

2009 Legislative Session Report

State Tax Commission

Rick Anderson

208-332-6624

rick.anderson@tax.idaho.gov

Property Tax Policy Specialist

April 7 – Moscow

April 9 – Idaho Falls

April 10 – Meridian

- **Property Tax Policy Specialist:**
 - During the legislative session I track and report on the status of bills relating to property tax administration as they proceed through the Idaho State Legislature.
 - When bills look like they are going to pass we look more closely at the bill to see if an administrative rule (temporary or proposed permanent) will need to be written for clarification purposes.
 - We then solicit help and input from folks like you before drafting a rule that will help clarify the legislation and make the administration of law as easy as can be.

During the 2009 Session we tracked 24 plus bills ranging in topics from a cap on parcel value increases to urban renewal changes.

HB2	HB 4	HB17	HB30	HB50	HB83
HB116	HB120	HB122	HB141a	HB201	HB203a
HB206	HB208	HB209	HB233a	HB244a	HB253
HB259	SB1010	SB1040	SB1060a	SB1091	SB1138

Bills that Might Become Law

Bill No.	Subject Matter / Effective Date	Status 4/2/09	Current Status
HB – 4	Homeowner’s Exemption Maximum Amount Adjustment 1/09	LAW	LAW
HB – 83	Personal Property List (declaration form) 1/09	LAW	LAW
HB - 141a	Floating Home Definition 7/09	To Governor	
HB - 203aa	Renewable Energy Exemption ; 3% Gross Energy Tax – Operating Property 1/09	S-Loc. Gov.	
HB – 206	Highway District’s Budget Certification Dates 7/09	To Governor	

Bills that Might Become Law

(continued)

Bill No.	Subject Matter / Effective Date	Status 4/2/09	Current Status
HB - 233a	Renewable Energy Exemption – Residential, Other plant not producing for resale. 1/09	S-Loc. Gov.	
HB - 244a	Urban Renewal Term 7/09	S-Loc. Gov.	
HB – 253	COSA – School Facility Levy 7/09	S-Loc. Gov	
SB 1091	School District Levies Exempt from Urban Renewal Distribution 3/09	LAW	LAW
SB 1138	Section 42 Low Income Housing 7/09	To Governor	

(HB – 4) PROPERTY TAX EXEMPTION HOMESTEADS -

Amends existing law (63-602G) to allow the maximum amount of the homeowner's exemption to be adjusted for the changes in the Idaho Housing Price Index whether the change be an increase or a decrease.

- An important one word Change:
- The adjustments shall effect changes in the amount subject to tax exemption by a percentage *equal as near as practicable to the annual ~~increase~~ change in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight.*

History of Idaho's Homeowner's Exemption

Idaho's homeowner's exemption began in 1980, with a maximum of \$10,000. It remained at that level until 1983, when it was raised to \$50,000 by voter initiative. The 2006 Idaho Legislature raised the exemption to \$75,000 and tied future numbers to the Housing Price Index.

History of Maximum Homeowner's Exemption

Years	Maximum
1980 – 1982	\$10,000
1983 – 2005	\$50,000
2006	\$75,000
2007- +19.1%	\$89,325
2008 – + 13.0%	\$100,938
2009 – + 3.5%	\$104,471
2010–Guess -2.5%	\$101,860

HB-4 - Rules Review

- Rule 609 spells out the detailed procedures for computing the maximum limit for the homeowner's exemption.
- No change is necessary because the rule was originally written to say “based on the **change** in the Idaho HPI”.
- The rule and the law now conform.

(HB – 83) Amends Existing law (63-602KK), the Personal Property Exemption – *Technical Changes*

1. Clarifies that the **exemption becomes effective** the year following the year the State Controller certifies an increase in the general fund of at least 5%.
2. Attempted to clarify that **urban renewal districts will be reimbursed** for exempted personal property. **However** the word “existing” remains in the statute. (63-602KK(4)(a)).
3. Removes an erroneous provision requiring that the personal property be added to the certified budget before computing the **3% limit**.
4. Requires inclusion of the exempt personal property in taxable value for **levy setting**.

(HB – 83) Amends Existing Law (63-602KK), the \$100,000 Personal Property Exemption - *Substantial Changes*

1. Changes the requirement to file an annual personal property declaration (application for exemption) for those taxpayers having less than \$100K in personal property per county. This provision **does not go into effect until the personal property exemption is triggered by the 5% increase in state revenues** and the taxpayer qualifies for the exemption by filing one (*perhaps*) final personal property declaration.
2. Does not provide a method for calculating the amount (***Value***) of personal property to be exempt from taxpayers having less than \$100,000 worth of personal property. **How will the amount (*Tax*) to be paid by the state of Idaho to the counties be known? Problem-Rule needed.**
3. Changes the **trigger year** from “previous fiscal year to “2008 fiscal year”. It makes FY 2008 state revenues the base.

HB – 83 (continued)-Changes the Requirement to File an Annual Personal Property Declaration for those Taxpayers Qualifying for the \$100,000 Exemption and having less than \$100,000 of personal property.

1. The taxpayer must have received the exemption during the previous year – In other words must have filed a personal property declaration for the first year of the exemption.
2. The value of the taxpayer's personal property must not exceed \$100,000 per county. The taxpayer must not have made purchases that would cause his personal property to exceed \$100,000.
3. The taxpayer must sign an affidavit stating that the conditions in 1 & 2 above have been met.

HB – 83 Rules Review

- **Review the rules that were written last year as a result of passage of HB 599a – The Exemption**

1. Rule 302 – **List of Taxable Personal Property**
2. Rule 313 – **Assessment of Transient P. P.**
3. Rule 626 – **Property Exempt from Taxation – Certain Personal Property (Covers administration of the state reimbursement to the counties)**

Rule 302 – **List** of Taxable Personal Property (**Old Business**)

- The list (Property Declaration) is still the application for exemption and for sure must be filed if your Personal Property is valued more than \$100,000.
- What about **multiple parcels**? Each application will contain an attestation to the effect that you are eligible for the exemption. [Ownership (IRC Section 267) multi-accounts, and the \$100,000 limit]

Rule 302 – List of Taxable Personal Property (New Business- HB 83)

- **An affidavit may be filed in lieu of the declaration (application) If:**
 1. The lists (63-302, 313, 602Y I.C.) were filed for the first year that the exemption is in effect, and
 2. The aggregate value of the personal property does not exceed \$100,000, and
 3. *The aggregate current market value of the personal property is stated on the affidavit (By Rule), and if
 4. QIE (63-3029B) is not claimed (By Rule).

***If the taxpayer does not qualify to use the affidavit, the full listing must be made, not just the property or value over \$100,000.**

Rule 302 Addressing HB – 83(Draft)

- **04. Affidavit in Lieu of Application for Exemption.** The “Affidavit in Lieu of Application for Exemption” permitted in section 63-602KK, Idaho Code, shall be identified as the “personal property affidavit.” Except as provided in section 05 of these rules, a taxpayer may submit a personal property affidavit in lieu of the list of personal property required by Section 63-302, Idaho Code, and this affidavit will constitute a valid substitute application for the exemption provided in Section 63-602KK, Idaho Code, provided that the taxpayer complies with Subsections 04.a. and 04.b. of this rule.

- The list(s) required by ~~either~~ Section 63-302, Section 63-313, ~~or~~ and Section 63-602Y, Idaho Code, was (were) submitted the first year during which the exemption applies to transient or other personal property for that taxpayer.

- The personal property affidavit includes an estimate of the current market value of the taxpayer’s property upon which application for the exemption in Section 63-602KK is being made. This estimate of current market value may be in aggregate for all property otherwise required to be listed under the provisions of Section 63-302, Idaho Code. ()

Rule 302 Addressing HB – 83 (Draft)

(Continued)

- The aggregate estimate of current market value included on the personal property affidavit shall be used by the assessor to fulfill the requirements of Section 63-301, Idaho Code, to determine the market value for assessment purposes of the taxpayer's personal property. ()
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- The personal property affidavit shall be permitted provided that the value reported by the taxpayer for property otherwise required to be listed under Section 63-302, Idaho Code does not exceed one hundred thousand dollars (\$100,000). ()
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- If the current market value of the taxpayer's property required to be listed under Section 63-302, Idaho Code, exceeds one hundred thousand dollars (\$100,000), the taxpayer must list all property otherwise required to be listed under Section 63-302, Idaho Code, not just the property or value exceeding one hundred thousand dollars (\$100,000). ()
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Rule 302 Addressing HB – 83(Draft)

(Continued)

- A taxpayer otherwise subject to the filing requirements in section 63-302, Idaho Code, with multiple parcels for which separate lists have been filed previously may file the personal property affidavit provided that the total current market value of all otherwise reportable personal property for all of the parcels owned by that taxpayer in a county does not exceed \$100,000.
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- 05. Taxpayers who have elected to designate property to be included in the exemption provide for in Section 63-3029B, Idaho Code, shall not be eligible to file the personal property affidavit otherwise permitted in section 04 of these rules. This prohibition shall be limited to the time period during which the taxpayer may be subject to recapture under Section 63-3029B, Idaho Code.
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Rule 313 – Assessment of Transient Personal Property

04. Exempt Transient Personal Property. (4-?-09)

a. Section 63-602KK, Idaho Code, when applicable provides for exemption of each eligible taxpayer's personal property to the extent of one hundred thousand dollars (\$100,000) within each county. **The limit on the exemption shall apply to the sum of the taxpayer's non-transient personal property and transient personal property.** Prior to applying the exemption, transient personal property shall be allocated among the counties based on the prorated value as provided in Subsection 63-313(2), Idaho Code, or based on the taxpayer's pro-ration of value if provided. If the taxpayer files an affidavit in lieu of the list otherwise required in section 63-313, Idaho Code, the taxpayer's pro-ration of value shall be used in each applicable county instead of the allocation procedure in Subsection 63-313(2), Idaho Code. (4-?-09)

Rule 626 – Property Exempt from Taxation – Certain Personal Property

- Covers all aspects of the administration of the 602KK exemption.

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1. The effective date of the exemption.
2. The filing of the application or the affidavit
3. Once the exemption is triggered the taxpayer must initially file the personal property declaration in order to be exempt.
4. If the taxpayers personal property is valued at less than \$100K he may file the affidavit. If the affidavit is filed it must be filed by the date set out in Idaho Code. [63-302 (Mar. 15) 313 (Nov. 1) 602Y(1st Mon. in Nov.)]

Rule 626 (continued)

5. If the taxpayer **fails to file the affidavit** he must re-establish eligibility for the exemption by filing a new declaration.
6. The **affidavit option** is **not** available to taxpayers who designate property to be included in the QIE program.
7. By Code the final reimbursement list must be submitted to the Tax Commission by the 3rd Monday in Nov. In order to include the transient property and missed property, this date should be changed. **Future Legislation?**

HB-83 – Third change- Changes the **trigger year** from “previous fiscal year to “2008 fiscal year”.

- So when will the \$100,000 Personal Property Exemption become effective?
- FY 2008 state revenue was \$2,909,847,685
- FY 2008 increased by 5% **\$3,055,340,000**
- FY 2009 projected revenue \$2,560,000,000
- FY 2010 projected revenue \$2,550,000,000
- FY 10 needs to increase **19.8%** **\$3,055,340,000**
- **It might be a while!**

Rule 205-Personal and Real Property Defined

- The focus is on the definition of the word “Fixture”.
- If an item satisfies all three tests it is a fixture and therefore real property- and not personal property.
 1. **Annexation:** It become a part of an improvement to real property and removing would cause material damage.
 2. **Adaptation:** The use or purpose is integral to the use of the real property to which it is affixed.
 3. **Intent:** The item would be personal property unless a (reasonable) person would intend to make the article a permanent addition to the real property.
- “Fixtures does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.”
- No List

(HB 141a)Amends the definition of “Floating Home” as found in Section 63-201(10) I.C.

- Floating home means a floating structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, ~~has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.~~

(HB 141a) Why the Change?

- To allow all floating homes to be treated in the same manner for assessment purposes.
- Floating home = Improvement = Real Property
- Under the former definition, a floating home moored in a lake that does not have an on shore sewage system would not be a floating home, would not be an improvement, so would most likely have been personal property.
- If personal property were exempt, some Floating homes would be exempt and some would be taxed.

(HB 203a) Relating to Renewable Energy Projects - Operating Property

(63-602JJ, 63-3501, 3502B & 63-802)

- Adds **renewable biomass, solar, and landfill gas power** plant to the property tax exemption list. Two years ago wind was exempted, and last year geothermal was exempted. (63-602JJ)
- Exempt property shall not be included in **new construction**.
- **Levies a 3% renewable energy tax** on the gross energy earnings
- In cases where producers stop producing, for purposes of computing allowable property tax increase **under 63-802** a taxing district can add the last full year's receipts to the amount of the property taxes certified for its budget.
- Effective date: Retro **Jan. 1, 2009**
- Requires a change to Rule 509 (**Reporting on the Abstract**) in order to keep track of the amount of the exempt property.

(HB 206) Highway Districts - Repeals section 40-1329 and adopts 63-803(3) as budget certification dates.

- 40-1329 required highway districts to complete and finalize their budgets no later than the Tuesday following the first Monday in September.
- 63-803(3) provides that certification of the budget to the county commissioners is to occur not later than the Thursday prior to the second Monday in September.
- This legislation requires Highway Districts to follow the provisions of 63-803(3)

(HB 233a) Provides two new sections exempting renewable energy devices.

- New Section 63-60200 exempts devices attached to residential property.
- New Section 63-602PP exempts non-residential property but the exemption shall not be allowed if the taxpayer sells the energy produced other than as a credit against a bill from a commercial power supply.
- Exempt property not to be included in new construction
- Install 1/1/09 – 12/31/18. The exemption remains in effect for as long as it is producing energy.

(HB 244a) Urban Renewal

- Original bill had provisions for the ISTC to monitor the provision in law that the value of the base can not exceed 10% of the value of the city.
- Amendments in the House removed the oversight provisions and retained the provision that the term of Urban Renewal not exceed 24 years even if the area is expanded.

(HB 253) Adds a new section (33-317A) providing for a cooperative service agency school plant facility levy

- Authorizes a new levy - .4% maximum – for constructing and maintaining school facilities.
- Can be in addition to the school plant facility levy.
- Voter approval tests based on existing school plant facilities and proposed COSA plant facilities levies based on immediate prior year values.

(SB 1091) Amends Section 50-2908, Calculation of levies for taxing districts where an urban renewal revenue allocation area is located.

- This completes the work of last years HB 470
- 470 stipulated that urban renewal RAA's would **not** benefit from the following levies certified after Dec. 31, 2007:
 1. For refunds and judgments
 2. 2 year overrides
 3. Bonds and plant facilities
 4. 2 year or less school supplemental

SB 1091 (Continued)

- Last year's HB 470 left out some school non-permanent supplemental levies – Greater than two years as provided by Section 33-802(4) Idaho Code.
- Senate Bill 1091 includes these levies in the list of levies that will not be allowed to generate funds for RAAs.
- Rule 804 – Tax Levy – Urban Renewal needs to be updated to include this supplemental levy.

(SB 1138) Relating to Sec. 42, low income properties

– Appraisal procedures – Effective 1/09

- The Feds working with state housing agencies offer income tax credits to developers to encourage the construction of housing units for persons making no more than 60% of an area's median income. The rents are restricted by a long term tax credit regulatory agreement.
- The developer usually sells the tax credits in a secondary market, takes the money and builds the project. He then gets to manage the rent restricted project for the next few decades.
- The debate has gone on for years: Should tax credits associated with a Sec. 42 low income projects be part of the assessed value and if so, how should they be valued?
- In the Brandon Bay vs. Payette County case the Idaho Supreme Court ruled that, yes the tax credits should be considered, however the ruling did not give a methodology for valuing the credits.

(SB 1138) Sec. 42 continued

- Last year a house bill to fully exempt the tax credit contributory value passed the house but was killed in a senate committee.
- This year SB 1138 passed both chambers (with only one dissenting vote) and tells us what to do with the tax credit factor.
- Senate Bill 1138-
 1. Section 1 sets forth 6 *good intentions*.
 2. Section 2 of bill adds a new section (63-205A) and tells us how to appraise Section 42 properties.

(SB 1138) Sec. 42 continued

- How should Section 42 properties be valued?
 1. By the Sales Comparison Approach using similar rent restricted properties.
 2. By the Cost Approach which shall include an economic obsolescence factor associated with the income and rent restrictions.
 3. By the Income Approach modified by the addition of the total tax credits divided by the number of years in the regulatory agreement. [tax credits not capitalized but – but added]
 4. The three approaches will then be reconciled.
(Correlation)

(HB 1138) Sec. 42 continued

- Other Interesting Provisions:
 1. For those properties whose associated tax credits were all applied before January 1, 2009, no amount will be added to the income approach.
 2. The State Constitutional problem that this provision may encounter is overcome by the addition of paragraph f. which exempts amounts that are computed to be larger by any other income approach than the one explained earlier.
 3. The tax commission shall gather market data to determine cap rates and shall make the information available to county assessors.

(SB 1138) Sec. 42 continued

4. Owners shall submit financial statements to the ISTC. The Idaho Housing and Finance Association shall provide to the ISTC tax credit and regulatory agreement information. This information is then to be made available to the county assessors.
5. Failure to submit the financial statements results in the county using market rents and expense in the appraisal of Sec. 42's.
6. An explanation in is needed to make the “penalty” state above in 5 meaningful. See proposed wording in following slide.

Proposed Wording for Rule 217

- The exemption provided by Section 63-205(A)(2)(f) Idaho Code, applies only to the difference in value due to not adding an amount to the income approach for those section 42 properties no longer receiving tax credits at January 1, 2009. It does not apply to the income approach that would use market expenses and income as provided for in Section 63-205(A)(2)(d) Idaho Code, applicable to those properties for which financial statements have not been made available.