

**PROPERTY TAX RULES COMMITTEE
AGENDA**

The Committee convenes on Tuesday February 27, 2018, at **9:30 a.m.** at:

Idaho State Tax Commission
Room 1CR5 / Plaza IV / 800 Park Ave / Boise, Idaho

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| Welcome & Introductions | <i>Committee Chair Alan Dornfest</i> | |
| Approval of Minutes – January 23, 2018 Meeting | <i>Committee Chair Alan Dornfest</i> | pg 2 |
| Legislative Report – New Legislation | <i>Committee Chair Alan Dornfest</i> | |
| Rules Status Reports – February 27, 2018 | <i>Rick Anderson</i> | pg 4 |

Discussion of open items:

- 1) New districts or districts newly annexed into RAAs with respect to increment value to be added as new construction later (Rule 802) pg 5
- 2) Definition of “base assessment roll” [(I.C. 50-2903(4))] in respect to exempt property becoming taxable. (Rule 804) pg 6
- 3) Application of I.C. 63-602Y to property owned by the government transferred to private party (Rule 312) pg 7
- 4) Assessor’s request to re-examine operating property value must be filed before July 15 (Rule 408) pg 10
- 5) Clarification that HOE and Circuit Breaker partial ownership rules apply only when the deed does not contain specific allocation percentages (Rule 610, Rule 709) pg 11

Next meeting date: Does Wednesday March 21 work?

Meeting adjourned

For more information, please contact the Committee Chair, or the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

Date: January 23, 2018
Time: 9:30 am
Location: 1CR5

ATTENDEES:

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|------------------------------------|--|
| Committee Members: | Alan Dornfest, Rick Anderson, Betty Dressen, Bob McQuade, Brian Stender, Jan Barnard, Janet James, Kathlynn Ireland, Sharon Worley, Steve Fiscus |
| Commissioners: | Tom Katsilometes |
| Rules Coordinator: | Sherry Briscoe |
| State Tax Commission Staff: | George Brown, Mat Cundiff, Pam Waters, Shaunna Roeber, Matt Virgil |
| Guests: | Brad Vanderpool, Brandee Kline, Bob Bingham (via phone), Joe Cox, June Fullmer, Katrina Basye, Sally Finlayson |

November 7, 2017 minutes were motioned for approval by Betty Dressen, seconded by Brian Stender.

Rick Anderson clarified that this meeting was basically to outline areas and projects that we will work on this year. He also skimmed through the current Rules Status Report.

Alan Dornfest updated the meeting members on the Legislative Report, and discussed three bills that were presented, and approved.

1. Certified mail for abstracts
2. Correcting errors in time frame to the third Monday in October
3. Dates for reporting gross earning taxes for solar, wind, etc.

Alan noted that the House did not approve a portion of Rule 314, dealing with assessors using aerial photographs. The concern was with the possible use of drones, however, the Law states drones cannot be flown over private property without the owner's permission.

Discussion of Open Items:

| Property Tax (35.01.03) | | |
|--------------------------------|--|------------------|
| RULE NUMBER | TITLE | STATUS |
| 802 | NEW DISTRICTS OR DISTRICTS NEWLY ANNEXED INTO RAAs Considerations are: What is the new construction to be added? Sample language was suggested. | Will be reviewed |
| 312 | PARTIAL YEAR ASSESSMENT OF REAL AND PERSONAL PROPERTY | Will be reviewed |

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| | Concern – property owned by the government then is sold into private hands. George’s comments will be put on hold for now. Bob McQuade feels this does need to be addressed. | |
| 408 | RE-EXAMINATION OF VALUE – COMPLAINT BY ASSESSOR | Will be reviewed |
| | There is an issue with the date (...must be filed before July 15) Steve Fiscus suggest talking to Jerott before moving forward. | |
| 610 | HOMEOWNER EXEMPTIONS | Will be reviewed |
| | Discussed issue of partial ownership, clarifying that it defaults to whatever the deed says, if it is specific. | |
| 609 | MAXIMUM AMOUNT OF HOMESTEAD EXEMPTION | Tabled |
| | The issue here is if it is per parcel or per person living on the parcel. Also needs a definition of ‘parcel’. Janet James moved to table this until later. | |
| 626 | PROPERTY EXEMPT FROM TAXATION – CERTAIN PERSONAL PROPERTY | Tabled |
| | The question came up of some possible legislation of a local option exemption. Regarding Executive Summary (handed out) It addressed administrative issues. Sharon Worley will send this out to the Assessors to get some feedback. | |

Next meeting will be in 1CR5 on Tuesday, February 27, at 9:30 am.

Alan Dornfest
Committee Chair

Sherry Briscoe
Rules Coordinator

**Property Tax Rules Status Report
2018 – 2019 Rules
Feb 27, 2018**

| Rule No. | Neg? notice date | Subject Matter | Date Sent/ DFM Track No. | Date- DFM- ARRF | Rule Status | Most Recent Draft | Comments | Date Sent For Publication |
|--|------------------|----------------------------|--------------------------|-----------------|---|-------------------|---|---------------------------|
| 006 | No, None | Incorporation by Reference | | None | | None | Standard updates – prepare synopsis of change | |
| Other Open Items for Discussion | | | | | | | | |
| Issue | | | | | Rule | | | |
| The problem of new districts or districts newly annexed into RAAs with respect to increment value to be added as new construction later | | | | | Rule 802 - Budget certification relating to new construction and annexation – Sample language and Mike’s comment | | | |
| Application of I.C. 63-602Y to property owned by the government transferred to private party | | | | | Rule 312 – Partial year assessment of real and personal property- Existing Rule 312 and George Brown’s comments | | | |
| Assessor’s request to re-examine operating property value must be filed before July 15 | | | | | Rule 408 – Re-examination of value – Complaint by the Assessor – Calendar and Rule 408 | | | |
| HOE and Circuit Breaker Clarification: If specified in the deed, the ownership interest are determined as specified. | | | | | Rule 610 for HOE, Rule 709 for Circuit Breaker. See Rule 610.08 | | | |
| C. 50-2903(4) – says that property that becomes taxable after the date of the base assessment roll is added to the base? Does this mean only [exempt] property that existed when the base was formed – But what about new [exempt] property added later? | | | | | Rule 804 – Tax Levy – Certification – Urban Renewal | | | |

Rule 802.06.e. - Sample wording for New districts or districts newly annexed into RAAs with respect to increment value to be added as new construction later

e. For taxing districts formed after December 31, 2006 or ~~annexing into~~ **including any part** of a revenue allocation area after that date, the amount of increment value to be added to the new construction roll will equal any positive difference between the increment value at the time of formation of the taxing district or **annexation inclusion** into the revenue allocation area and the increment value at the time of dissolution of the revenue allocation area or the increment value within the area deannexed from the revenue allocation area. ()

From the minutes of the November 7, Rules Meeting:

Mike would like to add to Subsection 802.06.e. the language "...the taxing district or at the time annexation into the..."

Revised wording above provided by Alan Dornfest

50-2903. DEFINITIONS. The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Act" or "this act" means this revenue allocation act.

(2) "Agency" or "urban renewal agency" means a public body created pursuant to section [50-2006](#), Idaho Code.

(3) "Authorized municipality" or "municipality" means any county or incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.

(4) Except as provided in section [50-2903A](#), Idaho Code, "base assessment roll" means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allocation area that becomes taxable after the date of the base assessment roll, provided any increase in valuation caused by the removal of the agricultural tax exemption from undeveloped agricultural land in a revenue allocation area shall be added to the base assessment roll. An urban renewal plan containing a revenue allocation financing provision adopted or modified prior to July 1, 2016, is not subject to section [50-2903A](#), Idaho Code. For plans adopted or modified prior to July 1, 2016, and for subsequent modifications of those urban renewal plans, the value of the base assessment roll of property within the revenue allocation area shall be determined as if the modification had not occurred.

*Does it also include **exempt** property that was constructed in the RAA after the RAA formation that has now become taxable or is it the intent to include this newly constructed property as part of the "increment value" rather than include it on the base assessment roll?*

312. PARTIAL YEAR ASSESSMENT OF REAL AND PERSONAL PROPERTY (Rule 312).

Sections 63-311 and 63-602Y, Idaho Code

01. Quarterly Assessment. For each partial year assessment of any non-transient personal property, the assessment shall comply with the quarterly schedules provided in Sections 63-311 and 63-602Y, Idaho Code. (5-3-03)

02. Change of Status. The real or personal property that has a change of status as described in Section 63-602Y, Idaho Code, does not include federal or state of Idaho property. The property of the United States, except when taxation thereof is authorized by the Congress of the United States, the state, counties, cities, school districts, and other taxing districts that is transferred to a private owner continues to maintain a non-taxable status until January 1 of the year immediately after transfer. However, property owned by an urban renewal agency that is transferred to a private owner is subject to property tax according to the proration as described in Section 63-602Y, Idaho Code. (3-29-12)

03. Cross Reference. The partial year assessment of any non-transient personal property shall comply with the Idaho Supreme Court decision in *Xerox Corporation v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980). When assessing all non-transient personal property, each assessor should be aware of the following quotation from this decision: "Where the county undertakes to update its initial (personal property) declarations during the course of the tax year, it cannot increase a taxpayer's tax burden to reflect the taxpayer's acquisition of non-exempt property without decreasing that tax burden to reflect the fact that property reported by the taxpayer in an earlier declaration was no longer subject to the county's ad valorem tax." (Clarification added.) (5-3-03)

From: George R. Brown [<mailto:George.Brown@tax.idaho.gov>]
Sent: Tuesday, November 14, 2017 10:45 AM
To: Mike McDowell <mmcdowell@kcgov.us>
Cc: Alan Dornfest <Alan.Dornfest@tax.idaho.gov>; Steve Fiscus (sfiscus@tax.idaho.gov) <sfiscus@tax.idaho.gov>; Richard Houser <rhouser@kcgov.us>
Subject: RE: Rule regarding 63-602Y

Hi Mike,

The question is: Does any Idaho law, besides current administrative rule, preclude the application of the provisions of Idaho Code 63-602Y to property transferred from government ownership into an otherwise non-exempt status at some point during the year.

I believe that it is legal for government property to be rolled on (for lack of a better term for pro rating a year when exempt status is lost) just like any other exempt property under Idaho Code 63-602Y, and property tax rules can be modified accordingly.

There has been a thought espoused that government property could not constitutionally be included under that provision, but I am unable to find where that thought is supported. One argument I continue to hear in support of that notion is that government property is “non-taxable” instead of being “exempt.” I’m not sure there is a legal difference in those two terms. That may be irrelevant, however, because both the Idaho Constitution and Idaho Code provide for an “exemption” for governmental property from taxation and both are otherwise silent on the issue.

My predecessor here at the Commission, Carl Olsson, is often identified as the precedent setter for this train of thought. I have not had a detailed conversation with him about it, but my understanding from those still at the Commission is that he identified *Hoover v. Minidoka County*, 50 Idaho 419 (1931) as determinative of the issue. That case discusses in fair detail (and, to its credit, fair modern English for an older case) the fact that prior and current taxes and associated liens are expunged on any property when it is transferred into government ownership. *Hoover* does discuss the issue at hand, albeit in broader terms, because that case really determined if a lien on land that was subsequently foreclosed by a governmental entity would spring back into being when the government transferred the land to a non-exempt owner. The *Hoover* Court correctly determined that, no, tax liens do not survive the government ownership and, while getting to that conclusion, cites its own precedent from a contemporary case, *Winton Lumber v. Shoshone County*, 294 P. 529 (1931) that concluded that property could not become taxable during a year in which it was originally exempt. The *Hoover* Court further quotes *Clearwater Timber Co. v. Nez Perce County* (C.C.) 155 F. 633 (Dist. Idaho, Northern Div., 1907) and identifies that case as establishing the doctrine it chose to follow in *Winton Lumber*. The judge in *Clearwater Timber* based that conclusion on a reasonable analysis of the policy involved and the fact that there was no statute allowing for assessment of property for only part of the year at that time. This may be where the divergence of my opinion and the basis of our current rule lies.

My understanding is the current rule disallowing part year assessment of property transferred away from government ownership is based on the reading of the case law above to deny such assessment. This is in conflict with the current Idaho Code 63-602Y, which allows for such part year assessment without any exclusion of property owned by the government. I think what has been missed is that the case law behind such a reading existed before the provisions of 63-602Y existed. The language of 63-602Y was originally promulgated as 63-105(20) in House Bill no. 231 in 1949, 18 years after the *Hoover*

case was decided. Before House Bill 231, any exemption of property would result in a full years exemption, regardless of transfers into non-exempt status during the year, unless there was some other statute governing the issue. The judge in *Clearwater Timber* points out that there were such statutes existing at the time, but not for transfers of real estate. Also, there was clearly not a differentiation in the law between property owned by the government and that owned by any other exempt entity at that time because the example he used in the *Clearwater* opinion was not a transfer from the government but, instead, a transfer of property exempted due to its ownership by a widow. Reading that case without taking into consideration the change in the law could lead to the conclusion that government ownership at any point during a year excludes property from taxability for the whole year.

There is a body of mostly federal case law I have dipped into that discusses government property being “non-taxable.” Those cases, in general, stand for the conclusion that property owned for “public purposes” is never taxable, but property owned by the government but not used for “public purposes” is taxable without further exemption. One could read into that body of law a difference in treatment of governmental property because if the property was owned by the government on the date of assessment (January 1) it would never be assessable for the year. Idaho Code 63-602Y only speaks to exempt property and not “non-taxable” property. One would have to make the leap that the non-taxable status (if it really exists as a separate status) would somehow create a situation that precluded a county from later picking up property to be taxed during the year. I cannot identify any precedent that would indicate the non-assessable nature of the property on the date of assessment would create a shield for what would otherwise be taxable property later in the year.

At this point, I see no reason to interpret 63-602Y as precluding the part year taxation of property the government transfers sometime during the year. That exception to 63-602Y exists only in administrative rule and, as has been discussed recently in the rules committee meetings here at the Tax Commission, doesn’t really make sense. I would enjoy hearing any other reading of this issue that someone might have out there before a decision on a new rule is made.

Thanks,

George R. Brown • Deputy Attorney General

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| From the Assessor's Calendar | | |
|---|---|--|
| FIRST WEEK IN JULY | <p>Notice of Operating Property Value – During this week, the state tax commission will notify each operating property owner of the value, appeal rights, and August 1 deadline for filing an appeal.</p> <p>Operating Property Values to Counties – During this week, the state tax commission will provide preliminary operating property values by district to county auditors and by county to assessors for examination.</p> | <p>§ 63-407 Rule 407 § 63-408 Rule 408</p> |
| JULY 15 | Deadline to File for Re-Examination of Value – No later than this date, any assessor wanting to request a re-examination of the value of any operating property must submit a written request to the state tax commission. | § 63-408 Rule 408 |
| THIRD MONDAY IN JULY | Operating Property Annexation Values Reported – The state tax commission shall report to the county auditor the preliminary operating property annexation values. | Rule 800 |
| Rule 408 | | |
| 408. RE-EXAMINATION OF VALUE -- COMPLAINT BY ASSESSOR (RULE 408). | | |
| <p>01. Request for Reexamination of Value. Section 63-408, Idaho Code, entitles the assessor (complainant) of any county in which the value of operating property is apportioned, to request that the State Tax Commission reexamine the valuation. (7-1-99)</p> <p>02. Information to be Provided by the State Tax Commission. After final values are established and sent to the respective taxpayers, the State Tax Commission shall send to each County Assessor a statement of the value allocated to Idaho for each centrally assessed taxpayer, together with the previous year's Idaho value for that taxpayer. (7-1-99)</p> <p>03. Complaint. On or before July 15, a complainant may file a complaint under Section 63-408, Idaho Code. A complaint by an assessor to the State Tax Commission to examine the valuation and allocation of value of operating property must be in writing and contain clear and concise questions regarding the valuation and allocation in question. The State Tax Commission shall send a copy of the complaint promptly to the taxpayer. (7-1-99)</p> <p>04. Meeting to Examine Valuation and Allocation. Upon receipt of a complaint under Section 63-408, Idaho Code, the staff of the State Tax Commission shall schedule a meeting between the staff appraiser(s) who performed the valuation and allocation and the complainant. Notice of this meeting shall be sent to the taxpayer in question. At this meeting, the staff appraiser(s) shall answer the complainant's questions to the best of his knowledge. The taxpayer or representative may participate in this meeting. (7-1-99)</p> | | |

08. Multiple Ownerships Including Community Interests as Partial Owners. A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a one-half (1/2) partial interest and the child holds a one-half (1/2) partial interest in the property. Qualification of the property for the homeowner's exemption is as follows: (7-1-99)()

a. If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. (3-15-02)()

b. If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to one-half (1/2) of the value of the improvement. (3-15-02)()

c. If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. (3-15-02)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to one-half (1/2) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. The one-half (1/2) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See Paragraph 610.03.c. of this rule. (4-7-11)()

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. (3-15-02)