

TITLE 63
REVENUE AND TAXATION

CHAPTER 42
ILLEGAL DRUG STAMP TAX ACT

63-4201. SHORT TITLE. This chapter is known as the "Illegal Drug Tax Act."

[63-4201, added 1989, ch. 144, sec. 1, p. 349; am. 1990, ch. 179, sec. 1, p. 379.]

63-4202. DEFINITIONS. As used in this chapter:

(1) "Commission" means the state tax commission.
(2) "Controlled substance" means the entire amount of any drug or substance, whether real or counterfeit, as defined in section [37-2701](#), Idaho Code, when possessed in the following quantities and in violation of Idaho law:

- (a) More than forty-two and one-half (42 1/2) grams of marijuana; or
- (b) One (1) or more growing marijuana plants; or
- (c) Seven (7) or more grams of any other controlled substance sold by weight; or
- (d) Ten (10) or more dosage units of any controlled substance which is not sold by weight.

(3) "Possess" or "possession" means, in addition to its ordinary meaning and tenses, to include hold, sell, manufacture, acquire, produce, purchase, ship, transport, transfer or import into Idaho.

[63-4202, added 1989, ch. 144, sec. 1, p. 349; am. 1990, ch. 179, sec. 2, p. 379; am. 1993, ch. 9, sec. 1, p. 27.]

63-4203. ILLEGAL DRUG TAX IMPOSED ON POSSESSION OF CONTROLLED SUBSTANCES. (1) Every person who in violation of Idaho law possesses a controlled substance shall be liable for payment of an excise tax on all of the controlled substance possessed including the amount below any threshold provided in section [63-4202](#), Idaho Code.

(2) The tax hereby imposed is calculated at the following rates:

- (a) On each gram of marijuana, or each portion of a gram, three dollars and fifty cents (\$3.50);
- (b) On each gram of other controlled substance sold by weight, or each portion of a gram, two hundred dollars (\$200);
- (c) On each fifty (50) dosage units of a controlled substance that is not sold by weight, or portion thereof, two thousand dollars (\$2,000); and

(d) On a growing marijuana plant, seven hundred seventy-five dollars (\$775) per plant. A credit of seven hundred seventy-five dollars (\$775) shall be given for the payment of each illegal drug tax on a growing marijuana plant against payment of illegal drug taxes for possession of marijuana harvested from the growing marijuana plant, provided, no credit shall be given unless evidence of payment of illegal drug taxes on a growing marijuana plant is permanently affixed to the marijuana harvested from it.

(3) For the purpose of calculating the illegal drug tax under this chapter, other than for growing marijuana plants, a quantity of controlled sub-

stance is measured by the weight of the substance, whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in a person's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(4) For the purposes of article VII of the Idaho constitution, the illegal drug taxes imposed in this chapter shall not be held or construed to be a tax on property.

[63-4203, added 1989, ch. 144, sec. 1, p. 350; am. 1990, ch. 179, sec. 3, p. 379; am. 1993, ch. 9, sec. 2, p. 27.]

63-4204. STAMPS, EVIDENCING TAX PAID TO BE DISPLAYED, AND PROVIDED AND SOLD BY THE COMMISSION. (1) The commission shall adopt a uniform system of providing, affixing and displaying official stamps, official labels, or other official indicia for controlled substances on the possession of which an illegal drug tax is imposed.

(2) In addition to any other prohibition against possession of a controlled substance by Idaho law, no person subject to a tax imposed in this chapter may possess a controlled substance, unless the tax has been paid as evidenced by a stamp or other official indicia.

(3) Official stamps, labels, or other indicia to be affixed to all controlled substances shall be purchased from the commission. The purchaser shall pay one hundred percent (100%) of face value for each stamp, label, or other indicia at the time of the purchase.

[63-4204, added 1989, ch. 144, sec. 1, p. 350; am. 1990, ch. 179, sec. 4, p. 380.]

63-4205. STAMPS TO BE AFFIXED TO CONTROLLED SUBSTANCES. (1) When any person manufactures, purchases, acquires, possesses, transports, or imports into this state a controlled substance, subject to illegal drug taxes, he shall obtain from the commission illegal drug tax stamps and shall permanently affix the official indicia on the controlled substance evidencing the payment of the tax required under this chapter. No stamp or other official indicia may be used more than once.

(2) Taxes imposed upon possession of controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by the person acquiring or possessing such controlled substance.

(3) Payments required under this chapter shall be made to the commission on forms provided by the commission. The commission shall collect all taxes imposed under this chapter.

[63-4205, added 1989, ch. 144, sec. 1, p. 350; am. 1990, ch. 179, sec. 5, p. 381.]

63-4206. CONFIDENTIALITY OF STAMP PURCHASES AND REDETERMINATION -- IMMUNITY FROM PROSECUTION -- PENALTY FOR DISCLOSURE. (1) No person applying to purchase or purchasing illegal drug tax stamps is required to give his name, address, social security number or other identifying information.

(2) No commissioner, deputy, clerk, agent or employee of the commission, and no person formerly holding such a position, may divulge or make known to any person any information obtained from a person applying to purchase or purchasing illegal drug tax stamps or seeking a redetermination by

the commission of an assessment for illegal drug taxes or penalties imposed in this chapter. Any person violating this provision shall be guilty of a felony and upon conviction shall forfeit his office or employment and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment for not more than five (5) years; provided, any information obtained from a person seeking a redetermination of an assessment for taxes or penalties may be used within the commission or in any action in court brought for the collection, remission, cancellation or refund, in whole or in part of the taxes or penalties. Provided further, the provisions of this section do not prohibit exchanges of information within the commission necessary for the processing of purchases of illegal drug tax stamps.

(3) Notwithstanding any other provision of Idaho law, no information obtained by the commission from a person applying to purchase or purchasing illegal drug tax stamps or seeking a redetermination by the commission of an assessment for illegal drug taxes or penalties imposed in this chapter, may be used against him in any criminal proceeding or for investigatory purposes leading to other evidence of a crime unless it is independently obtained; otherwise, nothing in this chapter provides immunity of any kind to any person from criminal prosecution under Idaho law.

(4) The provisions of this section do not prohibit the commission from publishing statistics that do not disclose the identity of persons purchasing illegal drug stamps or the actual contents of particular applications, reports, forms or returns.

[63-4206, added 1990, ch. 179, sec. 6, p. 381.]

63-4207. CIVIL PENALTY -- CRIMINAL PENALTY -- STATUTE OF LIMITATIONS. (1) Any person violating the provisions of this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax imposed by section [63-4203](#), Idaho Code. The penalty shall be collected as part of the tax.

(2) In addition to the tax penalty imposed, any person subject to the taxes imposed in this chapter distributing or possessing a controlled substance without affixing the appropriate stamps, labels, or other indicia is guilty of a criminal offense and, upon conviction, is punishable to the same extent as possession of the controlled substance is punishable as set out in section [37-2732](#), Idaho Code.

(3) Notwithstanding any other provision of the criminal laws of this state, an information, indictment, or complaint may be filed upon any criminal offense under this chapter within three (3) years after the commission of the offense.

[(63-4207) 1989, ch. 144, sec. 1, p. 351; am. and redesignated, 1990, ch. 179, sec. 7, p. 382.]

63-4208. COMMISSION TO ADMINISTER TAX -- JEOPARDY ASSESSMENT -- INAPPLICABILITY OF HOMESTEAD EXEMPTION -- BURDEN OF PROOF -- OTHER SECTIONS APPLICABLE. (1) The commission shall administer the provisions of this chapter and may adopt rules necessary to enforce the provisions of this chapter.

(2) (a) Upon the discovery of a controlled substance not bearing valid stamps or other official indicia required in this chapter, the commission shall make a jeopardy determination assessing the taxes and penalties against the person subject to the illegal drug taxes. The deter-

mination shall be made upon personal knowledge or information available to the commission. Written notice of the amount of the tax and penalty and demand for immediate payment shall be mailed, by certified or registered mail, to the last known address of, or served in person upon, the person subject to the illegal drug taxes and penalties. Upon giving notice and demand, collection procedures as provided in sections [63-3050](#) through [63-3064](#) and [63-3065A](#), Idaho Code, may be instituted immediately.

(b) A person aggrieved by a jeopardy assessment may, within thirty (30) days after mailing or service of the notice of the jeopardy assessment, petition the commission for a redetermination of the assessment. Collection procedures shall not be stayed pending the redetermination unless a bond in double the amount of the assessment is filed with the commission. If a petition for redetermination is not filed within the thirty (30) day period, the jeopardy assessment becomes final.

(c) If a petition for redetermination is filed within the thirty (30) day period, the commission shall redetermine the petition and if requested shall give the petitioner a reasonable opportunity to be heard. The redetermination shall proceed in accordance with the procedures established for redetermining notices of deficiency determination under section [63-3045](#), Idaho Code. The commission shall mail, by certified mail, or personally serve the petitioner the redetermination decision. A decision redetermining a jeopardy assessment becomes final thirty (30) days after mailing or service of the decision. A person aggrieved by a redetermination by the state tax commission may seek review of that redetermination as provided in section [63-3049](#), Idaho Code, as limited by this provision.

(d) No property seized pursuant to a jeopardy assessment shall be sold until an assessment becomes final, provided, such property can be sold:

- (i) If its owner consents;
- (ii) If the expenses of maintenance of the property will gravely reduce the net proceeds of its sale; or
- (iii) If the property is perishable.

(3) A homestead exemption provided in [chapter 10, title 55](#), Idaho Code, shall not exempt real property from a lien for illegal drug taxes imposed in this chapter.

(4) Any taxes and penalties assessed by the commission are presumed to be valid and correct. The burden is on the taxpayer to show their incorrectness or invalidity. The unlawful possession of any controlled substance not bearing valid stamps or other official indicia required in this chapter is an act prejudicing the collection of the tax imposed in this chapter. No specific finding of jeopardy by the commission is required to authorize the use of the jeopardy assessment procedure provided in this section.

(5) At any time within one (1) year after the imposition of a jeopardy assessment pursuant to subsection (2) (a) of this section, the commission, if it determines that the jeopardy assessment was not issued for the full amount of tax due under this chapter, may issue to the person liable for the tax under this chapter a notice of deficiency determination in the manner provided in section [63-3045](#), Idaho Code, for such additional amount. The provisions of subsection (2) (c) of this section shall apply to a notice issued under the provisions of this subsection.

(6) In addition to the enforcement and penalty provisions of this chapter, sections [63-3038](#), [63-3039](#), [63-3042](#), [63-3043](#), [63-3047](#) and [63-3048](#),

Idaho Code, shall apply and be available to the state tax commission for the enforcement of the provisions of this chapter for the assessment and collection of any amounts due and said sections shall be considered to be a part of this chapter.

[(63-4208) 63-4207, added 1989, ch. 144, sec. 1, p. 351; am. 1989, ch. 323, sec. 1, p. 834; am. and redesignated, 1990, ch. 179, sec. 8, p. 382; am. 1993, ch. 9, sec. 3, p. 28.]

63-4209. DISTRIBUTION OF TAX REVENUES. The revenues received from the taxes imposed by section [63-4203](#), Idaho Code, and any penalties, interest, or deficiency additions, shall be distributed periodically as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the tax by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the tax by the commission or in excess of any amount required to be distributed by subsection (2) of this section shall, at the end of each fiscal year, be distributed to the substance abuse treatment account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

[(63-4209) 63-4208, added 1989, ch. 144, sec. 1, p. 351; am. and redesignated, 1990, ch. 179, sec. 9, p. 383.]

63-4210. LAWFUL POSSESSION. Nothing in this chapter requires persons lawfully in possession of a controlled substance to pay the tax required under this chapter.

[63-4210, added 1990, ch. 179, sec. 10, p. 384.]

63-4211. THIRD PARTY AND EXEMPTION CLAIMS -- ACTIONS AGAINST STATE OF IDAHO. (1) Any person claiming that the property levied upon and seized by the commission for the collection of any tax, penalty, interest or other amounts due under this chapter is either:

(a) the property of a person other than a person against whom taxes sought to be collected under this chapter have been assessed, or

(b) the property is property exempt from levy to enforce a claim for state taxes under [chapter 6, title 11](#), Idaho Code,

may, within fourteen (14) days of the date of the levy, file a written claim with the commission setting forth the grounds for the claim. The commission shall grant or deny the claim in a written notice to the claimant within fourteen (14) days of the commission's receipt of the claim.

(2) A denial of a claim under subsection (1) of this section by the commission may be reviewed in the district court for Ada county or the county the property was seized or is then located by a complaint filed by the claimant against the commission within thirty (30) days after the mailing of the notice denying the claim, in whole or in part. Upon the serving of summons upon the commission the case shall proceed as other civil cases and shall be heard by the court without a jury. Only the state of Idaho shall be responsible for

any final money judgment secured against the commission, and said judgment shall be paid or satisfied out of the state refund fund created in section [63-3067](#), Idaho Code.

[63-4211, added 1993, ch. 9, sec. 4, p. 29.]