

Idaho State Tax Commission
PROPERTY TAX RULES COMMITTEE
Meeting Minutes
March 27, 2012
9:00 am – 12:00 pm, 1CR5

- ATTENDEES:** Alan Dornfest, Rick Anderson, Steve Fiscus, Erick Shaner, Gene Kuehn, Betty Dressen, Christopher Rich, Kathlynn Ireland, Jan Barnard, Shelley Sheridan, Janet James, Pam Waters, Bob McQuade, June Fullmer, Dwight Davis, Joe Cox, Brent Adamson, Ron Fisher, Sharon Worley, Georgia Plischke, Glenna Young, Sharon Worley, Terry Accordino, David Langhorst, Tony Poinelli, Seth Grigg, Blake Alder, Diona Lassiter, Brad Wills, Tim Tallman, Rich Jackson, Carl Olsson, Gerry Bowden
Phone Participants: Dan Anderson, Brad Bovey, Dave Packer, Kris Gaynes, Susan (Clearwater County), Donna Spier, Sarah (Jefferson County), Jerry White, Alex Chizewsky, Robert Rios, Mike McDowell, Rich (Kootenai County)
- MINUTES:** Gene Kuehn made a motion to approve the minutes of February 28, 2012, as amended. Betty Dressen seconded the motion. The motion carried.
- LEGISLATIVE UPDATE:**
- HB 354 deletes custom computer programs from the list of intangible personal property and is held in committee.
 - HB 356 Amends county Board of Equalization’s process of approving/disapproving exemptions and hearing appeals of exemption decisions.
 - HB 357 deals with timberland valuation and codifies what is done by the CFTM. No substantive changes; continues what is currently in practice.
 - HB 358a cleans up administrative issues and corrects procedures for erroneous levies. HB 358a is retroactive to January 1, 2012.
 - HB 462 amends law to bring “gathering lines” for natural and manufactured gas under central assessment by the Tax Commission. Unknown if rules are needed to avoid double taxation.
 - HB 519 exempts site improvements associated with land. HB 519 is on the agenda for discussion.
 - HB 576 (formerly HB 453) provides new requirements for elected levies. Rules may be needed quickly for round of levy elections in August. Betty Dressen will discuss with the clerks at the next budget/levy workshop.
 - HB 584a continues the homeowners exemption after death of owner for current year plus one additional year. HB 584 has no language restricting a vacant home. Unknown if rules needed. Rick will check if bill conflicts with any rules.
 - HB 697 allows non-school taxing districts to exceed budget limitations. Bill contains a 5-year sunset clause and requires simple majority election.
 - SB 1366 amends APA to require negotiated rulemaking when feasible. There are concerns with the time constraints within the rulemaking process and requirements to publish an additional notice.

**RULES STATUS
REPORT:**

Rule 000 provides references to Idaho Code sections that give the Tax Commission legal authority for rulemaking. Agenda item.

Rule 003 adds reference to Section 63-715, Idaho Code, relating to the Tax Deferral Program.

Rule 006 adopts IAAO standards by reference and provides new mapping standard reference. Rule 006 is tabled until June 2012.

Rule 131 relates to ratio studies and adds language pertaining to foreclosure sales.

Rule 313 addresses transient personal property taxed in another state.

Rule 612 provides recreational vehicles are taxable. Rule 612 was approved pending PARF approval.

Rule 605 defines requirements for property used for school or educational purposes to get the exemption.

Rule 714 provides for qualifications for property tax deferral applicants.

Rule 995 defines incorporated city for sales tax distribution purposes and source of population estimates for both cities and counties.

HB 519 The Committee approved moving the discussion of HB 519 to the top of the agenda.

Alan advised a temporary rule will be necessary and plans to have Rule 620T implemented by mid-April to meet deadline for notices to be mailed. Temporary Rule 620 will need Tax Commissioners' approval. A special Open Meeting will be held on April 10.

Alan noted that Rule 802 will be promulgated as a proposed rule to address section 2 of HB 519 relating to the exemption and the new construction roll subtraction. The exemption cannot affect any construction roll until 2013. Therefore Rule 802 does not meet the requirements of a temporary rule.

Alan also noted Rule 509 will be promulgated addressing abstracts as a proposed rule, not temporary, consistent with the new construction roll requirements.

Alan mentioned the request for a Tax Commission form for statewide use to apply for the exemption. Gene stated the application should be uniform and used statewide. Alan doubted authority for the Tax Commission to mandate one form and was unclear as to how any uniform application could be addressed in rule. Gene noted the assessors are working on it and will bring something to the committee. Carl Olsson suggested the committee dissect the statute before a decision be made on adopting a form.

Alan reviewed draft 4.1 of temporary Rule 620. First issue of substance is when the site improvements were made. For example, a developer made site improvements 10 years ago then sold the development 5 years later to developer B. The law states that the exemption applies until title of the land is conveyed from the land developer. Alan's interpretation is that the conveyance language in the statute is not a ticket *in* to getting the exemption, but a ticket *out* to losing the exemption. In order to lose something, you must have had it to begin with, and there was no exemption 5 to 10 years ago during those periods. Eligibility for the exemption is addressed in Subparagraph 620.03.c.ii. which states if the owner has changed and the exemption not claimed, the new owner may be eligible for the exemption.

Carl Olsson stated that developer B could wait 5 years and apply for the exemption because he would have incurred the cost of the improvements when the site was purchased. Mike McDowell and Dan Anderson expressed confusion over the meaning of developer and who would qualify as a developer. The person buying land from a developer would be a speculator. Dan stated the rule was confusing.

Brad Wills stated the intent of HB 519 is to state that land development is taking raw land and installing the site improvements in an income tax producing transaction. Brad noted that by using Carl's example, every vacant land would qualify for the exemption. That was not the intent of the bill. In Carl's example, the purchaser didn't purchase raw land, instead purchased a finished product for resale. Brad noted the definition of land is the guy who carries the inventory, and when the land was sold, it was sold as an inventory type transaction.

Alan suggested deleting new language in Subparagraph 620.03.c.i. and ii. relating to conveyance of the land. Language is needed, however, clarifying that eligibility goes with the original developer who added the site improvements. Dan Anderson suggested adding "some" or "all" to include the person who finished the improvements. Georgia Plischke agreed with striking 620.03.c.i. and ii. and clarifying who the original developer is in Subparagraph 620.03.d.

Alan asked if there was consensus that the exemption be limited to the original owner provided that owner installed something in the nature of site improvements. Brad disagreed and said the intent was the site improvement portion of the lot is the exempt portion, so if three people put in site improvements, the person finishing the lot is still the developer and the land is still in his inventory.

Consensus was reached that whenever there was a transfer, the owner would not be entitled to eligibility to anything, even site improvements the new owner made.

Brad asked when property is considered leaving the developer. If developer A sells land to a trust, developer A is still the developer. Carl clarified that selling the land to the trust is considered a conveyance and therefore does not qualify for the exemption.

Joe Cox clarified that all the movement of the land for financing purposes does not matter, it was the owner that puts in the infrastructure that applies for the exemption. Alan agreed, and reiterated adding language clarifying that the exemption is limited to the original owner/installer.

Mike McDowell noted that the reference to Subparagraph 620.03.c. in the beginning of Subsection 620.03 needs to be stricken. Alan agreed and noted the language in Subsection 620.03.d. was then not necessary.

Brad noted that the tax return would not show that the land was held for inventory and suggested striking Subparagraph 620.03.c.iii. as well. Mike McDowell suggested adding that the tax return would be considered by the county commissioners *and* the assessor.

Alan stated the rule cannot solve all problems, but will provide some guidance. Alan suggested creating a subcommittee to meet next week and compose another draft. The subcommittee participants will be Alan Dornfest, Rick Anderson, Gene Kuehn, Georgia Plischke, Brad Wills, Mike McDowell, and Sharon Worley. Subcommittee will meet Thursday, April 5.

Discussion continued about the definition of land developer. Carl noted that not everyone will qualify as a land developer and stated the statute restricts it to developers who are in the development business. In the application process, the articles of incorporation will be needed to prove who the developer is.

Rich Jackson stated the definition of land developer in the current is problematic. The law states that people can hold up where they have retailed five sales and it would not be inventoried, it would be investment property. Once passed the fifth lot sale, they become a retailer of real estate which makes it inventory. Carl noted the more the rule ties the definition of land developer to the income tax code, the more problematic. Carl suggested taking a different approach by defining the developer as the legal entity that put in the site improvements. Alan noted that that statement is in the beginning of Subparagraph 620.03. Consensus was reached to strike all of Subparagraph 620.03.d. except the first sentence stating that a land developer is a person as defined in Section 63-201(18), Idaho Code.

OLD BUSINESS:

- Rule 000 Rule 000 adds correct and pertinent chapters of Idaho Code granting the Tax Commission authority to promulgate rules.
Rule 000 will be tabled to June.
- Rule 003 Rule 003 corrects references to Idaho Code referring to appeals and the property tax reduction program. Alan questioned if a reference to the Qualified Investment Exemption should be added. Rick will get clarification.
Rule 003 will be tabled to June.
- Rule 131 Reference to the Standard on Verification and Adjustment of Sales was added to Subsection 131.01 to provide clarity as to where short sales fall.
Gene Kuehn will distribute rule to assessors for comments.
- Rule 313 Rule 313 deals with taxing property that has left Idaho but has not been taxed in another state. Language was added in Subsection 313.01 to clarify that the property that is outside of Idaho for a time and does not pay taxes to another state is taxed in Idaho. Terry recommended some language changes.
- MOTION Gene Kuehn made a motion to approve Rule 313 as amended. Steve Fiscus seconded the motion. The motion carried.
- Rule 605 Rule 605 addresses property leased for educational purposes. Language was added to Subparagraph 605.01.a. to clarify that the *portions* of the property used as required are eligible for the exemption. Subsection 605.02 states that the lessee may provide proof of eligibility.

Gene will send Rule 605 to the assessors for comments.

Rule 714 New Rule 714 addresses property tax deferral and the issue of reverse mortgages and eligibility for the deferral program. Subparagraph 714.01.a. provides a definition of “sufficient equity” meaning greater than 10 times the current year’s property tax. The problem is that the statute does not provide a time or a definition of sufficient equity.

Alan suggested Pam and Rick work on a technical correction for the statute to clarify the definition of sufficient equity.

Rule 714 will be tabled to June.

Rule 995 Language in Subsection 995.01 was added to specify the table used for population estimates. Suggestion was made to add language providing a mechanism of notifying the Tax Commission when population estimates were revised.

Betty will distribute to clerks for comments.

NEW BUSINESS:

Rule 217 Rick suggested aligning the statute and Rule 217 and asked the committee to consider if actual and functional use needed to be addressed in the rule.

Alan did not believe there was an alignment issue. Rick will research and report back to the committee.

Rules Affected by Legislation Rick will research if any additional temporary rules are needed as a result of current legislation

HB 462 may require rules. Steve Fiscus will look into the need for a rule to address assessment of gathering lines.

Alan will research HB 586 for possible rulemaking.

NEXT MEETING: April 24, 2012, at 9:00 a.m. in 1CR5.

ADJOURNMENT: There being no further business, the meeting was adjourned.

**Alan Dornfest
Chairman**

**Shelley Sheridan
Committee Secretary**