

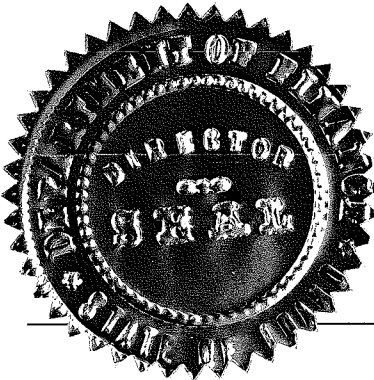


Policy Statement #2007-4

INTERPRETATIONS OF THE IDAHO ESCROW ACT

The Idaho Escrow, Idaho Code § 30-901 *et seq.*, (the Act) became law in Idaho on July 1, 2005. In an effort to provide direction to Idaho businesses whose activities fall within the requirements of the Idaho Escrow Act, the Director of the Idaho Department of Finance has adopted the following interpretations of the Act:

Dated at Boise, Idaho this 23rd day of July, 2007



Gavin M. Gee
Director, Idaho Department of Finance

(1) § 1031 Qualified Intermediaries are Subject to the Idaho Escrow Act.

The Department has reviewed proposals that the applicability of the Idaho Escrow Act (the Act) be waived as to § 1031 Qualified Intermediaries (QIs) until such time as a new law is enacted in Idaho specifically addressing a QI's business practices. The Department interprets the Idaho Escrow Act as applicable to QIs, and has no authority for waiving the Act's applicability to business practices we believe are subject to the Act's requirements.

(2) The Department Finds it a Reasonable Interpretation of the Act that its Requirements Do Not Apply When the Sole Contact with Idaho in a Tax Deferred Exchange is Replacement Property Located in Idaho.

Industry members have questioned the applicability of the Act to a QI in a tax-deferred exchange where the sole contact with Idaho is replacement property located in Idaho. The Department has reviewed the applicable Statutes in the Act and concludes that the Act can reasonably be interpreted to support this view. Therefore, the Department adopts such interpretation of the applicability of the Act to QIs in tax-deferred exchanges under the Internal Revenue Code. This interpretation is narrow, in that it applies solely to the circumstance where the *only* contact with Idaho in a tax-deferred exchange is replacement property located in Idaho. Any other contacts with Idaho in a tax deferred exchange transaction may change this result.

(3) The Requirement of Idaho Code § 30-914(4)(a) Concerning the Location of the Separate Escrow Trust Fund Account May Be Satisfied by Maintaining Such an Account in any Bank Authorized to Conduct Business in Idaho.

Idaho Code § 30-914(4)(a) states that a separate escrow trust fund account required for entities subject to the Idaho Escrow Act must be maintained “at a financial institution located in Idaho.” The Department has reviewed the language of Idaho Code § 30-914(4)(a) in conjunction with current law regarding preemption and constitutionality of such statutory language. After such review, it is the Department’s position that a reasonable interpretation of Idaho Code § 30-914(4)(a) is that its requirement can be met by maintaining the separate escrow trust fund account required by that subsection in any bank *authorized to conduct business in Idaho*. Barring any statutory changes or judicial decisions impacting the issue, the Department will interpret the statute accordingly.

(4) The Department Accepts Alternative Bonding and Insurance Requirements Under the Act.

Industry members have proposed that the Director exercise the discretion authorized by Idaho Code § 30-909(7) to waive or modify the financial responsibility requirements of that section. Specifically, industry representatives requested that the Director waive the surety bond requirement of § 30-909(3), to be balanced by an increase in the fidelity bond requirement of § 30-909(1) to \$1,000,000, and in the errors and omissions insurance requirement of § 30-909(2) to \$250,000. The Department has considered this proposal and finds it a reasonable alternative to the financial responsibility requirements of Idaho Code § 30-909. Therefore, QIs and other entities subject to the Idaho Escrow Act may meet their financial responsibility requirements under § 30-909 by either complying with the requirements set forth in the statute, or the alternative requirements as follows:

- maintaining a \$1,000,000 fidelity bond;
- maintaining \$250,000 in errors and omissions coverage; and
- no surety bond required.