

**PROPERTY TAX RULES COMMITTEE
AGENDA**

The Committee convenes on Tuesday, August 6, 2013, at **9:00 a.m.** at:

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

Welcome & Introductions *Committee Chair Alan Dornfest*

Approval of Minutes for June 18, 2013, Committee Meeting *Alan Dornfest*

Rules Status Report *Rick Anderson*

Rules Discussion and Approval (Proposed Property Tax Rules)

- a. **Rule 020** Value of Recreational Vehicles for Annual Registration and Taxation of Unregistered Recreational Vehicles *Rick Anderson*
- b. **Rule 205** Personal and Real Property – Definitions and Guidelines *Alan Dornfest*
- c. **Rule 407** Appeal of Operating Property Assessments *Alan Dornfest*
- d. **Rule 626** Property Exempt from Taxation – Certain Personal Property *Alan Dornfest*
- e. **Rule 632** Property Exempt from Taxation – Oil and Gas Wells *Rick Anderson*
- f. **Rule 803** Budget Certification *Alan Dornfest*
- g. **Rule 902** Property Tax Notice and Receipts *Alan Dornfest*

1. Any Additional Items for Discussion
2. Next meeting date:
3. 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.

DRAFT

Idaho State Tax Commission
PROPERTY TAX RULES COMMITTEE
Meeting Minutes
June 18, 2013 ~ 9:00 am – 12:00 pm ICR5

ATTENDEES:

Committee Members:	Alan Dornfest, Rick Anderson, Betty Dressen, Dwayne Hines, Gene Kuehn, Steve Fiscus, Glenna Young, Sharon Worley, Erin Brady
Commissioners:	Rich Jackson, Ken Roberts
Rules Coordinator:	Sherry Cann
State Tax Commission Staff:	Jan Barnard, Janet James, Kathlynn Ireland
Guests:	Bob McQuade, Brent Adamson, June Fullmer, Justin Baldwin, Katrina Basye, Linda Jones, Terry Accordino, Tim Tallman, Rick Smith, Georgia Pleschke, Gary Collins, Mike Brassey, John Watts, Elli Brown, Zack Hauge, Ben Davenport, and Brad Wills via phone

MINUTES: The May 20, 2013 minutes were unanimously approved.

STATUS REPORT: Rick presented a brief status report on the rules.

006	Technical changes, not a negotiated rule	
020	Tabled until August, we advised the 3 major RV groups	
302	Complete – deletes entire rule	
407	Will hold for August approval	
626	This needs to be in final form by August 1	
632	Tabled until August	
700	PARF was approved May 22, approved by committee on April 23, 2013	
802	Tabled until August	
804	<i>Referred to subcommittee – Urban renewal</i>	
902	Approved by committee subject to PARF approval	Temporary/Proposed rule

OLD BUSINESS:

Property Tax Rule 006: INCORPORATION BY REFERENCE. This rule is not negotiated. Rick gave his suggested changes to the rule and Gene moved to accept the rule with the changes, Betty seconded, all approved with amended dates. This PARF has been approved by DFM.

Proposed Rule 407: Rick Anderson, who chaired the subcommittee for this rule, discussed the changes that were incorporated, specifically to make the hearings non-adversarial. Rick Smith commented that it is an adversarial event; however our aim is to take the confrontation out of it.

DRAFT

Katrina from Idaho Power expressed their concerns, but do not object. Rick went through all of the changes.

*Action item for August meeting.

Proposed Rule 626: Gene would like to see a value for section 01 b “Taxpayers establishing initial eligibility...” Rick reviewed all of the changes in the proposed rule. An item to come back to, is how we’re dealing with potentially otherwise taxable personal property subject to other exemptions.

Proposed Property Tax Rule 803: Betty will follow up with the county clerks regarding this issue regarding L2 forms. This is on hold for the August meeting.

Proposed Rule 902: It was agreed that there is no need to send out a zero balance due notice to taxpayers. This negotiated and temporary rule will be presented to the Commissioners at the July 17, 2013 Open Meeting. It was agreed by committee to make this a Temporary rule, which we can now move forward with. And it is also a proposed negotiated rule.

NEW BUSINESS:

Proposed Rule 205: Personal and Real Property – definitions and guidelines. The issues in this negotiated rule are:

- a. Conflict in the three-factor test in statute.
- b. Fixture definitions needed to be clarified insuring uniformity.

Alan will have a second draft of this at the next meeting.

Next Meeting Date: Tuesday, August 6, 2013, 9:00 a.m. in 1CR5

Alan Dornfest
Chairman

Sherry A. E. Cann
Rules Coordinator

**2013-2014
Property Tax Rules Status Report
August 6, 2013-Draft**

Rule #	Date PARF Approved By Agency	Date DFM Sent (ISTC Number)	Date Approved By DFM	Rule Status	Date of Draft	Comments	Date Sent For Publication
006 (R)	5/8/13		5/22/13	Committee Approved June 18, 2013	Draft 3, June 10, 2013	Adopt by reference – updates standard reference manuals and guides	
020 (NR)	5/8/13		5/22/13	Tabled until Aug. meeting Solicited Comments	Draft1, April 15, 2013	R/V's - combined use – Registration fee value determination	
205 (NR)	6/24/13			On today's agenda	Draft 2, July 2, 2013	Personal Property – 3 factor test Predominant – focus on Improvements – two comments received to date 12th	
302T (NA)	4/4/13	2013-352-2	4/8/13	Approved by Commission -4-9-13		Complete -Deletes entire rule	
302 (R)	5/8/13		5/22/13	Committee Approved May 20, 2013	Draft 1, April 16, 2013	Deletes entire rule	
407 (NR)	5/8/13		5/22/13	On today's agenda	Draft 1, May 9, 2013	Hearing process for Appeals of Operating Property Assessments	
626T (NA)	4/4/13	2013-352-3	4/8/13	Approved by Commission -4-9-13		Completed	
626 (NR)	5/8/13		5/22/13	On Today's Agenda	Draft ,4 Thru July 11 with charts, 2013	PP exemption	
632T (NA)	4/4/13	2013-352-1	4/8/13	Approved by Commission -4-9-13		Defines oil/gas well	

Rule #	Date PARF Approved By Agency	Date DFM Sent (ISTC Number)	Date Approved By DFM	Rule Status	Date of Draft	Comments	Date Sent For Publication
632 (NR)	5/8/13		5/22/13	On Today's agenda	Draft 1, April 16, 2013	Defines oil/gas well	
700 (R)	5/8/13		5/22/13	Approved by the committee April 23, 2013 subject to PARF approval	Draft 1, March 15, 2013	Disclosure of PTR applicant information to state or federal elected officials	
803 (NR)	5/8/13		5/22/13	On Today's Agenda – Will be further discussed on Clerk's Conf.	Draft 1a, May 20, 2013	Budget certification – budget amounts not to exceed amount published in budget hearing notice.	
804 (NR)	5/8/13		5/22/13	Referred to Subcommittee – PARF notes 2 year project	None	Urban Renewal Districts	
902 T & P (NA) (R)	6/3/13		6/7/13	On today's agenda for discussion Needs negotiation determination?	Draft 1, May 15, 2013	Delete requirement to show exempt personal property on tax notices after 2013. July 17 Temp. Approval	

Discussion Issues

Issue	Comments
Improvements v. improved property as used in Code and Rule	Open -

Proposed Property Tax Rule 020, Draft 1a, July 29, 2013

Refer to section 3. This draft does not recognize differing values based on the varying number of fixtures and sets the value at 50% of the sales price – Also provides an effective date of Jan. 1, 2015

020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).

Section 49-446, Idaho Code.

(5-3-03)

01. Value of Recreational Vehicle For Registration Fees. Beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule.

	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

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Refer to section 3. This draft does not recognize differing values based on the varying number of fixtures and sets the value at 50% of the sales price – Also provides an effective date of Jan. 1, 2015

To use this depreciation schedule, multiply the sales price of the RV or the applicable value from Subsection 020.02 or 020.03 below by the appropriate “Percent Good” based on the “Age” and type of RV. Decide the “Age” based on the year of purchase as follows: purchased in the current year equals “Age” zero (0), purchased in the previous year equals “Age” one (1), etc. For example, in year 2004, the “Age” for an RV purchased in 2004 is zero (0), the “Age” for an RV purchased in 2003 is one (1), the “Age” for an RV purchased in 2002 is two (2), the “Age” for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for the correct RV type. This depreciation schedule is based on the “Recreation Vehicle Guide of the National Automobile Dealers Association” and the “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” approved by the State Tax Commission as required under Section 49-446, Idaho Code. The State Tax Commission will maintain the information on which this depreciation schedule is based while it is in use and for a minimum of three (3) years after it has been replaced. If the purchase price for the RV is not known, use the approved edition of the “Recreation Vehicle Guide of the National Automobile Dealers Association” or the “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” as referenced in Rule 006 of these rules to determine the market value. (5-3-03)

02. Value of Motor Home or Van Conversion For Registration Fees. The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion’s total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees. For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is ~~the price listed on the bill of sale for the living quarters. When the price of the living quarters is not listed separately on the bill of sale, for a vehicle with less than four (4) facilities, the value of the RV is twenty five~~

Proposed Property Tax Rule 020, Draft 1a, July 29, 2013

Refer to section 3. This draft does not recognize differing values based on the varying number of fixtures and sets the value at 50% of the sales price – Also provides an effective date of Jan. 1, 2015

~~percent (25%) of the sales price, and for a vehicle with four (4) or more facilities, the value of the RV is thirty fifty percent (30%)(50%) of the sales price. A facility is any one (1) of the following: (5-3-03)()~~

- ~~a. Stove; (5-3-03)~~
- ~~b. Lavatory/toilet; (5-3-03)~~
- ~~c. Heater/air conditioner; (5-3-03)~~
- ~~d. Refrigerator/icebox; (5-3-03)~~
- ~~e. Sink with water faucet; or (5-3-03)~~
- ~~f. Electricity/gas supply. (5-3-03)~~

04. Assessment Notice Mailed or Assessment Canceled. If after August 31, the required annual registration fee has not been paid, a taxpayer’s valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

205. PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).

Sections 39-4105, 39-4301, 63-201, 63-302, 63-309, 63-602KK, 63-1703, 63-2801, Idaho Code. (5-8-09)

01. Real Property. Real property is defined in Section 63-201, Idaho Code. Real property consists of land and improvements. (5-8-09)

a. Land. Land is real property as well as all rights and privileges thereto belonging or any way appertaining to the land. (5-8-09)

b. Law and Courts. Real property also consists of all other property which the law defines, or the courts may interpret, declare, and hold to be real property under the letter, spirit, intent, and meaning of the law. (5-8-09)

c. Improvements. Improvements are buildings, structures, fences, and similar property that is built upon land. Improvements are real property regardless of whether or not such improvements are owned separately from the ownership of the land upon or to which the same may be erected, affixed, or attached. (5-8-09)

02. Personal Property. Personal property is defined in Section 63-201, Idaho Code, as everything that is the subject of ownership that is not real property. (5-8-09)

03. Fixtures. Fixtures are defined in Section 63-201, Idaho Code. (5-8-09)

a. Three part ~~factor~~ test. If an item of property satisfies all three tests, the item becomes a fixture and therefore real property. (5-8-09)

i. Annexation. Although once moveable chattels, articles become accessory to and a part of improvements to real property by having been physically or constructively incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property; and (5-8-09)

ii. Adaptation. The use or purpose of an item is integral to the use of the real property to which it is affixed; and (5-8-09)

iii. Intent. Items should be considered personal property unless a person would reasonably be considered to intend to make the articles, during their useful life, permanent additions to the real property. The intent depends on an objective standard and what a reasonable person would consider permanent and not the subjective intention of the owner of the property. (5-8-09)

b. Fixtures does not include machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles. (5-8-09)

04. Property eligible for the exemption in 63-602KK. ()

a. ~~The three factor test will be the predominant determinant of eligibility when considering whether items are exempt per Section 63-602KK, Idaho Code. When Subsection 03.b. of this rule and the three factor test create a conflict in determining whether an item is eligible, the three factor test shall resolve the conflict.~~ **Improvements! Some items may not be considered fixtures, but may be structures or buildings. In this case the items are improvements which are real property and therefore not eligible for the exemption found in section 63-602KK, Idaho Code.** ()

b. Examples. The following items **are examples of improvements that shall are not be considered eligible for the exemption:** ()

- i. Cell towers and similar structures; ()
- ii. Underground storage tanks; ()
- iii. Poles and towers; ()
- iv. Signposts; ()
- v. Pipelines and conduit; ()
- vi. Railroad track; ()
- vii. ~~Affixed boilers, generators, and similar equipment;~~ ()

0405. Operating Property. Operating Property is defined in Section 63-201, Idaho Code. For any purpose for which the distinction between personal property and real property is relevant or necessary for operating property, operating property will be characterized as personal or real based upon the criteria stated in this guideline and the rules of the State Tax Commission.
(5-8-09)



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July 15, 2013

Property Tax Rules Committee
Idaho State Tax Commission
800 Park Blvd., Plaza IV
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RE: Proposed Changes to Rule 35.01.03.205

Dear Committee:

In 2008, the Idaho State Legislature modified Idaho Code §63-201 to redefine personal property and add new language outlining the definition of fixtures. For the past several years, the Property Tax Rules Committee has been working to clarify the definitions of personal property and fixtures. Currently, the committee is now contemplating a change to Rule 35.01.03.205. I wish to provide a few comments on Draft 2 (dated July 2, 2013) of this proposed rule.

RULE 205.03.b.

My first comments are centered on some existing language found in Rule 205. Subparagraph 205.03.b. is a restatement of a sentence found in Idaho Code §63-201(9). It currently reads as follows:

Fixtures does not include machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles. [35.01.03.205.03.b.]

Over the past few years, I have watched as knowledgeable individuals have struggled with that sentence and pondered what it meant. Now that Rule 205 is being opened for modification, I feel that the committee should take this opportunity to add some clarification to the meaning of that sentence.

I will propose some language later in this memo, but first let me outline my analysis.

As stated in Idaho Code §63-204, Idaho has three classes of property.

1. Real Property
2. Personal Property
3. Operating Property

Real Property is defined to include Land and Improvements. [§63-201(23)]

“Personal Property” is defined as everything that is not real property. [§63-201(19)]

Operating Property is defined by who owns it and “means real and personal property....” [§63-201(16)]

Improvements fall under the real property classification and are defined to include Buildings, Structures, Fences and Fixtures. [§63-201(11)]

Fixtures are defined in §63-201(9) using a 3-part test. Note that this 3-part test is an “And” test – meaning that all three parts must be satisfied in order to convert once movable chattels into fixtures and thus treat them as real property.

1. Affixation: having been physically incorporated therein or annexed or affixed thereto in such a manner that removing them would cause material injury or damage to the real property;
2. Adoption: the use or purpose of such articles is integral to the use of the real property to which it is affixed; and
3. Intention: a person would reasonably be considered to intend to make the articles permanent additions to the real property.

This statutory definition of fixtures also includes an exception to the definition.

“Fixtures” does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles. [§63-201(9)]

I will now explain my analysis of the meaning of that exception sentence which is duplicated in Rule 205.03.b.

- By including the phrase “affixed to real property” in the exception, the Legislature essentially nullified the importance of the manner of affixation for purposes of testing this exception. As a result, articles of property could qualify for this exception no matter how they were attached – even if they were permanently cemented in place.

- I believe that the last phrase "to enable the proper utilization of such articles" refers to the item attached to the real property and not to the real property itself. The reference to "articles" in that last phrase mirrors that same term in the list of items at the beginning of the sentence that are subject to the exception in the first place.
- Combining the two phrases discussed above, this exception to the definition of "Fixtures" implies that no matter how the "articles" are attached, they are not to be treated as "Fixtures" – if they are anchored to the real property in order to make them (the "articles") function.

Now, if we were to stop at this point in our analysis, then we may be led to conclude that *all* fixtures were not really "Fixtures" because all fixtures, by definition, are attached to real property in order to make them work. Otherwise, they would be mobile and would likely be classified as personal property. Clearly, this was not the intent of the legislature when they included that sentence to except certain articles from the definition of "Fixtures." So, we must look a little further to discern the intent of that troublesome sentence.

- If the legislature didn't intend to exempt all fixtures from the definition, then they must have been selecting a subset of items that would normally have been classified as "Fixtures." Thus, there must be at least two types of property meeting the definition of fixtures: those that are real property and those that are not.
- A natural supposition would be that the fixtures to be treated as real property are those articles that are directly related to the real property and were necessary for the real property to function. This hypothesis is further supported by the preceding sentence found in the statute: "Fixtures' includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building."
- Subsequently and conversely, those fixtures that should be treated as personal property would be those articles that are primarily concerned with the business operations and are not necessary for the operations of the real property.

- I believe that we could add a single word to the exception sentence that would clarify the distinction between these two types of fixtures. I suggest that the last phrase should read: "...articles that are affixed to real property **primarily** to enable the proper utilization of such articles."
- By inserting that one clarifying word, I believe that we would reach a logical conclusion of the legislative intent. This change would also clarify that Idaho's definition is in conformity with a widespread definition for "Fixtures" based on common law practice.

When the legislature inserted the exception language into the definition of fixtures, it created a classification of property that met the full definition of fixtures but wasn't going to be treated as real property. So what do we call this type property? By definition, it is a fixture; however, by legislative decree – it is personal property. Fortunately, common law provides a name for a similar type of property. These items are often called trade fixtures.

In the IAAO book, Property Appraisal and Assessment Administration, trade fixtures are specifically identified as a separate class of property distinguished from real property fixtures.

Items that were movable and are now permanently attached to the real estate – sinks, bathtubs, and the like – are called fixtures and considered part of the real estate. However, attached items used in the conduct of business, such as barber chairs, bowling alleys and so on, are called trade fixtures and treated as personal property. Industrial machinery and equipment, pipelines, and the like may be considered personal property even when permanently attached.

[Property Appraisal and Assessment Administration, IAAO, 1990, pg 76.]

Based on my analysis above, I would like to propose some language for Rule 205 that I think would help clarify what I believe to have been the legislative intent to the exception to the rule for fixtures.

RULE 205.3.b. PROPOSED NEW LANGUAGE

205.03.b.

Trade Fixtures. The term "Fixtures" does not include machinery, equipment, or other articles that are affixed to real property **primarily** to enable the proper utilization of such articles. This class of property is referred to as "Trade fixtures."

“Trade fixtures” means machinery, equipment or other items, affixed to real property other than buildings or site improvements associated with land or buildings, which are primarily used for the operation of the business as opposed to the operation of the real property to which they are attached. The machinery, equipment or other items constituting trade fixtures may be above ground or underground and include the bases, supports, and foundations for such property. “Trade fixtures” shall not include a building, even if the building is specially designed or constructed for the machinery and equipment placed within the building. “Trade fixtures” shall also not include permanent interior walls or supporting objects such as machinery, equipment or other items that are primarily used for heating, air conditioning, ventilation, sanitation, lighting or plumbing primarily for the comfort of the occupants of the real property. Property which otherwise meets the definition of “trade fixtures” shall constitute trade fixtures whether the real property to which it is attached is owned or leased.

RULE 205.04.b.

My second set of comments is centered on the proposed added language in 205.04.b, which contains examples of improvements that would be considered to be real property. The proposed subparagraph is as follows:

- b. Examples. The following items are examples of improvements that are not eligible for the exemption:
- i. Cell towers and similar structures;
 - ii. Underground storage tanks;
 - iii. Poles and towers;
 - iv. Signposts;
 - v. Pipelines and conduit;
 - vi. Railroad track;

Currently, I will restrict my comments to only the fifth item: Pipelines and conduit.

- **Pipelines and conduit:** These are not buildings, structures, or fences so in order to treat them as real property they must be fixtures. For clarity, I would like to see these items split onto two separate lines.

For pipelines, there will be many situations where they should be considered real property – as in the case of a gas line or water line

running to a parcel (as opposed to just passing through it). Alternatively, just having a buried pipeline running through a parcel of land doesn't necessarily enable the land to function any better. For pipelines, I would argue that there will be cases where they could meet the exception in §63-201(9) and should then be treated as personal property. Due to the dual possibilities for pipelines, I suggest that further clarification is needed.

I struggle with the generic term, "conduit." When I think about a conduit I think of metal pipes embedded in the walls of a building or running underground out to a box or another location. You can also have conduit that is just bolted to the wall or to the ceiling that carries wire or process gases. In the first instance where the conduit is part of the building or land and is useful for the real property functions, I would agree that the conduit is likely real property. In the later case, conduit that is merely bolted to the wall or ceiling would probably not cause material injury or damage to the real property if it were removed – so it is questionable if it is even a fixture in the first place. Nonetheless, I would agree that the conduit that carries wiring for the ceiling lights or wall plugs should be considered part of the structure and treated as real property. However, the conduit that is not installed to enable the real property to function, could meet the exception to the 3-part test and thus be considered personal property. Like pipelines, because of the dual possibilities for conduit, I suggest that further clarification is needed or else the example should be removed from the list.

Although I have an opinion on each of the proposed six examples, this concludes my written comments at this time on 205.04.b. As the committee works to further define the terms I look forward to open discussions on each example. I do feel that through the use of examples, the Idaho law can be enhanced to provide much needed clarity.

I appreciate the opportunity to provide input on the proposed changes to Rule 205. If you should have questions on any of my comments, please feel free to contact me.

Sincerely,



Terry Accordino
Property Tax Manager

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).

Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code.

(3-29-10)()

01. Effective Date. This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during fiscal year 2008 by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 2010, have exceeded the receipts for fiscal year 2008 by five percent (5%) or more, then this exemption would take effect on January 1, 2011. Once this exemption takes effect, it will remain in effect continuously. (3-29-10)

02. Locally Assessed Property - Application Required to Establish Initial Eligibility for Exemption. (3-29-10)

a. In order to establish initial eligibility for this exemption, ~~the~~ taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total *market* value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. *For purposes of reporting personal property the value is to be based on market value, not book value.* The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code. (3-29-10)()

b. Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a value cost of one hundred thousand dollars (\$100,000) or less. In providing such value cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less and is exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. ()

bc. Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer. In addition, for taxpayers with personal property with a total *market* value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in the every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total *market* value of all otherwise taxable personal property is less than or equal to one hundred

thousand dollars (\$100,000) of information required in section 63-602KK(6) and must be filed with the county assessor no later than April 15 of the appropriate year. (5-8-09)(.....)

03. Procedure During Years Following Year of Initial Eligibility for Exemption (3-29-10)

~~a. Unless the exemption has been deemed improper, for all years following the initial establishment of eligibility for the exemption, the taxpayer may continue to file the lists required by Sections 63-302, 63-313, and 63-602Y, Idaho Code, or, if applicable, for property otherwise reportable as required by Section 63-302, Idaho Code, may file the affidavit provided in Section 63-602KK(6), Idaho Code. If the taxpayer chooses to file the affidavit, such filing must conform to the filing date provided in Section 63-302, Idaho Code. (3-29-10)~~

~~b. If, after receiving the exemption, the taxpayer fails in any subsequent year to timely file the required lists of personal property or, if applicable, the affidavit provided in Section 63-602KK(6), Idaho Code, the taxpayer can re-establish future eligibility for the exemption by means of filing the lists required by Sections 63-302, 63-313 and 63-602Y, Idaho Code. (3-29-10)~~

~~c. For the duration of the period during which recapture could apply, the affidavit option shall not be available for taxpayers who elect to designate property to be included in the exemption provided for in Section 63-3029B, Idaho Code. (3-29-10)~~

0402. Locally Assessed Property - Taxpayers' Election of Property Location. ()

a. Multiple locations within a county. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by March April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed. (3-29-10)(____)

b. Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per

county. ()

03. Centrally Assessed Property – Application Required. ()

a. Except for private railcar fleets, the taxpayer must file a list of personal property with the operator’s statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsection (03)(c) of this rule, for such personal property to be considered for the exemption, the operator’s statement must include: ()

i. a description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; ()

ii. cost and depreciated cost of the personal property; ()

iii. the county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. ()

b. For private railcar fleets subject to assessment by the Commission and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection (03)(a) of this rule shall apply. However, the requirements to show specific or county locations, found in (03) (a) (i) and (iii) shall not apply. Instead, the ~~tax e~~Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county. The remaining taxable and exempt market value is to be further apportioned to each taxing district and urban renewal allocation area in accordance with Subsection (06) of this rule.

()

c. For private railcar fleets subject to assessment by the ~~state tax e~~Commission and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), the application procedure described in Subsection (03)(a) of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county. ()

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted.

06040504. Centrally Assessed Property - Taxpayers' Election of Property Location.

Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection (03)(b) of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located and, if more than one location is chosen within any county, the taxpayer must indicate the tax code area(s) in which the personal property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. ()

~~**050405. Valuation Assessment Notice.** *The valuation assessment notice required by Section 63-308, Idaho Code, must show the taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, gross value, the exempt market value, pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. For 2013, such notice is required even if the net taxable value is reduced to zero by the exemption. In subsequent years, provided the personal property is still eligible for the exemption and the net taxable value is zero, no such notice is required. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required until the every fifth year following year when the claimant must reapply.* The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code.~~

(3-29-10)()

06. Preliminary and Final Personal Property Tax Reduction Lists. (5-8-09)

~~**a.** Except as provided in Paragraph 626.06.e. of this rule, the preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption: (3-29-10)~~

~~**i.** The name of the owner, listed in alphabetical order unless the State Tax Commission grants permission for accounts to be listed in an alternate order; (5-8-09)~~

- ii. ~~The description of the property item(s) subject to exemption or partial exemption;~~ (5-8-09)
- iii. ~~The location(s) of the property item(s) showing the tax code area; and~~ (5-8-09)
- iv. ~~The assessed value of the property item(s) listed as equalized by the county board of equalization.~~ (3-29-10)

~~**b.** This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code, or the affidavit permitted by Section 63-602KK, Idaho Code. Transient personal property will not be listed on the preliminary list.~~ (3-29-10)

~~**e.** Except as provided in Paragraph 626.06.e. of this rule, the final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.06.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption:~~ (3-29-10)

- i. ~~The tax levy applicable to the personal property;~~ (5-8-09)
- ii. ~~The tax before the exemption;~~ (5-8-09)
- iii. ~~The tax after the exemption;~~ (5-8-09)
- iv. ~~The amount of the exemption;~~ (5-8-09)
- v. ~~The aggregate total of the tax exempted; and~~ (5-8-09)
- vi. ~~The aggregate total of the tax exempted within each taxing district and each revenue allocation area.~~ (5-8-09)

~~**d.** This final personal property tax reduction list may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK (3), Idaho Code. The final certified list shall be filed with the Tax Commission not later than the third Monday of November of each year.~~ (3-29-10)

~~**e.** If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs 626.06.a.ii., and~~

~~626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule.~~

0705. Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.

a. ~~If an entry on the preliminary or final personal property tax reduction list is found to be erroneous, the Tax Commission shall disapprove as much of the claim as necessary and so notify the county clerk.~~ (5-8-09)()

b. ~~If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the first fourth Monday in May February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the first fourth Monday in May February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency and shall change any payment due to the county in accordance with the correction.~~ ()

c. ~~If the a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in the amount to be paid in June of 2014.~~ ()

d. ~~If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission shall adjust the payment to the county and then the county shall begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. Any amount so recovered shall be remitted to the Commission.~~ ()

e. ~~Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission.~~

0607. Limitation on Eligibility for the Exemption. ()

a. Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. ()

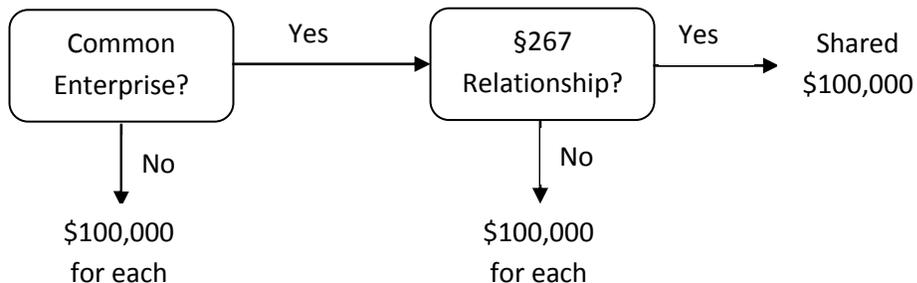
b. Personal property exempt in accordance with statutes other than Section 63-602KK(2), Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ()

c. Taxpayers with requirements to annually apply for or list personal property for which other statutorily provided personal property exemptions are sought must continue to comply with the requirements of these statutes. ()

d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements and therefore ineligible for the exemption. **Structures such as cell towers are improvements and therefore are not personal property and are not eligible for the exemption, regardless of whether they are affixed to land.** (.....)

e. Certain personal property is not eligible to receive the exemption otherwise provided in Section 63-602KK(2), Idaho Code. All taxpayers who are within a relationship described in Section 267 of the Internal Revenue Code, as defined in Section 63-3004, Idaho Code, are treated as single taxpayers for purposes of the Section 63-602KK(2), Idaho Code, exemption and are limited to a maximum exemption of one hundred thousand dollars (\$100,000) in each county. ()

08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships. If the taxpayer owns more than one (1) business within one (1) county he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. *For purposes of this exemption, a taxpayer includes two or more individuals or organizations using the property in a common enterprise and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart:*

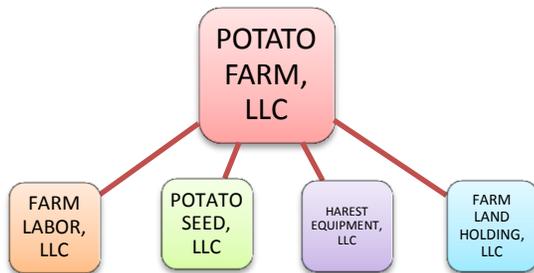


a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business they would be in common enterprise. If common enterprise is found the taxpayer is entitled to only one (1)

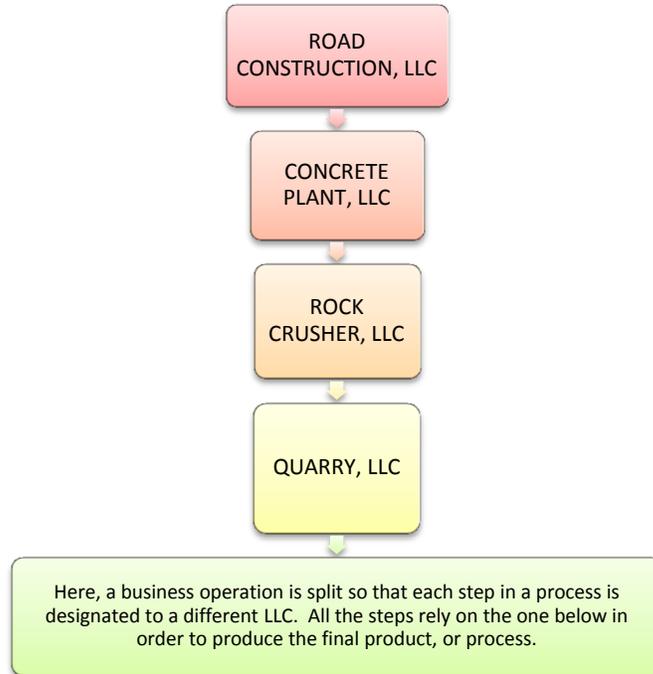
Here, the usual functions involved in a working potato farm are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC.

exemption. However, if common enterprise is not found each entity or individual would be entitled to more than one (1) exemption.

i. Horizontal Commonality is explained by the following chart:



ii. Vertical Commonality is explained by the following chart:

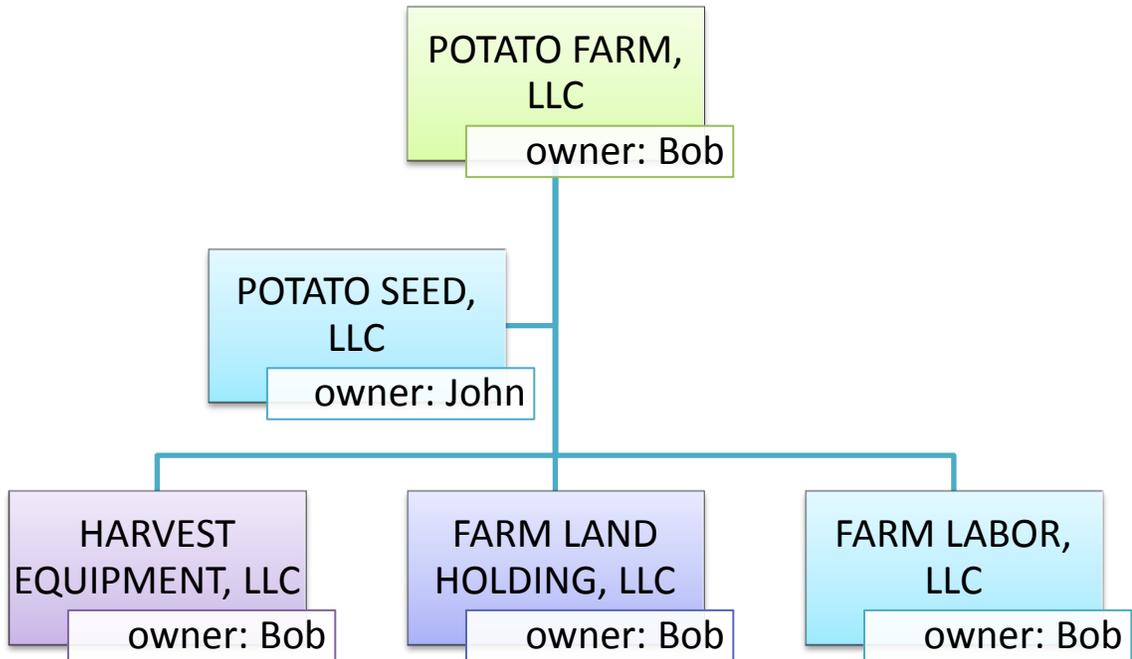


b. Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist exist the entities or individuals would be considered one (1) taxpayer for purposes of this exemption.

c. Ownership alone does not determine whether entities are considered one taxpayer for purposes of this exemption. Two (2) businesses can have identical ownership and each receive the exemption providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. However, the two (2) analyses as describe in Subsections a. and b. of this rule must be performed in the order as described.

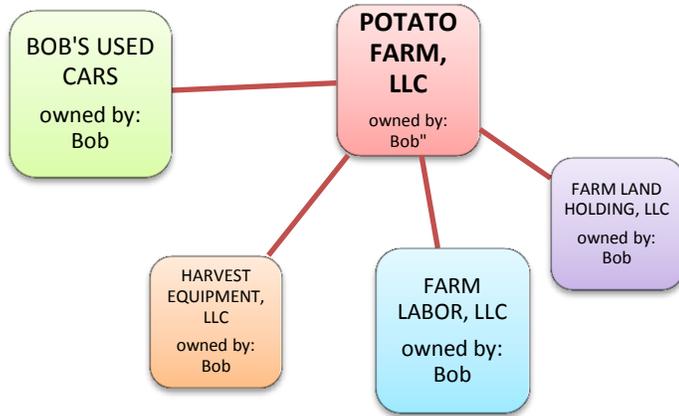
d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships:

i. Example 1. This is an example of common enterprise but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code.

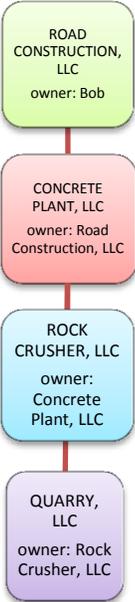


So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.

ii. Example 2. This is an example of the same owner not being involved in common enterprise. Bob's farm businesses are common enterprises and therefore entitled to only one (1) exemption for all the farm businesses. Bob's used car business is not involved with Bob's farm businesses so Bob is entitled to an additional exemption related to his used car business.

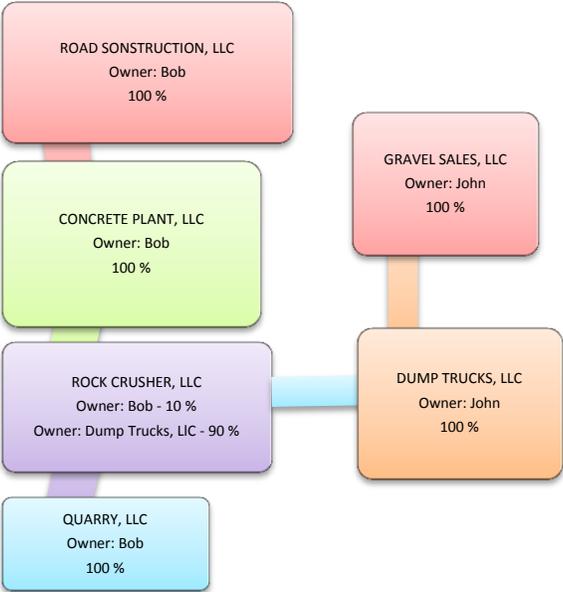


iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists.



Here, one exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

iv. **Example 4.** This is an example showing how owners of common enterprises may



intersect.

This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.

v. ~~Example 5 [Coming]~~

e. In cases of partial ownership as noted in example four wherein Bob owns 10% and Dump Trucks, LLC owns 90% only the majority owner is eligible to receive this exemption. ()

07089. Special Rules for the Exemption Provided in Section 63-602KK(1). ()

a. Newly acquired items of personal property exempt as provided in Section 63-602KK(1) are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. ()

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer per county exemption provided in Section 63-602KK(2), Idaho Code. ()

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ()

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1 applies only to taxpayers who have an obligation to file any application.

080910. Limitation on Replacement Money.

a. Once the 2013 amount of replacement money for each taxing district and unit and for each urban renewal district revenue allocation area is made final, following corrections, as provided in this rule, there shall be no additions. However, there may be changes and reductions as follow: ()

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution. ()

ii. If taxing districts or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue

allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district. ()

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013. ()

iv. Any payment made to the State Idaho Department of Education as provided in Subsection 10 11 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment. ()

b. If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code, there shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property receives the exemption in Section 63-602KK(2) in the future. ()

101. Special provision for replacement money for state authorized plant facilities levy. The state authorized plant facilities levy will be applied to the exempt personal property in any school district within which this levy has been certified in 2013 and the amount of tax calculated will be billed to the state tax eCommission as part of the property tax reduction list. The state tax eCommission shall remit any related funds directly to the State Treasurer Idaho Department of Education for deposit to the Public School Cooperative Fund. ()

0910112. Special provision for exempt personal property within urban renewal revenue allocation areas (RAAs). When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. ()

1123. Special provision for reporting exempt value. Beginning in 2014 taxing district values submitted to the tax eCommission as required in section 63-510, Idaho Code, shall indicate the otherwise taxable value exempt pursuant to section 63-602KK(2), in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho

State Board of Education and the state Idaho Department of Education for each school district, as required in Section 63-1312, Idaho Code (_____)

14. Effective date. The effective date of this rule is January 1, 2014 (____)

~~**13. Common enterprise and related ownerships. [to be inserted]**~~

~~**081012131415. Cross Reference.**~~ For more information on the lists and affidavit option, see Rule 302 of these rules. For information on transient personal property see Rule 313 of these rules and for information on the definition of personal property see Rule 205 of these rules.

(3-29-10)(____)

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).

Sections 63-105(A), 63-201 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code.

(3-29-10)(____)

01. Effective Date. ~~This exemption shall take effect on January 1 of the following tax year after the state controller certifies to the State Tax Commission that receipts to the General Fund for the fiscal year just ended have exceeded the receipts to the General Fund during fiscal year 2008 by five percent (5%) or more. For example, if the state controller certifies that the receipts to the General Fund for the fiscal year ending June 30, 2010, have exceeded the receipts for fiscal year 2008 by five percent (5%) or more, then this exemption would take effect on January 1, 2011. Once this exemption takes effect, it will remain in effect continuously.~~ (3-29-10)

02. Locally Assessed Property - Application Required. ~~to Establish Initial Eligibility for Exemption.~~ (3-29-10)

a. ~~In order to establish initial eligibility for this exemption, t~~The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. For purposes of reporting personal property, the value is to be based on market value, not book value. The application will be deemed valid provided the exemption provided in Section 63-602KK, Idaho Code, is granted and not later deemed improperly claimed. If the applicable list is not filed by the taxpayer to initiate the exemption, or if in any subsequent year the taxpayer fails to file either the applicable list(s) or, if permitted, the affidavit provided in Section 63-602KK(6), Idaho Code, the assessor may list and assess the items to be taxed based on his best judgment and information available. The items not listed by the taxpayer but listed and assessed by the assessor will be assessed without deduction of the exemption provided for in Section 63-602KK, Idaho Code. (3-29-10)(____)

b. Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, and is exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. (____)

c. Any taxpayer appealing his personal property listed on the property roll to the county board of equalization shall qualify for the exemption provided eligible property is ultimately shown on the list received from the taxpayer. In addition, for taxpayers with personal property with a total market value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total market value of all otherwise taxable personal property is less than or equal to one hundred

thousand dollars (\$100,000), and must be filed with the county assessor no later than April 15 of the appropriate year. (5-8-09)(____)

03. Procedure During Years Following Year of Initial Eligibility for Exemption (3-29-10)

~~a. Unless the exemption has been deemed improper, for all years following the initial establishment of eligibility for the exemption, the taxpayer may continue to file the lists required by Sections 63-302, 63-313, and 63-602Y, Idaho Code, or, if applicable, for property otherwise reportable as required by Section 63-302, Idaho Code, may file the affidavit provided in Section 63-602KK(6), Idaho Code. If the taxpayer chooses to file the affidavit, such filing must conform to the filing date provided in Section 63-302, Idaho Code. (3-29-10)~~

~~b. If, after receiving the exemption, the taxpayer fails in any subsequent year to timely file the required lists of personal property or, if applicable, the affidavit provided in Section 63-602KK(6), Idaho Code, the taxpayer can re-establish future eligibility for the exemption by means of filing the lists required by Sections 63-302, 63-313 and 63-602Y, Idaho Code. (3-29-10)~~

~~c. For the duration of the period during which recapture could apply, the affidavit option shall not be available for taxpayers who elect to designate property to be included in the exemption provided for in Section 63-3029B, Idaho Code. (3-29-10)~~

0402. Locally Assessed Property - Taxpayers' Election of Property Location. ()

a. Multiple locations within a county. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the immediate prior year. If a taxpayer with personal property located in multiple places within the county files one (1) affidavit provided in Section 63-602KK(6), and fails to elect where to apply the exemption, the county shall prorate the exemption to the last known locations of the eligible property based on last lists filed. (3-29-10)(____)

b. Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county,

the limit is one hundred thousand dollars (\$100,000) in market value per county. ()

03. Centrally Assessed Property – Application Required. ()

a. Except for private railcar fleets, the taxpayer must file a list of personal property with the operator’s statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsection (03)(c) of this rule, for such personal property to be considered for the exemption, the operator’s statement must include:

- i. A description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; ()
- ii. Cost and depreciated cost of the personal property; ()
- iii. The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. ()

b. For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection (03)(a) of this rule shall apply. However, the requirements to show specific or county locations, found in (03)(a)(i) and (iii) shall not apply. Instead, the Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county. The remaining taxable and exempt market value is to be further apportioned to each taxing district and urban renewal allocation area in accordance with Subsection (06) of this rule. ()

c. For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), the application procedure described in Subsection (03)(a) of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county. ()

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed

property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. ()

04. Centrally Assessed Property - Taxpayers' Election of Property Location. ()

Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection (03)(b) of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located and, if more than one location is chosen within any county, the taxpayer must indicate the tax code area(s) in which the personal property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. ()

05. Valuation Assessment Notice. The valuation assessment notice required by Section 63-308, Idaho Code, must show the taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, ~~gross value,~~ the exempt market value, pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required until every fifth year following when the claimant must reapply. ~~The information shown on the valuation assessment notice may reflect the aggregate value reported by the taxpayer on an affidavit submitted in lieu of the lists required under Section 63-302, Idaho Code. If the items of personal property cannot be identified to the extent necessary to assign them to another of the categories provided in Rule 512 of these rules, the personal property shall be listed in secondary category 68. If the affidavit fails to provide an estimate of value, the assessor shall determine current market value of the property which shall not then be eligible for the exemption provided in Section 63-602KK, Idaho Code.~~

~~(3-29-10)~~()

06. Preliminary and Final Personal Property Tax Reduction Lists. (5-8-09)

a. ~~Except as provided in Paragraph 626.06.e. of this rule, the preliminary personal property tax reduction list shall include the following information pertaining to the personal property accounts to receive the exemption:~~ (3-29-10)

i. ~~The name of the owner, listed in alphabetical order unless the State Tax Commission grants permission for accounts to be listed in an alternate order;~~ (5-8-09)

ii. ~~The description of the property item(s) subject to exemption or partial exemption;~~ (5-8-09)

iii. ~~The location(s) of the property item(s) showing the tax code area; and~~ (5-8-09)

iv. ~~The assessed value of the property item(s) listed as equalized by the county board of equalization.~~

(3-29-10)

~~b. This preliminary list shall be compiled by the assessor and shall be certified and sent to the county clerk and the Tax Commission by the fourth Monday in July. The list will be reviewed and, if necessary, corrected by the Tax Commission. The list will only include those taxpayers who have filed the list of taxable personal property as required by Section 63-302, Idaho Code, or the affidavit permitted by Section 63-602KK, Idaho Code. Transient personal property will not be listed on the preliminary list. (3-29-10)~~

~~e. Except as provided in Paragraph 626.06.e. of this rule, the final personal property tax reduction list shall include, in addition to the items listed in Paragraph 626.06.a. of this rule, the following information pertaining to the personal property accounts to receive the exemption: (3-29-10)~~

- ~~i. The tax levy applicable to the personal property; (5-8-09)~~
- ~~ii. The tax before the exemption; (5-8-09)~~
- ~~iii. The tax after the exemption; (5-8-09)~~
- ~~iv. The amount of the exemption; (5-8-09)~~
- ~~v. The aggregate total of the tax exempted; and (5-8-09)~~
- ~~vi. The aggregate total of the tax exempted within each taxing district and each revenue allocation area. (5-8-09)~~

~~d. This final personal property tax reduction list may include transient personal property and may include personal property otherwise assessable under Section 63-602Y, Idaho Code. This final list shall serve as the certification from the county clerk to the Tax Commission as required by Section 63-602KK (3), Idaho Code. The final certified list shall be filed with the Tax Commission not later than the third Monday of November of each year. (3-29-10)~~

~~e. If a taxpayer has filed the affidavit permitted by Section 63-602KK(6), Idaho Code, in lieu of the list required by Section 63-302, Idaho Code, some of the information otherwise required to be included on the preliminary and final personal property tax reduction lists may not be available. For any taxpayer for which complete information is not available because of the filing of such an affidavit, requirements found in Subparagraphs 626.06.a.ii., and 626.06.a.iv. for the description and value of items of property shall be waived. In lieu of these requirements, the preliminary and final personal property tax reduction lists must indicate the aggregate equalized value of the taxpayer's property in the county that is eligible for the exemption provided in Section 63-602KK, Idaho Code. For transient personal property and personal property subject to listing under Section 63-602Y, Idaho Code, the prorated value shall be used to fulfill the requirements of Subparagraph 626.06.a.iv. of this rule.~~

Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.

a. If an entry on the ~~preliminary or final~~ personal property tax reduction list is found to be erroneous, the ~~Tax~~ Commission shall disapprove as much of the claim as necessary, and so notify the county clerk. (5-8-09)(____)

b. If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the fourth Monday in February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation, and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the fourth Monday in February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency, and shall change any payment due to the county in accordance with the correction. (____)

c. If a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in the amount to be paid in June of 2014. (____)

d. If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission shall adjust the payment to the county, and then the county shall begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. Any amount so recovered shall be remitted to the Commission. (____)

e. Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property, or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission. (____)

07. Limitation on Eligibility for the Exemption. (____)

a. Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. (____)

b. Personal property exempt in accordance with statutes other than Section 63-602KK(2), Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. (____)

c. Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. ()

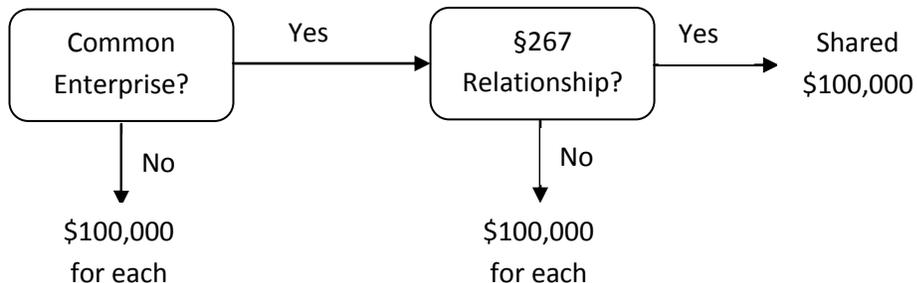
d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of

Here, the usual functions involved in a working potato farm are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC.

whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. ()

08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships. If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, a taxpayer includes two or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart:

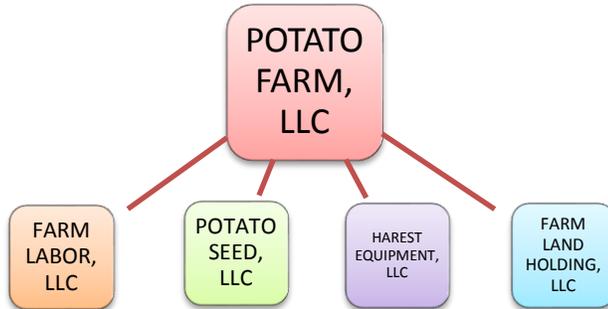
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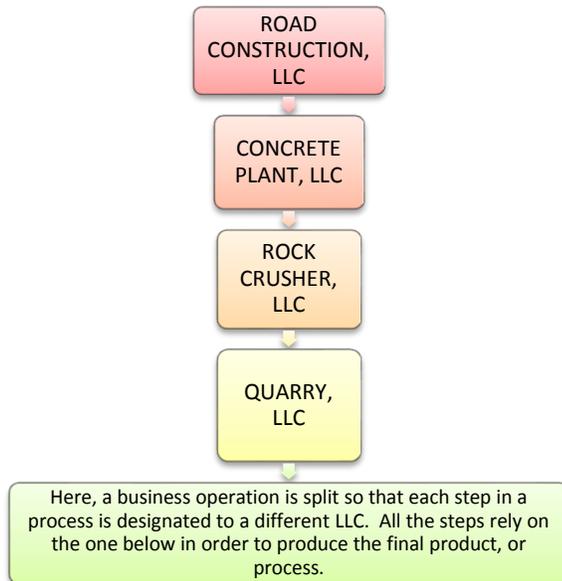
a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in

common enterprise. If common enterprise is found, the taxpayer is entitled to only one (1) exemption. ()

i. Horizontal Commonality is explained by the following chart: ()



ii. Vertical Commonality is explained by the following chart: ()



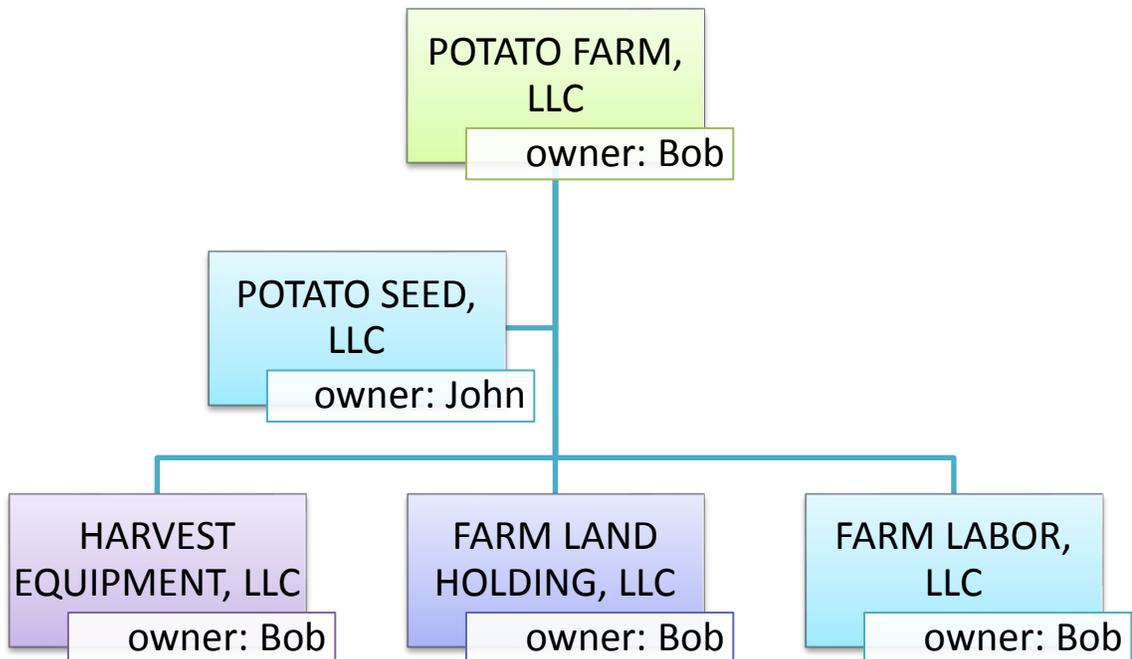
b. Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, the entities or individuals would be considered one (1) taxpayer for purposes of this exemption. ()

c. Ownership alone does not determine whether entities are considered one taxpayer for purposes of this exemption. Two (2) businesses can have identical ownership, and each

receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code. However, the two (2) analyses, as described in Subsections a. and b. of this rule, must be performed in the order as described. ()

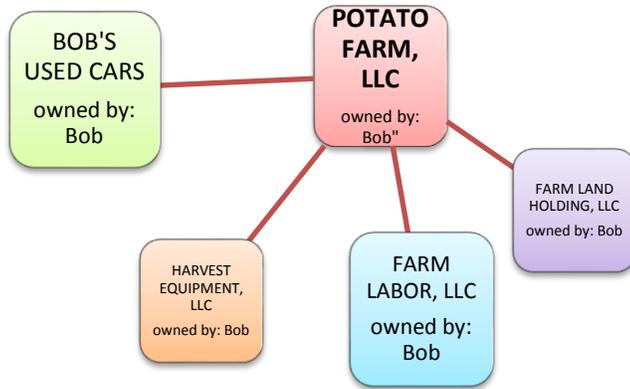
d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: ()

i. Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ()



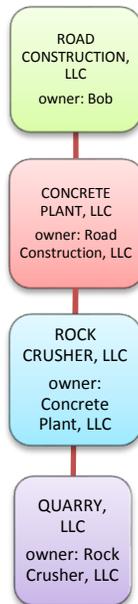
[So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.](#)

ii. Example 2. This is an example of the same owner not being involved in common enterprise. Bob's farm businesses are common enterprises, and therefore entitled to only one (1) exemption for all the farm businesses. Bob's used car business is not involved with Bob's farm businesses, so Bob is entitled to an additional exemption related to his used car business. ()



.....

iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. ()

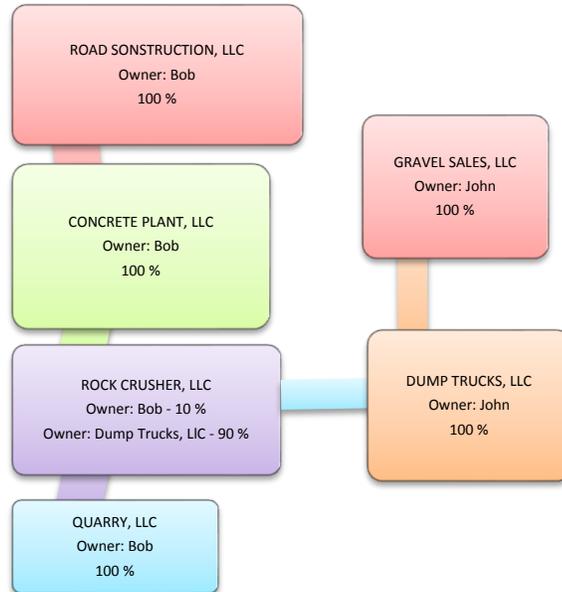


.....

Here, one exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

iv. Example 4. This is an example showing how owners of common enterprises may intersect.

This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.



e. In cases of partial ownership as noted in example four wherein Bob owns 10% and Dump Trucks, LLC owns 90% only the majority owner is eligible to receive this exemption. ()

09. Special Rules for the Exemption Provided in Section 63-602KK(1). ()

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. ()

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. ()

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ()

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application.

10. Limitation on Replacement Money.

a. Once the 2013 amount of replacement money for each taxing district, and unit, and for each urban renewal district revenue allocation area is made final, following corrections as provided in this rule, there shall be no additions. However, there may be changes and reductions as follow:

()

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution.

()

ii. If taxing districts, or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district.

()

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013.

()

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 11 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment.

()

b. If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code, there shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property receives the exemption in Section 63-602KK(2) in the future.

()

11. Special provision for replacement money for state authorized plant facilities levy. The state authorized plant facilities levy will be applied to the exempt personal property, in any school district within which this levy has been certified in 2013, and the amount of tax calculated will be billed to the Commission as part of the property tax reduction list. The Commission shall remit any related funds directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund.

()

12. Special provision for exempt personal property within urban renewal revenue allocation areas (RAAs). When personal property subject to the exemption in Section

63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules.

()

13. Special provision for reporting exempt value. Beginning in 2014, taxing district values submitted to the Commission as required in section 63-510, Idaho Code, shall indicate the otherwise taxable value exempt pursuant to section 63-602KK(2), in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor, or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho State Board of Education and the Idaho Department of Education for each school district, as required in Section 63-1312, Idaho Code

()

14. Effective date. The effective date of this rule is January 1, 2014

()

15. Cross Reference. ~~For more information on the lists and affidavit option, see Rule 302 of these rules.~~ For information on transient personal property, see Rule 313 of these rules and for information on the definition of personal property see Rule 205 of these rules.

~~(3-29-10)~~()

626. PROPERTY EXEMPT FROM TAXATION -- CERTAIN PERSONAL PROPERTY (RULE 626).

Sections 63-105(A), 63-201, 63-302, 63-308, 63-313, 63-602Y, and 63-602KK, Idaho Code.(3-29-10)

01. Locally Assessed Property - Application Required. (~~3-29-10~~)

a. The taxpayer must file one (1) or more of the lists of taxable personal property as required by Section 63-302, Section 63-313, or Section 63-602Y, Idaho Code if the total market value of the property to be listed is greater than one hundred thousand dollars (\$100,000). The filing of said list(s) shall constitute the filing of an application for exemption. For purposes of reporting personal property, the value is to be based on market value, not book value.(~~3-29-10~~)()

b. Taxpayers establishing initial eligibility for the exemption provided in Section 63-602KK(2), Idaho Code, may in lieu of a list, file only an application attesting to ownership of otherwise taxable personal property having a cost of one hundred thousand dollars (\$100,000) or less. In providing such cost, newly acquired personal property items acquired at a price of three thousand dollars (\$3,000) or less, and is exempt pursuant to Section 63-602KK(1), Idaho Code, shall not be included. The application must be filed no later than April 15th of the first year for which the exemption is claimed. ()

c. In addition, for taxpayers with personal property with a total market value less than or equal to one hundred thousand dollars (\$100,000) in a single Idaho county, in every fifth year following the first year in which the exemption in section 63-602KK(2) is granted for any property, the taxpayer must file an application for the exemption to continue. The application must include certification by the taxpayer that the total market value of all otherwise taxable personal property is less than or equal to one hundred thousand dollars (\$100,000), and must be filed with the county assessor no later than April 15 of the appropriate year. (~~5-8-09~~)()

02. Locally Assessed Property - Taxpayers' Election of Property Location. ()

a. Multiple locations within a county. In cases where the taxpayer has personal property located in multiple places within the county, the taxpayer may elect the location of the property to which the exemption will apply by filing the "Idaho Personal Property Exemption Location Application Form" available from the State Tax Commission (Commission) for this purpose. To make the election for property required to otherwise be listed as provided in Section 63-302, Idaho Code, the form must be filed with the county assessor by April 15. For taxpayers with personal property required to be listed as provided in Sections 63-602Y and 63-313, Idaho Code, any application specifying the location of the property to which the exemption provided for in Section 63-602KK(2) will apply, must be filed by the dates specified for filing the lists required by these Sections. Should the taxpayer not make an election as to where to apply the exemption, the county shall have discretion regarding the property to which the exemption shall apply. However, to the extent possible and assuming the assessor is not aware of any changes in eligibility, the exemption will be first applied to the same property to which it applied in the

immediate prior year.

b. Multiple locations in different counties. The one hundred thousand dollar (\$100,000) limit on the exemption applies to a taxpayer's otherwise taxable personal property within any county. If the taxpayer owns qualifying personal property in more than one county, the limit is one hundred thousand dollars (\$100,000) in market value per county. ()

03. Centrally Assessed Property – Application Required. ()

a. Except for private railcar fleets, the taxpayer must file a list of personal property with the operator's statement filed pursuant to Rule 404 of these rules. The filing of such a list shall constitute the filing of an application for this exemption. Except as provided in Subsection (03)(c) of this rule, for such personal property to be considered for the exemption, the operator's statement must include:

- i. A description of the personal property, including any tax code area in which the personal property subject to assessment as situs property is located; ()
- ii. Cost and depreciated cost of the personal property; ()
- iii. The county in which the personal property is located, if the taxpayer wishes to receive the exemption on property located in more than one county. ()

b. For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of five hundred thousand dollars (\$500,000) or greater, the application procedure described in Subsection (03)(a) of this rule shall apply. However, the requirements to show specific or county locations, found in (03)(a)(i) and (iii) shall not apply. Instead, the Commission shall, after using apportionment procedures described in Rule 413 of these rules to apportion the market value of these fleets, allow an exemption of up to one hundred thousand dollars (\$100,000) to be applied to the apportioned market value within each county. The remaining taxable and exempt market value is to be further apportioned to each taxing district and urban renewal allocation area in accordance with Subsection (06) of this rule. ()

c. For private railcar fleets subject to assessment by the Commission, and having an Idaho taxable market value of less than five hundred thousand dollars (\$500,000), the application procedure described in Subsection (03)(a) of this rule shall apply. However, the property of such fleets is never apportioned to counties, so the exemption amount is limited to one hundred thousand dollars (\$100,000) per company, unless the company provides proof showing the

multiple counties in which the personal property is located for the entire tax year, in which case the one hundred thousand dollar (\$100,000) limit shall apply per company per county. ()

d. When operating property companies have locally assessed property, any exemption pursuant to Section 63-602KK(2), Idaho Code must be applied to the locally assessed property first. In this case, the county assessor must notify the Commission of the value of the exemption granted. ()

04. Centrally Assessed Property - Taxpayers' Election of Property Location.()

Except for private rail car fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or greater, to which the procedures in Subsection (03)(b) of this rule shall apply, the taxpayer owning personal property located in multiple counties may indicate the county in which the property is located and, if more than one location is chosen within any county, the taxpayer must indicate the tax code area(s) in which the personal property is located. Should the taxpayer not make an election as to where to apply the exemption, the exemption shall be limited to one hundred thousand dollars (\$100,000) applied to the Idaho value of the taxpayer prior to apportionment. ()

05. Valuation Assessment Notice. The valuation assessment notice required by Section 63-308, Idaho Code, must show the taxable market value before granting the exemption provided in Section 63-602KK(2), Idaho Code, the exempt market value pursuant to the exemption provided in Section 63-602KK(2), Idaho Code, and the net taxable market value of the personal property. After the year of initial eligibility, if the net taxable market value is zero, no valuation assessment notice is required until every fifth year following when the claimant must reapply. (~~3-29-10~~)()

06. Tax Commission's Review and Correction of the Personal Property Tax Reduction Lists.

a. If an entry on the personal property tax reduction list is found to be erroneous, the Commission shall disapprove as much of the claim as necessary, and so notify the county clerk. (~~5-8-09~~)()

b. If, after certifying the personal property tax reduction list, the county learns of any erroneous information included in said list, the county clerk will immediately, and not later than the fourth Monday in February, 2014, notify the Commission of the correction. If the county cancels the tax otherwise due, the county must notify the Commission of the cancellation, and the Commission will adjust the replacement money accordingly. In addition to any other errors, corrections may include market value and tax changes resulting from actions of the county board of equalization related to property listed and assessed as required in Sections 63-313 and 63-602Y, Idaho Code. Corrections may also include market value changes as a result of appeals to the state board of tax appeals or district court, provided however, that the Commission is notified by the county of such changes by the fourth Monday in February, 2014. Once notified of any correction, the Commission shall adjust the total certified personal property tax reduction amount for any applicable taxing district or urban renewal agency, and shall change any payment due to

the county in accordance with the correction. ()

c. If a disapproval occurs after the Commission has certified the amount to be paid to the county in December, the Commission shall notify the county as soon as practicable and shall make all necessary adjustments in the amount to be paid in June of 2014. ()

d. If the amount of the disapproval exceeds the amount remaining to be paid to the county, the Commission shall adjust the payment to the county, and then the county shall begin proceedings to recover any remaining excessive amounts paid on behalf of any taxpayer, pursuant to the recovery procedures found in Section 63-602KK(7), Idaho Code. Any amount so recovered shall be remitted to the Commission. ()

e. Corrections may also be made to account for additional amounts of exemptions granted provided the Commission is so notified not later than January 30, 2014. Such additional amounts may be related to exemptions granted for transient personal property, or for other personal property listed on the subsequent or missed assessment rolls and shall be subject to review by the Commission. ()

07. Limitation on Eligibility for the Exemption. ()

a. Except for taxpayers claiming and receiving the exemption provided for in Section 63-4502, Idaho Code, taxpayers receiving the personal property exemption provided in Section 63-602KK, Idaho Code, may be eligible for, and are not precluded from, other applicable exemptions. ()

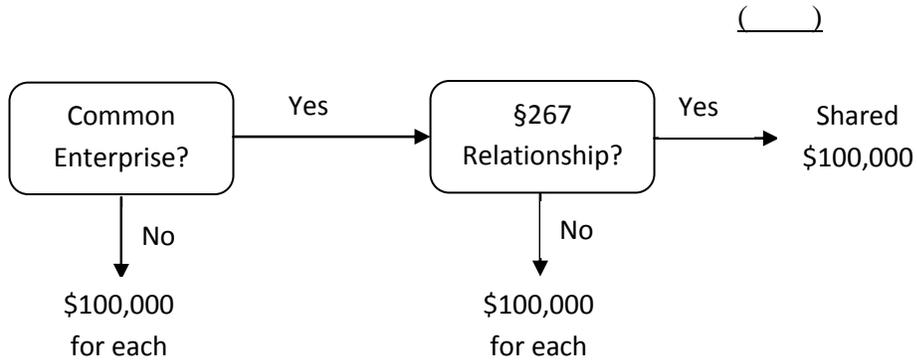
b. Personal property exempt in accordance with statutes other than Section 63-602KK(2), Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ()

c. Taxpayers with requirements to annually apply for, or list personal property for, which other statutorily provided personal property exemptions are sought, must continue to comply with the requirements of these statutes. ()

d. Improvements, as defined or described in Sections 63-201 and 63-309, Idaho Code, shall not be eligible for the exemption provided in Section 63-602KK. Improvements shall be deemed to include mobile and manufactured homes and float homes, regardless of whether such property is considered personal property. Leasehold real properties and other leasehold improvements that are structures or buildings shall be considered improvements, and therefore ineligible for the exemption. Structures, such as cell towers, are improvements and therefore are not personal property eligible for the exemption. ()

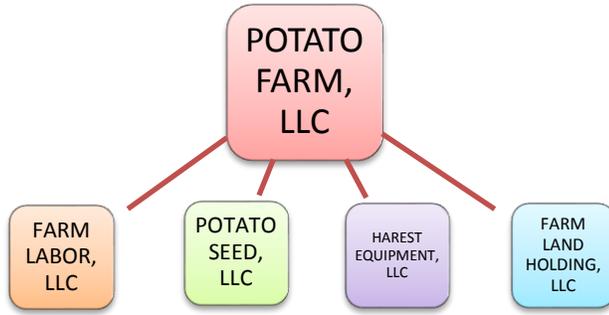
08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships. If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, a taxpayer includes two or more individuals or organizations using the property in a common enterprise, and the individuals or organizations are within a relationship described in Section 267 of the Internal Revenue Code. This is illustrated in the following chart:

Here, the usual functions involved in a working potato farm are split between several LLCs, all of which own the property involved with the functions they perform. The operation of the business is no different than if all the functions were combined in just Potato Farm, LLC.

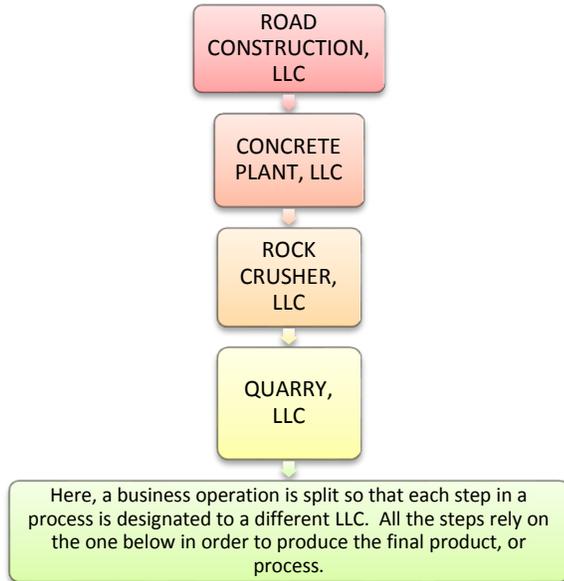


a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in common enterprise. If common enterprise is found, the taxpayer is entitled to only one (1) exemption. ()

i. Horizontal Commonality is explained by the following chart: ()



ii. Vertical Commonality is explained by the following chart: ()



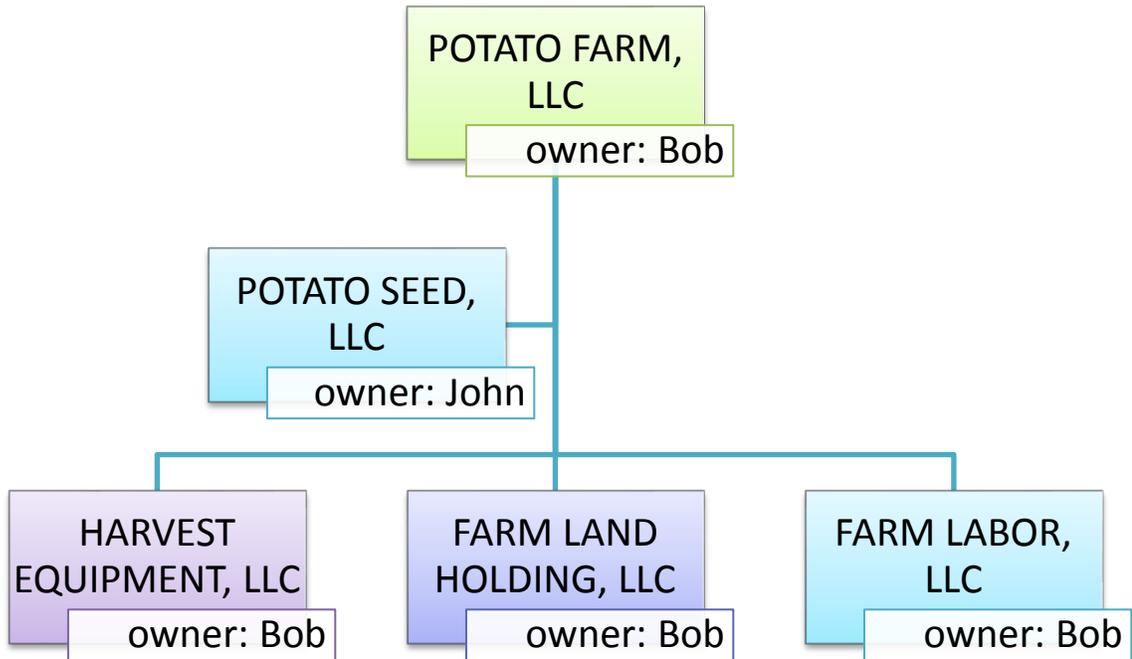
b. Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code. If such a relationship is found to exist, the entities or individuals would be considered one (1) taxpayer for purposes of this exemption. ()

c. Ownership alone does not determine whether entities are considered one taxpayer for purposes of this exemption. Two (2) businesses can have identical ownership, and each receive the exemption, providing they do not operate as a common enterprise. In addition, entities in a common enterprise can receive separate exemptions, providing that their ownership does not consist of a relationship identified in Section 267 of the Internal Revenue Code.

However, the two (2) analyses, as described in Subsections a. and b. of this rule, must be performed in the order as described. ()

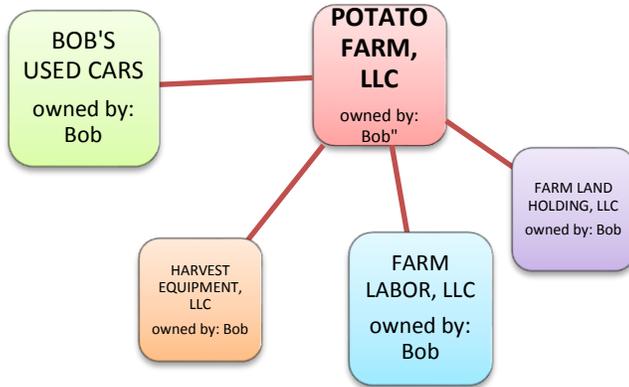
d. The following examples are given to illustrate eligibility situations related to common enterprise and related ownerships: ()

i. Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ()

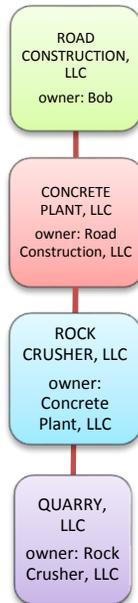


So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob’s businesses, because they are in a common enterprise and all owned by him.

ii. Example 2. This is an example of the same owner not being involved in common enterprise. Bob’s farm businesses are common enterprises, and therefore entitled to only one (1) exemption for all the farm businesses. Bob’s used car business is not involved with Bob’s farm businesses, so Bob is entitled to an additional exemption related to his used car business. ()



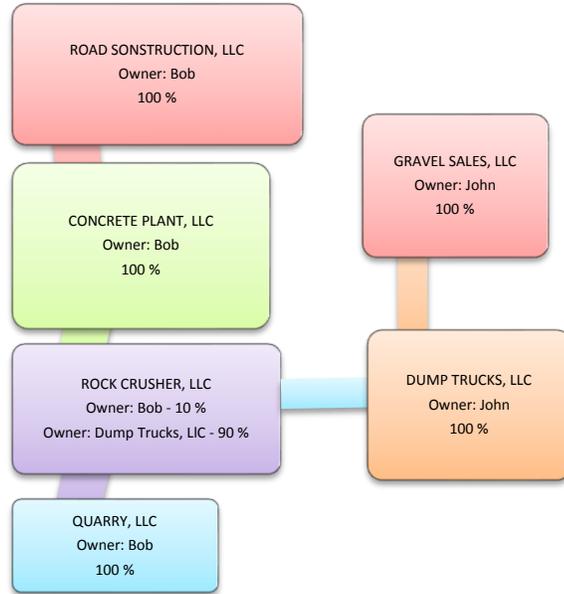
iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. ()



Here, one exemption exists for all of the entities because they are in a common enterprise, due to their vertical commonality, and are all constructively owned by Bob, pursuant to IRC 267.

iv. Example 4. This is an example showing how owners of common enterprises may intersect.

This is an example of how common enterprises can intersect with one another. The companies Bob owns completely receive one exemption; John's companies also receive one exemption, including Rock Crusher, LLC, because John's ownership interest in that company falls within IRC 267.



e. In cases of partial ownership as noted in example four wherein Bob owns 10% and Dump Trucks, LLC owns 90% only the majority owner is eligible to receive this exemption. ()

09. Special Rules for the Exemption Provided in Section 63-602KK(1). ()

a. Newly acquired items of personal property, exempt as provided in Section 63-602KK(1), are not to be reported on any list otherwise required pursuant to Sections 63-302, 63-602Y, and 63-313, Idaho Code. ()

b. The exemption provided in Section 63-602KK(1), Idaho Code, is in addition to the one hundred thousand dollar (\$100,000) per taxpayer, per county exemption provided in Section 63-602KK(2), Idaho Code. ()

c. No application for the exemption provided in Section 63-602KK(1), Idaho Code, is necessary. ()

d. The requirement in Section 63-602KK(6) requiring the assessor to provide the application by no later than March 1, applies only to taxpayers who have an obligation to file any application.

10. Limitation on Replacement Money.

a. Once the 2013 amount of replacement money for each taxing district, and unit, and for each urban renewal district revenue allocation area is made final, following corrections as provided in this rule, there shall be no additions. However, there may be changes and reductions as follow:

()

i. If a taxing district dissolves, the state will make no payment of the amount previously certified for that district, and when an urban renewal district revenue allocation area dissolves and is no longer receiving any allocation of property tax revenues, the state will discontinue payment of amounts previously certified for that revenue allocation area, beginning with the next scheduled distribution.

()

ii. If taxing districts, or revenue allocation areas within urban renewal districts are consolidated, the amounts of replacement money attributed to each original district or revenue allocation area shall be summed and, in the future, distributed to the consolidated taxing or urban renewal district.

()

iii. No urban renewal district shall receive replacement money based on exempt personal property within any revenue allocation area (RAA) established on or after January 1, 2013, or within any area added to an existing RAA on or after January 1, 2013.

()

iv. Any payment made to the Idaho Department of Education, as provided in Subsection 11 of this rule shall be discontinued if the state authorized plant facilities levy is not certified in any year. Certification in subsequent years shall not cause any resumption of this payment.

()

b. If otherwise eligible personal property is exempt in 2013 by reason of any property tax exemption other than the exemption found in Section 63-602KK(2), Idaho Code, there shall be no personal property replacement money related to exempt taxes on this property nor shall the amount of replacement money be adjusted if this personal property receives the exemption in Section 63-602KK(2) in the future.

()

11. Special provision for replacement money for state authorized plant facilities levy. The state authorized plant facilities levy will be applied to the exempt personal property, in any school district within which this levy has been certified in 2013, and the amount of tax calculated will be billed to the Commission as part of the property tax reduction list. The Commission shall remit any related funds directly to the Idaho Department of Education for deposit to the Public School Cooperative Fund.

()

12. Special provision for exempt personal property within urban renewal revenue allocation areas (RAAs). When personal property subject to the exemption in Section 63-602KK(2), Idaho Code, is within an RAA, any adjustment shall first be to the increment value, and there shall be no adjustment to the base value of the RAA unless the remaining

taxable market value of the parcel is less than the most current base value of the parcel. In that case, the base value shall be reduced. The amount to be subtracted is to be determined on a parcel by parcel basis in accordance with procedures found in Rule 804 of these rules. ()

13. Special provision for reporting exempt value. Beginning in 2014, taxing district values submitted to the Commission as required in section 63-510, Idaho Code, shall indicate the otherwise taxable value exempt pursuant to section 63-602KK(2), in addition to the net taxable value of each district. In the absence of a more current value of the exemption, the value of the exemption may be estimated based on the last known value determined in 2013 by the county assessor, or in the case of centrally assessed property, the Commission. The Commission will include this exempt value in the total taxable valuation reported to the Idaho State Board of Education and the Idaho Department of Education for each school district, as required in Section 63-1312, Idaho Code ()

14. Effective date. The effective date of this rule is January 1, 2014 ()

15. Cross Reference. For information on transient personal property, see Rule 313 of these rules and for information on the definition of personal property see Rule 205 of these rules.

~~(3-29-10)~~()

407. ~~{XE "APPEAL OF OPERATING PROPERTY ASSESSMENTS"}APPEAL OF HEARING TO REVIEW OPERATING PROPERTY ASSESSMENTS APPRAISALS (RULE 407).~~ ()

01. ~~{xe "Appeal Of Operating Property Assessments: Procedure Governed"}Procedure Governed.~~ This rule shall govern all practice and procedure before the State Tax Commission sitting as a Board of Equalization in hearings under Section 63-407, Idaho Code. Hearings are not contested cases under the Idaho Administrative Procedures Act. Hearings are open meetings under the Idaho open meetings law and all written materials are subject to Idaho public records law. The taxpayer may request that the board of equalization go into executive session to discuss confidential materials (7-1-99)()

02. ~~{xe "Appeal Of Operating Property Assessments: Liberal Construction"}Liberal Construction.~~ These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the State Tax Commission. For good cause the State Tax Commission may permit deviation from these rules: and the taxpayer may request a stipulated finding that would result in an appealable decision in lieu of a hearing before the state board of equalization. (7-1-99)()

03. ~~{xe "Appeal Of Operating Property Assessments: Communication"}Communication.~~ All notices and petitions required to be filed with the State Tax Commission must be in writing. Each notice must identify the filing party, be signed by the filing party, be dated and give the filing party's mailing address and telephone number. The provisions of Section 63-217, Idaho Code, apply to the filing of documents with the State Tax Commission. (7-1-99)

04. ~~{xe "Appeal Of Operating Property Assessments: Service by State Tax Commission"}Service by State Tax Commission.~~ All notices and orders required to be served by the State Tax Commission may be served by mail. Service shall be complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail. (7-1-99)

05. ~~{xe "Appeal Of Operating Property Assessments: Notice to County Assessors"}Notice to County Assessors.~~ When the calendar of hearings under Section 63-407, Idaho Code, is final, the State Tax Commission shall send a copy of this calendar to the assessor of each county. (7-1-99)

06. ~~{xe "Appeal Of Operating Property Assessments: Parties"}Parties.~~ The following are parties to a hearing of the State Tax Commission meeting as Board of Equalization. (7-1-99)

a. Petitioner. A person petitioning for a hearing shall be called the petitioner. (7-1-99)

b. Staff. The State Tax Commission staff may appear as a party at the hearing and may be represented by one (1) or more Deputy Attorneys General assigned to the State Tax Commission. (7-1-99)

c. Legal advisor to the commission. When sitting as a Board of Equalization, the State Tax Commission may obtain legal advice from a Deputy Attorney General who is not representing the State Tax Commission staff. (7-1-99)

07. {xe "Appeal Of Operating Property Assessments: Appearances & Practice"}Appearances and Practice. The following apply for appearances and practice in a hearing. (7-1-99)

a. Rights of parties. At any hearing, both parties may appear, introduce evidence, ~~examine and cross-examine witnesses~~, make arguments, and generally participate in the conduct of the proceeding. ~~(7-1-99)~~(____)

b. Taking of appearances. The presiding officer conducting the hearing shall require appearances to be stated and shall see that both parties present are identified on the record. (7-1-99)

c. Representation of taxpayers. An individual may represent himself or herself or be represented by an attorney. A partnership may be represented by a partner, authorized employee or by an attorney. A corporation may be represented by an officer, authorized employee or by an attorney. (7-1-99)

08. {xe "Appeal Of Operating Property Assessments: Pre-Hearing Conferences"}Pre-Hearing Conferences. ~~The following apply for holding pre hearing conferences.~~ ~~(7-1-99)~~(____)

a. ~~Reasons for holding pre-hearing conferences.~~ The State Tax Commission may, upon notice to both parties, hold a pre-hearing conference for the following purposes:~~(7-1-99)~~(____)

i. Formulating or simplifying the issues; (7-1-99)

ii. Obtaining admissions of fact and of documents which will avoid unnecessary proof; (7-1-99)

iii. Arranging for the exchange of proposed exhibits or prepared expert testimony; (7-1-99)

iv. Limiting the number of witnesses; (7-1-99)

v. Setting the hearing procedure, at for the hearing; and including allocation of an amount of time for the hearing; and ~~(7-1-99)~~(____)

vi. Reviewing other matters to expedite the orderly conduct and disposition of the proceedings. (7-1-99)

vii. Allowing any continuance. ()

b. Action taken. Any action taken at the conference and any agreement made by the parties concerned may be recorded and the State Tax Commission may issue a pre-hearing order which will control the course of subsequent proceedings unless modified. (7-1-99)

c. Compromise and offers to compromise. Evidence of an offer or agreement to compromise the dispute and the conduct and statements made in compromise negotiations are not admissible at the hearing. (7-1-99)

09. {xe "Appeal Of Operating Property Assessments: Hearings"}Hearings. The following apply to the hearings. (7-1-99)

a. Request for hearing. A request for a hearing shall be in writing and the form of a petition filed with the State Tax Commission on or before August 1 of the current year. The ~~petition request~~ shall state the factual and legal basis on which the request is based. ~~(7-1-99)~~()

b. Notice of hearing. The State Tax Commission shall notify both parties and all counties of the place, date and time of the hearing. (7-1-99)

~~c. Motions. Motions may be submitted for the State Tax Commission's decision by written or oral argument or both. The filing of affidavits in support or opposition is permitted. Motions filed by different parties but involving the same point of law may be set for hearing at the same time. The practice for motions shall generally conform to the Idaho Rules of Civil Procedure, with modifications and exceptions as ordered by the State Tax Commission. Submission of documents and other evidence. The taxpayer's operating statement, applicable yield studies, the staff's appraisal and the taxpayer's notice of appeal and request for hearing are deemed a part of the record of the hearing. Other written appraisals, exhibits, statements, arguments and other documents for the Commissioners to consider shall be submitted by both parties at least three (3) days in advance of the hearing. Additional information may be presented by either party at the time of their oral presentations, but such additional information should be limited to subject matter and evidence provided at least three days prior to the hearing. Parties shall submit ten (10) copies.~~ ~~(7-1-99)~~()

d. Presiding officer. The Chairman of the State Tax Commission shall appoint an individual who is not a member of the State Tax Commission's staff to conduct the hearing. In the absence of a conflict of interest or other good cause, this person will normally be the Commissioner overseeing the centrally assessed property section of the State Tax Commission or the designee thereof. A Commissioner shall not vote on any matters where he has oversight (7-1-99)

e. The proceeding. In a non-adversarial proceeding witnesses shall present evidence and arguments directly to the Commissioners. The presentation may include written materials including a transcript of the witnesses' oral statements. Copies of written materials (including copies of visual presentations) shall be provided each Commissioner, the Commission's secretary and the Staff. At the conclusion of a witness' testimony, Commissioners may pose

questions. The party with the burden of proof on the matter to be considered shall present first and may make a closing presentation. This closing presentation should be limited to the subject matter and evidence presented during the proceeding. (____)

f. Testimony under oath. All testimony to questions of fact to be considered by the State Tax Commission in hearings, except matters noticed officially or entered by stipulation, shall be under oath. Before testimony is presented ~~taking the witness stand~~ each person shall swear, or affirm, that the testimony he is about to give shall be the truth. Attorneys may present oral and written legal argument on behalf of clients as part of the presentation by the party they represent. (7-1-99)(____)

fg. Rules of evidence. No informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made by the State Tax Commission. Unless otherwise provided in these rules ~~The Idaho Rules of Evidence~~ will be generally followed but may be modified at the discretion of the State Tax Commission to aid in ascertaining the facts. When objection is made to the admissibility of evidence, the evidence may be received subject to later ruling by the State Tax Commission. The State Tax Commission, at its discretion either with or without objection may limit or exclude inadmissible, incompetent, cumulative or irrelevant evidence. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. (7-1-99)(____)

gh. Recessing hearing for conference. In any proceeding the presiding officer may, in at his discretion, call both parties together for a conference prior to the taking of testimony, or may recess the hearing for a conference. The presiding officer shall state on the record the results of the conference. (7-1-99)

hi. Transcript. An official electronically recorded transcript of the hearing ~~will~~ may be taken at the discretion of the Commission when requested by a party. A petitioner desiring the taking of stenographic notes by a qualified court reporter may notify the State Tax Commission in writing and shall arrange for the hiring of a reporter and bear the expense of the reporter's fees. If the reporter's transcript is deemed by the State Tax Commission or presiding officer as the official transcript of the hearing, the petitioner shall furnish the State Tax Commission a transcript free of charge. (7-1-99)(____)

ij. Transcript copies. A request for a copy of ~~the~~ a transcript of proceedings at any hearing must be in writing or on the record. Upon completion of the transcript, the State Tax Commission shall notify the person requesting a copy of the fee for producing the transcript. Upon receipt of the fee, the State Tax Commission will send a copy of the transcript. (7-1-99)(____)

July 18, 2013

Katrina M Basye
Property Tax Manager
(208) 388-2328
(208) 388-5460 (FAX)
kbasye@idahopower.com

Alan Dornfest, Chairman
Property Tax Rules Committee
Idaho State Tax Commission
PO Box 36
Boise, ID 83707

Subject: Proposed Rule Change Comments
IDAPA 35.01.03.407 – Appeal of Operating Property Assessments

Dear Mr. Dornfest:

I appreciate you allowing me to participate in the subcommittee that was charged with reviewing the appeal process for operating property assessments. I am requesting the amended rule 407 paragraph 7(a) be modified as it creates a disparity between locally and state assessed property, it will not eliminate a hearing from being adversarial, and finally it impedes taxpayers from receiving a fair and impartial hearing.

Background:

Alan Dornfest, ISTC Property Tax Rules Committee Chairman, received a letter (attachment A) from Commissioner David Langhorst, August 15, 2012 requesting a review of the property tax rule 407 (operating property appeal process). The general guidance from the Commissioner was to keep in mind during the rule review the following; open meetings law, adversarial versus presentational process, how to receive information effectively and efficiently, and should flexibility be allowed in the hearings.

A subcommittee was formed consisting of two taxpayers and six-seven tax commission staff. The subcommittee met several times and did arrive at language that was workable on all issues but one (elimination of examine and cross examination).

IDAP 35.01.03.407.07(a) – Proposed rule (Attachment B)
Rights of parties. At any hearing, both parties may appear, introduce evidence ~~examine and cross-examine witnesses~~, make arguments and generally participate in the conduct of the proceeding.

Comments:

Taxpayers disagree with the tax commission's decision to eliminate the ability of the taxpayer to ask questions at its hearing, "examine and cross examine witnesses" as it will;

- impede taxpayers from receiving a fair and impartial hearing.
Taxpayers seek through the appeals process a fair and impartial review. The taxpayer recognizes the burden of proof lies with them and takes on the responsibility to present and clarify all issues for the Board of Equalization. The purpose of cross examination is to explain and/or clarify the evidence presented by the opposing party. By eliminating the taxpayers ability to cross examine the tax commission creates a restriction of the evidence resulting in something less than a fair and impartial hearing.
- create inequity between local and tax commission appeals.
The ad valorem valuation appeals heard at the local level by the Board of Commissioners setting as the Board of Equalization allow the taxpayer to ask questions (see Attachment C). It is inappropriate that the operating property taxpayers will be are afforded fewer rights than the locally assessed taxpayers when appealing their property values.
- not eliminate a hearing from being adversarial.
A hearing is created as a result of two parties disagreeing, that by its nature gives rise to an unavoidable adversarial position.

Taxpayer's proposal:

1. Taxpayers recommend as a compromise to write in rule that if the hearing officer deems a question in cross examination to be inappropriate, abusive, or demeaning the hearing officer may deny the question.
2. Rule 407.07(1) should read as follows:
IDAP 35.01.03.407.07(a) – Proposed rule (Attachment B)
Rights of parties. At any hearing, both parties may appear, introduce evidence examine and cross examine witnesses, make arguments and generally participate in the conduct of the proceeding.

For the reasons discussed above please reinsert the language "examine and cross examine witnesses" in the proposed rule 407.07(a).

Sincerely,



Katrina Basye, Property Tax Manager
Idaho Power Company
PO Box 70
Boise, ID 87307

August 15, 2012

Alan Dornfest
Chairman, Property Tax Rules Committee
Idaho State Tax Commission

Re: Property Tax Rule 407

Dear Alan:

The Commission has a task for your Property Tax Rules Committee. Please review Property Tax Rule 407 (and any related rules and processes of the Tax Commission) governing the conduct of hearings to review property tax appraisals. Rule 407 was last revised more than a decade ago. Hearings conducted in recent State Board of Equalization (SBOE) sessions may have evolved away from the processes spelled out in Rule 407. We ask that your Committee recommend whether changes in the rule and related process could improve the Commission's existing practices. We expect the Committee to fully engage in negotiated rulemaking to conduct this review.

As your Committee undertakes this task, we ask that members keep in mind the following general guidance:

- The governing statutes, Idaho Code sections 63-407 and 63-107, which require hearings upon a taxpayer's request be "conducted in such manner as the commission may direct" and "shall be as summary and simple as reasonably may be, and, as far as possible, in accordance with the rules of equity."
- Requirements of the Idaho Open Meetings Law.
- We ask that you consider and recommend whether the Commission should update the rule to more accurately reflect recent practice. Should the Commission conduct adversarial hearings that adhere more closely to the existing rule? Or, would a presentational process work better?
- What changes may allow the Commissioners to receive information needed to make a decision more effectively and efficiently? Should Rule 407 further relax the rules of evidence (see subsection (g)). Would pre-submission of evidence, written testimony, or briefing help?

- How much, if any, flexibility should the rule encourage varying procedures for specific hearings?

This general guidance should not limit your Committee's review of the SBOE hearing process. We welcome wide-ranging discussions and recommendations for improvements. Please target recommended changes for review by the Idaho Legislature's 2014 session.

Idaho State Tax Commission



By David R. Langhorst, Chairman

drl/tvs/ss

cc: Commissioner Tom Katsilometes
Commissioner Rich Jackson
Commissioner Ken Roberts
Mike Chakarun, Tax Policy Manager
Steve Fiscus, Property Tax Manager
Valerie Dilley, Executive Administrative Assistant

407. ~~APPEAL~~ OF HEARING TO REVIEW OPERATING PROPERTY ASSESSMENTS APPRAISALS (RULE 407). ()

01. Procedure Governed. This rule shall govern all practice and procedure before the State Tax Commission sitting as a Board of Equalization in hearings under Section 63-407, Idaho Code. Hearings are not contested cases under the Idaho Administrative Procedures Act. Hearings are open meetings under the Idaho open meetings law and all written materials are subject to Idaho public records law. The taxpayer may request that the board of equalization go into executive session to discuss confidential materials (7-1-99)()

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Hearing Procedures

Purpose of Hearing

Your BTA hearing furnishes the Board and you with the greatest opportunity to obtain the necessary and best information available for deliberations and to render a final decision. Several related points are discussed below:

The Record. The Board is quasi-judicial and responsible for developing a complete and accurate record. This is primarily accomplished through the information gathered at hearing from the parties.

Fair Hearing. A just decision is rendered only after an opportunity to be heard has been properly offered.

Written Decision. A just decision is supported by the record and law, and is based on the best evidence available. Final decisions are not issued at hearing.

Due Process is an orderly and law-guided process to enforce and protect a person's rights and property.

Hearing Procedure

A hearing officer will open the hearing with instructions and preliminary comments. Then participating individuals introduce themselves and are typically sworn in together. The hearing is recorded as required by law.

The appellant (party appealing) presents first, i.e., all evidence and legal argument is presented. The hearing officer ensures there are no undue interruptions. At the conclusion of appellant's presentation, the opposing party may ask questions.

The respondent (party responding to the appeal) then presents its case with the same opportunity for questions afterwards. The hearing officer will occasionally ask questions or clarify information for the record as well.

Each party may then make a brief closing statement, with the appellant going first, respondent second, and the appellant having the opportunity for a final rebuttal statement. The hearing officer may require closing arguments by written brief in conjunction with, or in place of, closing arguments at hearing.

Most Board hearings last 1 to 2 hours and involve about 3 to 5 people.

Exhibits

The parties may wish to present exhibit materials to the Board. Photographs, reports, letters, logs, receipts, written materials, maps, and spreadsheets are examples of exhibits.

Exhibits should be clearly titled, the pages numbered, and indicate who prepared the exhibit. An 8.5 x 11 inch size is preferable. A complete copy of any documentary evidence -- such as with a letter, contract, report, or appraisal -- should be provided.

The hearing officer will briefly describe exhibits for the record and mark them for future reference.

Bring one (1) original and two (2) copies of each exhibit to the hearing: one for the appellant, one for the respondent, and one for the official record and hearing officer's use.

De Novo

The hearing before the Board is de novo, meaning the process of gathering information is starting over again. Please be prepared to present all exhibits and testimony that may have been previously submitted to the County Board of Equalization or the State Tax Commission. New evidence and legal argument may also be presented by either party.

Appeal Forms

[Appeal Form for a Property Tax Appeal](#)
[Appeal Form for a State Tax Commission Decision](#)
[Appeal Form for a Circuit Breaker Benefit](#)

Other Forms

[Notice of Withdrawal Form](#)
[Market Value Settlement Form](#)

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Important - Please Read

The material on this page is only a general outline concerning hearing procedures before the Board. Ultimately the hearing officer will conduct and preside over the hearing as he or she sees legally proper. This brochure is not intended to discuss all aspects of the hearing or to provide legal counsel. It is your obligation to be informed and prepared for the hearing. You should do all you can to acquaint yourself with the procedures and relevant law and to thoroughly prepare your case for hearing.

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632. PROPERTY EXEMPT FROM TAXATION – OIL OR GAS RELATED WELLS (RULE 632).

Section 63-60200, Idaho Code. ()

01. Definitions of oil or gas well. ()

a. Wells drilled for the production of oil, gas or hydrocarbon condensate may include the well, casing, and other structures permanently affixed inside the well, and the land inside the perimeter of the well. ()

b. The well shall include the part where the gas producing stratum has been successfully cased off from any oil. ()

02. Ineligible land and equipment. ()

a. Wellheads and gathering lines or any line extending above ground level shall not qualify. Equipment used for the extraction, storage, or transportation of oil, gas, or hydrocarbon condensate shall not qualify. ()

b. Land, other than that used for the well as defined in section 01 of these rules, shall not qualify. If the presence of the well increases the market value of nearby land, the assessed value of such land shall reflect the increase, unless the land qualifies independently for any other property tax exemption. ()

03. Application. As provided in section 63-602(3), Idaho Code, annual application is required for the exemption provided in this section. ~~For 2013, such application must be made to the county commissioners by May 1. Subsequently, application and~~ must be made to the county commissioners by April 15. ()

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July 29, 2013

Idaho State Tax Commission
Attn: Alan Dornfest, Chairman, Property Tax Rules Committee
PO Box 36
Boise ID 83722-0410

Re: Draft Rule 632, "Property Exempt From Taxation – Oil or Gas Wells."

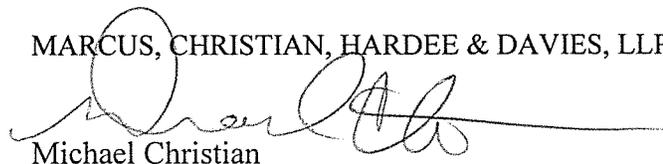
Dear Mr. Dornfest:

This firm represents AM Idaho, LLC. We appreciate the opportunity to comment on draft Rule 632, "Property Exempt From Taxation – Oil or Gas Wells." Our comments are as follows:

Provision should be made for application for the exemption for 2013 after the rule becomes effective. The draft rule appears to require application by May 1, 2013, when that date has already passed, which makes compliance impossible. The date is later than the normal application date, suggesting the understanding when the rule was drafted that taxpayers should have a real opportunity to comply (although it was also the same date that the draft rule was published in the Administrative Bulletin). As a practical matter, HB 141 was not signed by the governor until late March 2013, leaving very little time for AM Idaho to become acquainted with the application process even if procedural rules existed at that time, which they did not. We respectfully suggest that a true opportunity should be provided for taxpayers to comply with the rule for the 2013 tax year, by allowing application at a date after the rule becomes effective.

Very truly yours,

MARCUS, CHRISTIAN, HARDEE & DAVIES, LLP



Michael Christian

MC:ah
cc: Sherry Briscoe
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803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803). Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), and 63-3638(10), Idaho Code. (4-2-08)

01. Definitions. (4-5-00)

a. “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

b. “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code. (4-2-08)

c. “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

d. "Property Tax Funded Budget." Property tax funded budget means that portion of any taxing district's budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

e. "Recovered/Recaptured Property Substitute Funds Tax List." Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)

i. Section 63-602G(5), Idaho Code; and (5-8-09)

ii. Section 63-3029B(4), Idaho Code; and (5-8-09)

iii. Section 31-808(11), Idaho Code. (5-8-09)

f. "Taxing District/Unit." Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

g. "New Taxing District." For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

02. Budget Certification. The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located by submitting the completed and signed L-2 Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed on the amount shown in the notice of budget hearing.

(4-6-05)()

03. Budget Certification Requested Documents. Using the completed L-2 Form, each board of county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission. (4-2-08)

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

a. “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

b. “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

c. “Cash Forward Balance.” List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

d. “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

e. “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-2-08)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; and (5-8-09)

iv. The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code. (5-8-09)

v. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement. (4-6-05)

f. “Balance to be Levied.” Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

- g. Other Information.** Provide the following additional information. (4-5-00)
- i. The name of the taxing district or unit; (3-20-04)
 - ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)
 - iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)
 - iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)
- h. Attached Information.** Other information submitted to the county auditor with the L-2 Form. (4-6-05)
- i. For all taxing districts, L-2 worksheet. (3-20-04)
 - ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)
 - iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)
 - iv. Voter approved fund tracker. (3-20-04)
 - v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)
 - vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)
 - vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

05. Special Provisions for Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

06. Special Provisions for Property Tax Replacement other than Replacement Money Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code. With the exception of property tax replacement monies received for property subject to the exemption provided in Section 63-602KK, Idaho Code, property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. For all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section 31-808(11), Idaho Code, and the amount actually levied. (5-8-09)

a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Section 63-3638(10), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Section 63-3638(10), Idaho Code. (5-8-09)

b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received. (4-2-08)

c. Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

d. For counties receiving monies described in Section 31-808(11), Idaho Code, the amount of money transferred from the interest-bearing trust to the county indigent fund shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. (5-8-09)

e. Levy limits shall be tested against the amount actually levied. (3-15-02)

07. Special Provisions for Property Tax Replacement Received for Property Subject to the Exemption Provided in Section 63-602KK, Idaho Code. The following procedure is to be used to calculate levy rates and maximum amounts of property tax revenue for taxing districts or units that receive property tax replacement money for property subject to the exemption in Section 63-602KK, Idaho Code. (5-8-09)

a. Such property tax replacement money is not to be subtracted from the “balance to be levied” amount certified on the L-2 Form. (5-8-09)

b. The otherwise taxable value of the property subject to the exemption provided in Section 63- 602KK, Idaho Code, is to be included in the value of the taxing district or unit used to calculate the levy rate. (5-8-09)

c. The maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the amount actually levied plus other property tax replacement money as defined in Paragraph 803.4.e. of this rule, excluding any amount transferred as provided in Section 31-808(11), Idaho Code. (5-8-09)

08. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services. For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

09. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District. For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years

preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

10. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds. Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the “Column Total” entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

11. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy. To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63- 802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this levy, sum the school district's tort fund for the prior year and the agricultural equipment replacement revenue subtracted from that tort fund, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (4-2-08)

12. Special Provisions for Interim Abatement Districts. When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

13. Special Provisions for Levies for Payment of Judgments by Order of Court. The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. (4-4-13)

14. Cross Reference for School Districts with Tuition Funds. For any school district certifying a tuition fund levy in 2006 or any year thereafter, see Section 33-1408, Idaho Code, as amended by the First Extraordinary Session of the Fifty-eighth Legislature, for clarification that

Proposed Property Tax Rule 803
Draft 1a, May 20, 2013

the amount of property tax revenue for a tuition fund is not subject to the limitations of Section
63-802, Idaho Code. (4-2-08)

902. PROPERTY TAX NOTICE AND RECEIPTS - DUTY OF TAX COLLECTOR (RULE 902).

Sections ~~63-602KK~~, 63-704, and 63-902, Idaho Code.

~~(5-8-09)~~(1-1-13)T&P

01. ~~Tax Notices with Zero Tax Owed.~~ The tax notice required to be mailed to taxpayers under Section 63-902, Idaho Code, must include taxpayers whose property taxes are to be paid in full as a result of the property tax reduction approved under Section 63-704, Idaho Code ~~or as a result of the property tax exemption provided in Section 63-602KK, Idaho Code.~~ For these taxpayers, the tax notice shall show the amount to be paid on behalf of the taxpayer and zero taxes owed.

~~(5-8-09)~~(1-1-13)T&P

02. ~~Tax Notices Applicable to Taxpayers Eligible for the Exemption Provided by Section 63-602KK, Idaho Code.~~ The tax notice for taxpayers who receive a reduction in the amount of property tax due must show the gross value of the personal property, the gross tax amount, the amount exempted, the tax amount to be paid by the state, and the net tax due from the taxpayer even if zero (0) tax is owed.

~~(5-8-09)~~T&P