shall be discharged and released by the commission from, any and all, liability to the state, accruing on the bond after the expiration of thirty (30) days from the date upon which the surety shall have lodged with the commission a written request to be released and discharged. The request shall not operate to relieve, release, or discharge the surety from any liability accrued, or which will accrue, before the expiration of the thirty (30) day period. The commission shall promptly, upon receipt of the notice of the request, notify the wholesaler and require him to furnish a new bond. Unless the wholesaler files a new bond with the commission in the amount provided in this section before the expiration of the thirty (30) day period, the commission shall immediately cancel the wholesaler's license or permit.

(2) In the event that any taxes due under the provisions of this chapter are not paid by a wholesaler, and the unpaid taxes are assessed by the commission, and after all avenues for appeal of the assessment have been exhausted, the commission may apply the unpaid tax liability against the bond required in this section.

(3) A wholesaler may pay full value for stamps in advance in lieu of posting a bond. A wholesaler that has posted a bond may petition for release from the bond requirement after having filed timely and fully paid cigarette tax returns, as provided in section [63-2510](#), Idaho Code, for a period of not less than twelve (12) months. Upon such petition from the wholesaler, the commission will review the cigarette tax return filing and payment record of the wholesaler and, if determined necessary, within sixty (60) days examine the books and records of the wholesaler. The commission will, no later than ninety (90) days from the date of receipt of the petition, advise the wholesaler in writing of its determination and the reasons therefor. If the wholesaler wishes to seek a redetermination of the commission's decision, a petition for redetermination may be filed as provided in section [63-3045](#), Idaho Code.

(4) If at any time after release of a bond requirement the wholesaler becomes delinquent for any period in the filing of tax returns or the payment of the tax as required in section [63-2510](#), Idaho Code, the commission may make immediate demand that the return be filed or the payment be tendered and that a bond be filed as set forth in subsection (1) of this section. Any wholesaler against whom such demand is made may petition for a redetermination as provided in section [63-3045](#), Idaho Code, except that the petition must be filed no later than ten (10) days after service upon the person of notice thereof. If a petition for redetermination is not filed within the ten (10) day period, the determination shall become final and the commission shall issue a jeopardy assessment as provided in section [63-3630](#), Idaho Code, and thereafter may:

- (a) Seize all Idaho cigarette stamps in the possession of the wholesaler which are not applied to cigarettes;
- (b) File a lien of record upon the cigarettes held in inventory by the wholesaler or seize such cigarettes;
- (c) Revoke the wholesaler's cigarette permit as provided in section [63-2503](#), Idaho Code, except that no notice or hearing shall be required; and
- (d) Notify the manufacturers of the cigarettes held in inventory by the wholesaler of any or all actions so taken.

(5) A wholesaler who acquires all cigarettes with tax stamps affixed at the time of acquisition may petition the state tax commission for waiver of the bond required in subsection (1) of this section. Upon receipt of evidence establishing that the wholesaler is not required to pay cigarette taxes under this chapter because the wholesaler exclusively purchases cigarettes with stamps affixed by another wholesaler, the state tax commission may waive the requirement for a bond. Any such waiver is conditioned upon the wholesaler's continuing qualification for the waiver under this subsection.

[63-2510A, added 1988, ch. 224, sec. 3, p. 430; am. 1990, ch. 41, sec. 1, p. 64; am. 1992, ch. 49, sec. 4, p. 153; am. 2006, ch. 60, sec. 6, p. 189; am. 2016, ch. 28, sec. 1, p. 69.]

63-2511. RECORDS TO BE KEPT -- INSPECTION. Each wholesaler of cigarettes shall keep and preserve for a period of four (4) years, records showing the purchase and sale of cigarettes, as well as separate invoices and records of stamps purchased. All records and stocks of cigarettes on hand shall be open to inspection by the state tax commission or authorized employees at all reasonable times. Additionally, the state tax commission may require reports to be submitted to it from time to time concerning the purchase and sale of cigarettes and stamps.

All retailers shall permit the state tax commission or authorized employees to inspect all cigarettes on hand.

[63-2511, added 1974, ch. 211, sec. 11, p. 1548; am. 1986, ch. 193, sec. 6, p. 490; am. 2014, ch. 230, sec. 1, p. 590.]

63-2512. PENALTIES. The penalties herein prescribed are not intended as exclusive, but are in addition and supplemental to any and all other existing remedies and procedures prescribed by law for the enforcement of the revenue laws of this state.

(a) Any person who shall forge or counterfeit an Idaho cigarette stamp shall be guilty of a felony and upon conviction thereof shall be punished in accordance with the provisions of the criminal code, and additionally shall be ineligible to have issued him or to hold any state license or permit to sell or vend goods or merchandise of any kind or type, or to be employed by or work in any manner for any person who sells cigarettes for a period of five (5) years thereafter.

(b) The possession, purchase or consumption by any person of more than ten (10) packages of cigarettes without Idaho cigarette stamps is prohibited. Any person who possesses, purchases or consumes more than ten (10) packages of cigarettes without Idaho cigarette stamps shall be subject to a civil penalty equal to three (3) times the amount of tax due for each full or partial package of unstamped cigarettes in excess of ten (10), but in no event shall the penalty be less than fifty dollars (\$50.00). Such penalty shall be assessed and collected, as provided in section [63-2516](#), Idaho Code.

The penalty imposed by this subsection shall apply to persons acquiring cigarettes from internet, catalog, telephone and facsimile retailers.

(c) All violations of the provisions of this chapter for which criminal penalties are not otherwise imposed shall be misdemeanors and punishable in accordance with the provisions of the criminal code.

(d) The provisions of this section shall be applicable to all proceedings pending before the state tax commission, the board of tax appeals, or the courts of this state on the effective date of this act.

[63-2512, added 1974, ch. 211, sec. 12, p. 1548; am. 1976, ch. 175, sec. 2, p. 637; am. 1986, ch. 193, sec. 7, p. 489; am. 1988, ch. 319, sec. 1, p. 977; am. 1990, ch. 17, sec. 1, p. 28; am. 2006, ch. 60, sec. 4, p. 188; am. 2006, ch. 196, sec. 1, p. 610.]

63-2513. CONTRABAND ARTICLES. Any unstamped cigarettes held, owned, possessed or in control of any person for a period of time longer than necessary to affix Idaho stamps, are hereby declared to be contraband goods, except as authorized under subsection (b) of section [63-2512](#), Idaho Code, and may be seized by the state tax commission, or an employee of the state tax commission, or any peace officer, when directed by the state tax commission, without a warrant. Any vehicle, not a common carrier operating in interstate commerce, used in violating this act, shall likewise be subject to confiscation. Said cigarettes or vehicles seized shall be offered for sale. Fifteen (15) days' notice of the sale shall be given; net proceeds from the sale shall be deposited in the general fund. The state tax commission shall require the purchaser at the sale to affix the proper amount of tax stamps to cigarette packages.

[63-2513, added 1974, ch. 211, sec. 13, p. 1548; am. 1976, ch. 175, sec. 1, p. 637; am. 1991, ch. 2, sec. 2, p. 14.; am. 2011, ch. 2, sec. 2, p. 5.]

63-2514. SEARCH AND SEIZURE. When the state tax commission has reason to believe that any cigarettes are being kept, sold, offered for sale or given away in violation of this act, an employee, delegate or deputy of the state tax commission, or any peace officer, may make affidavit of such fact, describing the place or thing to be searched, before a magistrate, or such official shall issue a search warrant directed to the sheriff, constable, police officer, or employee[,] delegate or deputy of the state tax commission commanding him to search any place or vehicle that may be designated in the affidavit and search warrant, and to seize any cigarettes so possessed as well as any article, machine or vehicle wherein the same are found, kept or stored as contraband and to arrest the person in control or possession thereof for violation of the provisions of section [63-2512](#), Idaho Code.

[63-2514, added 1974, ch. 211, sec. 14, p. 1548; am. 1990, ch. 17, sec. 2, p. 29.]

63-2515. COMPROMISE AND CONFISCATION. When it is shown to the satisfaction of the state tax commission that there was no intention to violate any of the provisions of this act, the commission may return any property confiscated to the party and permit the party to affix the proper amount of stamps to any cigarettes, provided additionally the party pays all costs incurred and a penalty of twenty-five per cent (25%) of the amount of tax as well as interest on the total value of the stamps required to be purchased at one per cent (1%) for each month or portion thereof, from the date of the initial incident or occurrence of violations.

[63-2515, added 1974, ch. 211, sec. 15, p. 1548.]

63-2516. COLLECTION AND ENFORCEMENT -- ACTIONS AGAINST STATE OF IDAHO. In addition to the enforcement and penalty provisions in this act otherwise provided, the deficiency in tax and notice of deficiency as well

as the collection and enforcement procedures provided by the Idaho income tax act, sections [63-3030A](#), [63-3038](#), [63-3039](#), [63-3040](#), [63-3042](#), [63-3043](#), [63-3044](#), [63-3045](#), [63-3045A](#), [63-3045B](#), [63-3046](#), [63-3047](#), [63-3048](#) through [63-3065](#), [63-3068](#), [63-3071](#), [63-3073](#), [63-3075](#) and [63-3078](#), Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due, and said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this act, be described as cigarette tax liens and proceedings. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid as provided for payment of cigarette tax refunds.

[63-2516, added 1974, ch. 211, sec. 16, p. 1548; am. 1986, ch. 193, sec. 8, p. 491; am. 2007, ch. 10, sec. 7, p. 19; am. 2014, ch. 230, sec. 2, p. 590; am. 2018, ch. 48, sec. 1, p. 124.]

63-2517. JURISDICTION OVER NONRESIDENTS. A deficiency assessed and due and payable by a person not within the state may be prosecuted against such person by an action in any court in this state having jurisdiction of the subject matter, and the court shall have personal jurisdiction of such a person in any such action for taxes imposed and assessed under this act. Notice shall be given such person by personal service without the state or by publication. In the event such notice shall be by publication, notice shall also be mailed by registered or certified mail to such person at his last known address.

[63-2517, added 1974, ch. 211, sec. 17, p. 1548.]

63-2519. CIVIL ACTION -- INJUNCTION. If the state tax commission determines that any person is engaged in business as a wholesaler without holding a valid permit or license, it may proceed, by injunction or other legal process, to prevent the continuance of the business. An injunction, enjoining the continuance of the business by such person, may be granted without bond by any court or judge authorized by law to grant injunctions.

[63-2519, added 1988, ch. 224, sec. 5, p. 430.]

63-2520. DISTRIBUTION OF MONEYS COLLECTED. Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the state tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the state tax commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) On and after July 1, 2014, the balance remaining with the state treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:

(1) Five million dollars (\$5,000,000) shall be distributed to the permanent building fund created by section [57-1108](#), Idaho Code.

(2) One hundred twenty thousand dollars (\$120,000) shall be distributed to the central cancer registry fund and is subject to appropriation as provided for in [chapter 35, title 67](#), Idaho Code.

(3) Three hundred thousand dollars (\$300,000) shall be distributed to the cancer control fund created by section [57-1702](#), Idaho Code, and is subject to appropriation as provided for in [chapter 35, title 67](#), Idaho Code.

(4) An amount equal to the annual general fund appropriation for bond levy equalization, less the amount distributed under section [67-7434](#)(1), Idaho Code, if applicable, pursuant to section [33-906](#), Idaho Code, shall be annually distributed to the general fund.

(5) All remaining moneys shall be distributed as follows: For fiscal years on and after July 1, 2006, all moneys shall be distributed to the permanent building fund with the moneys to be used for the repair, remodel and restoration of the state capitol building and state facilities pertaining to the capitol restoration until such time as the capitol restoration is adequately funded as certified by the director of the department of administration. Thereafter, all remaining moneys shall be distributed in the following priority order:

(i) Four million seven hundred thousand dollars (\$4,700,000) to be used for the purpose of paying the state match as required for federal funds committed to pay the annual scheduled GARVEE debt service until such time as the Idaho housing and finance association certifies that any such bonds or notes are adequately paid for, in accordance with [chapter 62, title 67](#), Idaho Code;

(ii) Five million dollars (\$5,000,000) to the secondary aquifer planning, management and implementation fund as established in section [42-1780](#), Idaho Code. Such moneys shall be used for statewide aquifer stabilization; and

(iii) All remaining moneys following distributions pursuant to subparagraphs (i) and (ii) of this paragraph shall be distributed to the transportation expansion and congestion mitigation fund established in section [40-720](#), Idaho Code.

[63-2520, added 1974, ch. 211, sec. 20, p. 1548; am. 1975, ch. 57, sec. 1, p. 121; am. 1976, ch. 51, sec. 15, p. 179; am. 1978, ch. 182, sec. 1, p. 413; am. 1979, ch. 33, sec. 2, p. 49; am. 1980, ch. 1, sec. 1, p. 3; am. 1982, ch. 49, sec. 1, p. 74; am. 1984, ch. 146, sec. 1, p. 341; am. 1986, ch. 73, sec. 10, p. 210; am. 1987, ch. 254, sec. 2, p. 517; am. 1989, ch. 345, sec. 1, p. 872; am. 1994, ch. 45, sec. 2, p. 73; am. 1994, ch. 180, sec. 155, p. 522; am. 2000, ch. 60, sec. 2, p. 132; am. 2003, ch. 362, sec. 3, p. 967; am. 2005, ch. 404, sec. 3, p. 1378; am. 2006, ch. 311, sec. 11, p. 967; am. 2009, ch. 344, sec. 2, p. 1078; am. 2014, ch. 115, sec. 3, p. 329; am. 2014, ch. 337, sec. 2, p. 834; am. 2017, ch. 322, sec. 12, p. 850.]

63-2521. REFUNDS -- LIMITATIONS -- INTEREST. (1) Where there has been an overpayment of any cigarette tax imposed by this chapter, the amount of such overpayment shall be credited against any taxes then due to the state

tax commission from the taxpayer and any balance of such excess shall be refunded to the taxpayer.

(2) No such credit or refund of taxes, penalties or interest paid, shall be allowed or made after three (3) years from the time the return was filed, unless before the expiration of such period a claim therefor is filed by the taxpayer with the commission.

(3) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section [63-3045](#), Idaho Code, from the date such tax was paid.

(4) If the state tax commission denies a claim for refund in whole or in part, it shall provide notice of the denial and the claimant may petition the state tax commission for a redetermination of the denial in the manner provided in section [63-3045](#), Idaho Code. Appeal of a tax commission decision denying in whole or in part a claim for refund shall be made in accordance with and within the time limits prescribed in section [63-3049](#), Idaho Code.

[63-2521, added 2001, ch. 52, sec. 2, p. 94.]

63-2522. IMPOSITION AND RATE OF TAX. Commencing March 1, 1987, and ending July 1, 1987, in addition to the tax imposed by section [63-2506](#), Idaho Code, there is hereby imposed a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes at the rate of 89/200 of \$.01 for each cigarette, which tax shall be paid by the wholesaler and collected by the state tax commission.

The moneys collected under this section shall be deposited into the general account.

[63-2522, added 1987, ch. 254, sec. 3, p. 518.]

63-2523. PROHIBITIONS. It shall be unlawful for any person:

(1) To sell or distribute in this state; to acquire, hold, own, possess or transport, for sale or distribution in this state; or to bring into this state for sale or distribution in this state:

(a) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States including, but not limited to, labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar wording; or

(ii) Does not comply with:

1. All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States including, but not limited to, the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; and

2. All federal trademark and copyright laws;

(b) Any cigarettes imported into the United States in violation of section 5754 of the Internal Revenue Code as defined in section [63-3004](#), Idaho Code, or any other federal law, or implementing federal regulations;

(c) Any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(d) Any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. section 1335a;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) Any statement, label, stamp, sticker or notice described in subparagraph (1) (a) (i) of this section;

(b) Any health warning that is not specified in, or does not conform with the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; or

(3) To affix any stamp required pursuant to [chapter 25, title 63](#), Idaho Code, to the package of any cigarettes described in subsection (1) of this section or altered in violation of subsection (2) of this section.

[63-2523, added 2000, ch. 351, sec. 1, p. 1179; am. 2001, ch. 40, sec. 1, p. 76.]

63-2525. CRIMINAL PENALTIES. Any person that violates or fails to comply with any of the provisions of this chapter or rules promulgated pursuant thereto shall be punishable by a fine of not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

[63-2525, added 2000, ch. 351, sec. 1, p. 1180.]

63-2526. ADMINISTRATIVE SANCTIONS. (1) The state tax commission may revoke or suspend the permit issued to any person pursuant to [chapter 25, title 63](#), Idaho Code, in accordance with procedures set forth in the Idaho administrative procedure act. The state tax commission may, in addition to the suspension or revocation of such permit, assess a civil penalty to be paid by such permittee in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes involved or five thousand dollars (\$5,000), upon finding a violation of any of the provisions of this chapter by such permittee. Assessment of a civil penalty hereunder shall be made in the same manner as provided in section [63-2516](#), Idaho Code, for assessing a tax under this chapter.

(2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of the provisions of this chapter, shall be deemed contraband under section [63-2513](#), Idaho Code, and shall be subject to seizure and forfeiture as provided therein. Provided however, notwithstanding the provisions of section [63-2515](#), Idaho Code, all such cigarettes so seized and forfeited shall be destroyed and shall not be subject to resale. Such cigarettes shall be deemed contraband whether the violation of this chapter is knowing or otherwise.

[63-2526, added 2000, ch. 351, sec. 1, p. 1180.]

63-2527. GENERAL PROVISIONS. (1) It shall be the duty of the state tax commission to administer the provisions of this chapter.

(2) For the purpose of administering the provisions of this chapter, the state tax commission may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

(3) In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief for a violation of this chapter; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the court finds that the violation is flagrant, it may increase recovery to an amount not in excess of three (3) times the actual damages sustained by reason of the violation.

[63-2527, added 2000, ch. 351, sec. 1, p. 1181.]

63-2528. DEFINITIONS. The definitions set forth in section [63-2502](#), Idaho Code, shall apply to the provisions of this chapter. In addition, as used in this act:

(1) "Commission" means the Idaho state tax commission.

(2) "Importer" means any person in the United States to whom nontax-paid cigarettes manufactured in a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States are shipped or consigned; any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

(3) "Manufacturer" means any person who manufactures cigarettes by any method of preparing, processing or manipulating tobacco, except for his own personal consumption or use.

(4) "Person" means an individual, partnership, corporation or any other business or legal entity.

[63-2528, added 2000, ch. 351, sec. 1, p. 1181.]

63-2529. APPLICABILITY. (1) This act does not apply to:

(a) Cigarettes imported or brought into the United States for personal use; or

(b) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. section 1555(b) and any implementing regulations. Provided however, that this chapter shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

(2) The penalties provided in this chapter are in addition to any other penalties imposed under other law.

[63-2529, added 2000, ch. 351, sec. 1, p. 1181.]

63-2551. TOBACCO PRODUCTS TAX -- DEFINITIONS. As used in this act:

(1) "Tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and

any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco except cigarettes;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer or any person sells a tobacco product to a distributor that is not a related person as defined in section 267 of the Internal Revenue Code, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane or train;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Commission" means the Idaho state tax commission.

[63-2551, added 1972, ch. 289, sec. 1, p. 725; am. 2008, ch. 20, sec. 2, p. 31; am. 2011, ch. 2, sec. 3, p. 5.]

63-2552. TAX IMPOSED -- RATE. (1) From and after July 1, 1972, there is levied and there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of thirty-five per cent (35%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(2) A floor stocks tax is hereby imposed upon every distributor of tobacco products at the rate of thirty-five per cent (35%) of the wholesale sales price of each tobacco product in his possession or under his control on July 1, 1972.

Each distributor, within twenty (20) days after July 1, 1972, shall file a report with the commission, in such form as the commission may prescribe,

showing the tobacco products on hand on July 1, 1972, and the amount of tax due thereon.

The tax imposed by this subdivision shall be due and payable within twenty (20) days after July 1, 1972, and thereafter shall bear interest at the rate of one per cent (1%) per month.

[63-2552, added 1972, ch. 289, sec. 2, p. 725; am. 1974, ch. 173, sec. 1, p. 1432.]

63-2552A. ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax imposed in section [63-2552](#), Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five percent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

- (a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;
- (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- (c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one percent (1%) per month.

(3) Fifty percent (50%) of the tax collected pursuant to this section shall be subject to appropriation to the public school income fund to be utilized to develop and implement school safety improvements and to facilitate and provide substance abuse prevention programs in the public school system and the Idaho bureau of educational services for the deaf and the blind, less two hundred thousand dollars (\$200,000) that shall be remitted annually to the Idaho state police to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles, and less eighty thousand dollars (\$80,000) that shall be remitted to the commission on Hispanic affairs to be used for substance abuse prevention efforts in collaboration with the state department of education. Fifty percent (50%) of the tax collected pursuant to this section shall be subject to appropriation to the department of juvenile corrections for distribution quarterly to the counties to be utilized for county juvenile probation services, based upon the percentage the population of the county bears to the population of the state as a whole. The moneys remitted to the Idaho state police shall be reviewed annually and any money in excess to the operations needs of the laboratory for juvenile drug testing will be deposited in the public school income fund for substance abuse prevention programs in the public school system. The laboratory may utilize this increased toxicology capacity for adult drug testing to the extent that timely testing for juveniles is not adversely impacted.

[63-2552A, added 1994, ch. 447, sec. 3, p. 1432; am. 1995, ch. 160, sec. 2, p. 638; am. 1995, ch. 368, sec. 3, p. 1283; repealed 1995, ch. 368, sec. 4, p. 1283; new section added 1995, ch. 368, sec. 6, p. 1284; am. 1996, ch. 261, sec. 4, p. 861; am. 1996, ch. 261, sec. 5, p. 861; am. 1997,

ch. 268, sec. 5, p. 771; am. 2000, ch. 469, sec. 131, p. 1593; am. 2014, ch. 325, sec. 2, p. 808; am. 2018, ch. 94, sec. 2, p. 202.]

63-2552B. TOBACCO PRODUCTS USE TAX. Any person who does not hold a tobacco products tax permit who possesses, purchases or consumes tobacco products upon which tax imposed by this chapter has not been paid, including tobacco products sold by internet, catalog, telephone and facsimile sellers, is liable for the taxes imposed by sections [63-2552](#) and [63-2552A](#), Idaho Code, to be reported and paid as required in section [63-2560](#), Idaho Code.

[63-2552B, added 2008, ch. 20, sec. 3, p. 32.]

63-2553. LEGISLATIVE INTENT. It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in section [63-2551](#)[, Idaho Code]. It is the further intent and purpose of this chapter to impose the tax only once but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed by the state of Idaho.

[63-2553, added 1972, ch. 289, sec. 3, p. 725.]

63-2554. PERMIT REQUIRED. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received from the commission a permit as provided in section [63-2503](#) or [63-2504](#), Idaho Code.

[63-2554, added 1972, ch. 289, sec. 4, p. 725; am. 1991, ch. 2, sec. 3, p. 14; am. 2007, ch. 19, sec. 1, p. 29.]

63-2555. BOOKS AND RECORDS TO BE PRESERVED -- ENTRY AND INSPECTION BY COMMISSION. Every distributor shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand on July 1, 1972, and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products.

When a registered distributor sells tobacco products exclusively to the ultimate consumer at the address given in the certificate, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that registered distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least five (5) years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the commission, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, the commission, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained

therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the commission, or any of its agents or employees, is denied free access or is hindered or interfered with in making such examination, the permit of the distributor at such premises shall be subject to revocation by the commission.

[63-2555, added 1972, ch. 289, sec. 5, p. 725; am. 2017, ch. 17, sec. 1, p. 29.]

63-2556. PRESERVATION OF INVOICES OF SALES TO OTHER THAN ULTIMATE CONSUMER. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He shall preserve legible copies of all such invoices for five (5) years from the date of sale.

[63-2556, added 1972, ch. 289, sec. 6, p. 725.]

63-2557. INVOICES OF PURCHASES TO BE PROCURED BY RETAILER, SUBJOBBER -- PRESERVATION -- INSPECTION. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for five (5) years from the date of purchase. Invoices shall be available for inspection by the commission or its authorized agents or employees at the retailer's or subjobber's place of business.

[63-2557, added 1972, ch. 289, sec. 7, p. 725.]

63-2558. RECORDS OF SHIPMENTS, DELIVERIES FROM PUBLIC WAREHOUSE OF FIRST DESTINATION -- PRESERVATION -- INSPECTION. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the commission for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commission may require. These records shall be preserved for five (5) years from the date of delivery of the tobacco products.

[63-2558, added 1972, ch. 289, sec. 8, p. 725.]

63-2559. WHEN CREDIT MAY BE OBTAINED FOR TAX PAID. (1) Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to distributors or retailers outside the state, to be sold by those distributors or retailers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with rules prescribed by the commission.

(2) Taxes paid on tobacco products sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a subsequent payment of the tax on tobacco products or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected.

[63-2559, added 1972, ch. 289, sec. 9, p. 725; am. 2000, ch. 163, sec. 1, p. 412; am. 2007, ch. 19, sec. 2, p. 30.]

63-2560. TAX PAYABLE MONTHLY -- RETURNS -- OTHER THAN MONTHLY RETURNS -- PROCEDURE. (1) The taxes imposed hereunder shall be due and payable in monthly installments and remittance therefor shall be made on or before the twentieth day of the month next succeeding the end of the monthly period in which tax accrued. The taxpayer, on or before said twentieth day of said month, shall make out a return, upon such forms and setting forth such information as the tax commission may require, showing the amount of the tax for which he is liable for the preceding monthly period, and shall sign and transmit the same to the commission, together with a remittance for such amount in the form required.

(2) The state tax commission may by rule provide returns for periods of time other than monthly periods. Returns for such reporting periods, together with payment of the required taxes, shall be due on or before the twentieth day of the month following the end of the period to which the return relates.

[63-2560, added 1972, ch. 289, sec. 10, p. 725; am. 1990, ch. 17, sec. 3, p. 29; am. 2007, ch. 19, sec. 3, p. 30.]

63-2561. TITLE OF ACT. This act may be cited as the "Tobacco Products Tax Act."

[63-2561, added 1972, ch. 289, sec. 11, p. 725.]

63-2562. ADDITIONS AND PENALTIES. The additions, penalties and requirements provided by the Idaho income tax act, sections [63-3046](#), [63-3075](#), [63-3076](#) and [63-3077](#), Idaho Code, shall apply in the same manner and to the same extent to this act as to the Idaho income tax act and shall cover acts, omissions, and delinquencies under the Idaho income tax act and such additions, penalties and requirements shall, for this purpose, be described and be for acts, omissions, delinquencies and requirements under the Idaho tobacco products tax act.

[I.C., sec. 63-2562, as added by 1974, ch. 173, sec. 2, p. 1432.]

63-2563. COLLECTION AND ENFORCEMENT. The collection and enforcement procedures provided by the Idaho income tax act, sections [63-3038](#), [63-3039](#), [63-3040](#), [63-3042](#) through [63-3045B](#), [63-3047](#) through [63-3065A](#), [63-3068](#), [63-3071](#), [63-3075](#) and [63-3078](#), Idaho Code, shall apply and be available to the state tax commission for the enforcement of this act and collection of any amounts due under this act and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as tobacco products tax liens and proceedings. Any reference to taxable year in the income tax act shall be, for the purposes of this act, considered a taxable period.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured

against the state tax commission, and said judgment shall be paid or satisfied out of the tobacco products tax refund fund.

[63-2563, added 1974, ch. 173, sec. 3, p. 1432; am. 2007, ch. 10, sec. 8, p. 19; am. 2014, ch. 230, sec. 3, p. 591; am. 2018, ch. 48, sec. 2, p. 124.]

63-2564. DISTRIBUTION OF TAX REVENUES. (1) The revenues received from the taxes imposed by section [63-2552](#), Idaho Code, and any penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account, sufficient to pay current refund claims. All refunds authorized by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) From the balance remaining with the state treasurer after deducting the amounts in subsection (a) of this section, all remaining moneys shall be remitted directly to the general fund of the state of Idaho and shall be remitted to that fund periodically, but no less frequently than quarterly.

[63-2564, added 1974, ch. 173, sec. 4, p. 1432; am. 1976, ch. 51, sec. 16, p. 180; am. 1986, ch. 73, sec. 11, p. 211; am. 2000, ch. 60, sec. 3, p. 133.]

63-2565. REFUNDS, LIMITATIONS, INTEREST. (a) Where there has been an overpayment of any tobacco products tax imposed by this act, the amount of such overpayment shall be credited against any tobacco products tax then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized and the state board of tax appeals is authorized to order the tax commission in proper cases to credit or remit, refund, and pay back all taxes and penalties erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claims for refund shall be certified to the state board of examiners by the state tax commission.

(c) No such credit or refund of taxes, penalties or interest paid, shall be allowed or made after three (3) years from the time the return was filed, unless before the expiration of such period a claim therefor is filed by the taxpayer with the commission.

(d) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section [63-3045](#), Idaho Code, from the date such tax was paid.

(e) Appeal of a tax commission decision denying in whole or part a claim for refund shall be made in accordance with and within the time limits prescribed in section [63-3049](#), Idaho Code.

[I.C., sec. 63-2565, as added by 1974, ch. 173, sec. 5, p. 1432; am. 1981, ch. 290, sec. 11, p. 605.]