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February 6, 1990

The Honorable Pamela I. Bengson
Chairman, House State Affairs Committee
House of Representatives
STATEHOUSE MAIL

RE: INTEREST ON FISH AND GAME ACCOUNT

Dear Representative Bengson:

This is in response to your question whether interest earned upon license revenues in the fish and game account should be credited to the fish and game account. Regulations of the U.S. Fish and Wildlife Service (50 CFR 80) were amended effective May 17, 1989, to require this result as a condition to remain eligible to receive federal aid funds (Pittman-Robertson and Dingell-Johnson Act funds). Since the state is receiving such federal aid funds, it should credit interest earnings on revenues from fish and game license fees to the fish and game account.

Idaho Code § 67-1210 provides, in pertinent part, with respect to interest earnings on state accounts:

The interest received on all such investments, unless otherwise specifically required by law, shall be paid into the general account of the state of Idaho. Provided, unless otherwise specifically provided by statute, funds received by the state pursuant to a federal law, regulation, or federal-state agreement which governs disposition of interest earned upon such funds shall be classified in the agency asset fund provided by section 57-811, Idaho Code. Any interest

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earned upon such funds shall be accounted for separately to give effect to the federal law, regulation, or federal-state agreement.

Thus, interest earnings upon balances in the various state accounts are credited to the general account unless otherwise specifically required by law, including federal laws and regulations.

Pursuant to Idaho Code § 36-1801 and 36-1802, the state assents to the provisions of the Pittman-Robertson and Dingell-Johnson Acts which provide aid to the states for wildlife restoration and fish restoration projects. Those federal acts (16 U.S.C. 777 and 16 U.S.C. 669i) and the regulations implementing them (50 CFR 80) provide that revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the state fish and wildlife agency. 50 CFR 80.4(a) was amended effective May 17, 1989, to provide:

License revenues include income from:
. . . (3) Interest, dividends, or other income earned on license revenues.

Consequently, the state is now required to credit the fish and game account with interest earnings upon license revenues. The effective date of the amendments is described in the Federal Register of April 17, 1989, page 15209, in pertinent part, as follows:

The effective date of this revisions is 30 days after publication in the Federal Register. However, it is recognized that some States may need to enact legislation to meet the requirements of this provision. Therefore, for those States a period not to exceed 3 years after the effective date of the rule will be allowed in order to enact the needed legislation. All other States will need to be in compliance, and remain in compliance, on or after the effective date.

As noted previously, Idaho Code § 67-1210 authorizes the crediting of interest as required by federal regulations. Consequently, no legislation is required to implement a change in procedures to begin crediting the fish and game account with interest earnings from the fish and game account. However, as discussed below, crediting interest to the fish and game account for interest lost during the last fiscal year can only be accomplished by means of an appropriation.

Idaho Const. art. 7, § 13, provides:

No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

Since appropriations are made on a fiscal year basis, it is not a violation of Idaho Const. art 7, § 13, to make necessary corrections in accounts within a fiscal year. By making corrections within a fiscal year, each account merely receives the correct amount of revenue for the fiscal year and the correct amount of revenue is available for the legislative appropriations made from each account.

However, the result is not the same for corrections beyond a fiscal year. Idaho Code § 67-3604 requires the state auditor to close his accounts as to all appropriations on July 1 of each year. Thus, in *State v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965), the Idaho Supreme Court held that Idaho Const. art. 7, § 13, prohibited the state from refunding to a county the state's pro-rata share of a court ordered refund of taxes collected wrongfully in prior years without a legislative appropriation.

Accordingly, an appropriation should be made to the fish and game account for interest earnings from May 17, 1989, through June 30, 1989, assuming the state wants to avoid jeopardizing its eligibility for Pittman-Robertson and Dingell-Johnson Act funds. For the current fiscal year, necessary corrections in accounts can be made to reflect interest earnings due to the fish and game account, provided information can be compiled as to the daily balances in the account.

Sincerely,



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Deputy Attorney General
Chief, Business Regulation
and State Finance Division

DGH/mkf