



STATE OF IDAHO

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February 22, 1990

The Honorable Darwin Olberding
State House of Representatives
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Payments in Lieu of Taxes by Department of Fish and Game

Dear Representative Olberding:

This is in response to your request for our review of RSMHS052. The proposal would provide that the department of fish and game shall pay the state department of education payments in lieu of taxes upon the lands owned or controlled by the fish and game department. The amount of the payment would be determined based upon the value of such lands and the tax rate which would otherwise be applicable in the county.

Idaho Constitution art. 7, § 4, provides that the property of the state shall be exempt from taxation. In Robb v. Nielson, 71 Idaho 222, 229 P.2d 981 (1951), the Idaho Supreme Court considered this section in relation to a statute providing for payment of taxes on land held by the fish and game department in lieu of tax assessments based on valuation. The court held the statute to be unconstitutional, finding that the legislature was attempting to do indirectly that which it could not do directly. The required payment in lieu of taxes was found to violate the constitutional section.

It should be noted that the structure of your bill is somewhat different than the payments in lieu of taxes discussed in the Robb case, supra. It could be viewed as a mere transfer of funds from one state account to another state account. However, if the legislature desires to make any such transfers,

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it should not denominate them as payments in lieu of taxes. Furthermore, it is important to recognize that the amount which could be transferred is limited by federal law as discussed below.

Currently, the state receives federal aid funds for fish and wildlife programs pursuant to the Pittman-Robertson and Dingell-Johnson Acts. Pursuant to Idaho Code §§ 36-1801 and 36-1802, the state assents to the provisions of those Acts. Those Acts provide at 16 U.S.C. 777 and 16 U.S.C. 669(i) 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. Thus, those funds are not generally available for transfer to any other state program. The federal regulations implementing those restrictions (50 C.F.R. 80) would permit some state administrative overhead costs to be charged to the department of fish and game. However, the extent of such permissible charges is quite limited under the regulations. 50 C.F.R. 80.15(d) provides:

Allowable costs are limited to those which are necessary and reasonable for accomplishment of approved project purposes, and are in accordance with the cost principles of OMB Circular A-87.

. . .

Administrative costs in the form of overhead or indirect costs for state central services outside of the State Fish and Wildlife Agency must be in accord with an approved cost allocation plan and shall not exceed in any one fiscal year three percentum of the annual apportionment.

In other words, any charges made against the fish and game account must be consistent with OMB Circular A-87 and could not exceed a 3% overhead charge. I have enclosed a copy of the OMB Circular for your convenience.

In summary, the state may not impose charges in lieu of taxes upon lands of the department of fish and game. Any other charges made to the fish and game account are restricted by the federal law and regulations discussed above. If you have any questions regarding this letter, please contact me.

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Sincerely,

DAVID G. HIGH
Deputy Attorney General
Chief, Business Regulation
and State Finance Division