

**PROPERTY TAX RULES COMMITTEE
AGENDA**

The Committee convenes on Wednesday, August 21, 2013, at **9:00 a.m.** at:

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

| | | |
|---|---|----------------|
| Welcome & Introductions | <i>Committee Chair Alan Dornfest</i> | |
| Approval of Minutes for August 6, Meeting | <i>Alan Dornfest</i> | <i>page 2</i> |
| Rules Status Report | <i>Rick Anderson</i> | <i>page 5</i> |
| Rules Discussion and Approval (Proposed Property Tax Rules) | | |
| Rule 205 | Personal and Real Property – Definitions and Guidelines <i>Alan Dornfest</i> | <i>page 7</i> |
| Rule 626 | Property Exempt from Taxation – Certain Personal Property <i>Alan Dornfest</i> | <i>page 72</i> |
| Rule 803 | Budget Certification <i>Alan Dornfest</i> | <i>page 85</i> |

Any Additional Items for Discussion

Next meeting date:

Meeting adjourns

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
August 6, 2013 ~ 9:00 am – 12:00 pm 1CR5

ATTENDEES:

| | |
|------------------------------------|--|
| Committee Members: | Alan Dornfest, Rick Anderson, Betty Dressen, Dwayne Hines, Gene Kuehn, Sharon Worley, Erin Brady, Christopher Rich, Erick Shaner |
| Commissioners: | Rich Jackson, Ken Roberts, Tom Katsilometes |
| Rules Coordinator: | Sherry Briscoe |
| State Tax Commission Staff: | Bill von Tagen, Greg Heinrich, Greg Himes, Janet James, Kathlynn Ireland, Michael Chakarun |
| Guests: | Brent Adamson, Brett Endicott, Georgia Plischke, June Fullmer, Katrina Basye, Linda Jones, Rick Smith, Ron Fisher, Terry Accordino, Sue Probst, Seth Grigg, John Watts, Steve Worthley, Richard Budzich, Jeff Siddoway, Brody Aston, Zach Hauge, Ben Davenport, Elli Brown, Kate Haas, and Gerry White via phone |

MINUTES: The June 18, 2013 minutes were unanimously approved.

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

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| 006 | Technical changes, not a negotiated rule |
| 020 | Combined use RV's |
| 205 | Focus on improvements |
| 302 | Complete – deletes entire rule |
| 407 | Hearing process for Appeals of Operating Property Assessments |
| 626 | Temporary rule completed, proposed rule Draft 4 |
| 632 | Defines oil/gas well |
| 700 | Disclosure of PTR applicant info to state or federal elected officials |
| 803 | Budget certification |
| 804 | <i>Urban renewal- this hasn't started yet</i> |
| 902 | No need to send out zero balance tax notices |

RULES DISCUSSION:

Property Tax Rule 020: Value of Recreational Vehicles for Annual Registration and Taxation of Unregistered Recreational Vehicles. Section 03 was the only section modified in this rule, which changes the method used to establish value of utility/horse trailer-RV combination vehicles. ITD and Brett Endicott, Owyhee County Assessor, provided market research to help establish the new guidelines for valuation. Gene motioned and Betty seconded to accept this rule, the committee approved it for publication in the bulletin.

DRAFT

Proposed Rule 632: Property Exempt from Taxation – Oil and Gas Wells. This is a permanent rule that will replace the temporary rule. Draft 1a defines what is exempt with this rule. Rick noted that we had a letter from Michael Christian concerning the application date. Alan clarified that the application date was established by Idaho Code, and that the draft before the committee reflected Idaho Code, so could not address the concern expressed in the letter. Gene motioned and Betty seconded to accept this rule, the committee approved it for publication in the bulletin.

Proposed Property Tax Rule 803: Budget Certification – Dollar Certification Form (L-2). Section 02 is being amended. There was some concern in the Magic Valley area about locking in published limits prior to knowing their full budget. Alan plans to review this rule at the clerk's conference on August 20. This issue will be held over for final discussion during the August 21 meeting.

Proposed Rule 902: It was agreed that there is no need to send out a zero balance due notice to taxpayers. This doesn't forbid treasurers from sending out a zero-due tax notice, it just doesn't require sending one out. Gene motioned and Sharon seconded to accept this rule, the committee approved it for publication in the bulletin as a negotiated rule.

Proposed Rule 407: Rick Anderson, who chaired the subcommittee for this rule, discussed the changes that were incorporated, specifically to make the hearings more informational and less confrontational. Katrine of Idaho Power, was not comfortable with the elimination of the cross examination, and suggested adding a portion to section 07 a. to say "introduce evidence, *ask questions through the presiding officer*, make arguments...". Dwayne motioned to accept this change and move forward with this rule. June seconded his motion and the committee was in favor. This rule will be published in the bulletin.

Proposed Rule 626: Property Exempt from Taxation – Certain Personal Property. This rule provides guidance on the administration of the personal property exemption and the determination of replacement funds to taxing districts and RAAs. This rule was reviewed subsection by subsection. A few changes were suggested and approved to the current working draft. This rule will be considered at the August 21 meeting.

Proposed Rule 205: Personal and Real Property – definitions and guidelines.

Among the public comments received, was a letter from Rick Smith of Hawley/Troxell. He reviewed some of his concerns in the meeting as well, discussing the history of this rule, the issues in trying to define personal property and operating property, and revising the definitions of fixtures. Rick suggested going back to the percentage concept to determine identifying the structures and fixtures that can be considered personal property. Alan pointed out that the statute did not allow for the percentage method.

Eric Shaner discussed how some of the confusion began with the assessments on cell towers, and how they have been assessed as both, fixtures and structures. It was agreed that uniformity needs to be achieved by this rule.

Gene noted that the assessors have struggled with these definitions as well, and will be discussing this issue at the upcoming assessor s' conference.

The Notice of Intent to Promulgate – negotiated rulemaking will be forwarded to the Department of Administration this week. This rule will be further discussed at the August 21, 2013 meeting.

DRAFT

Next Meeting Date: Wednesday, August 21, 2013, 9:00 a.m. in 1CR5

Alan Dornfest
Chairman

Sherry Briscoe
Rules Coordinator

**2013-2014
Property Tax Rules Status Report
August 21, 2013**

| 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 | 5/8/13 | 5/22/13 | Committee Approved June 18, 2013 | Draft 3, June 10, 2013 | Adopt by reference – updates standard reference manuals and guides | Ready |
| 020 (NR) | 5/8/13 | 5/8/13 | 5/22/13 | Committee Approved August 6, 2013 | Draft 1a, July 29, 2013 | R/V's - combined use – Registration fee value determination | Ready |
| 205 (NR) | 6/24/13 | 6/24/13 | 8/7/13 | On today's agenda | Draft 2, July 2, 2013 | Personal Property – 3 factor test Predominant – focus on Improvements – | |
| 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 | 5/8/13 | 5/22/13 | Committee Approved May 20, 2013 | Draft 1, April 16, 2013 | Deletes entire rule | Ready |
| 407 (NR) | 5/8/13 | 5/8/13 | 5/22/13 | Committee Approved August 6, 2013 | Draft 1a, July 29, 2013 | Hearing process for Appeals of Operating Property Assessments | Ready |
| 626T (NA) | 4/4/13 | 2013-352-3 | 4/8/13 | Approved by Commission -4-9-13 | | Completed | |
| 626 (NR) | 5/8/13 | 5/8/13 | 5/22/13 | On Today's Agenda | Administration draft thru Aug 5, 2013 | PP exemption and replacement funds | |
| 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 | 5/8/13 | 5/22/13 | Committee Approved August 6, 2013 | Draft 1a, July 29, 2013 | Defines oil/gas well | Ready |
| 700 (R) | 5/8/13 | 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 | Ready |
| 803 (NR) | 5/8/13 | 5/8/13 | 5/22/13 | On Today's Agenda – discussed at 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 | 5/8/13 | 5/22/13 | Referred to Subcommittee – PARF notes 2 year project | None | Urban Renewal Districts | |
| 902 T & P (NA) (NR) | 6/3/13 | 6/3/13 | 6/7/13 | Committee Approved August 6, 2013 | Draft 1, May 15, 2013 | Delete requirement to show exempt personal property on tax notice. Temp. version approved July 17. | Ready |

Discussion Issues

| Issue | Comments |
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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)

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(2). ()

a. Personal property means everything that is the subject of ownership and that is not included within the term real property. Real property means land and all rights and privileges thereto belonging or any way appertaining and 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. Real property also includes improvements. Improvements means all buildings, structures, fences, water ditches constructed for mining, manufacturing or origination purposes, and fixtures, 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. The three factor test is ~~will be~~ the predominant determinant ~~of eligibility~~ when considering whether fixtures ~~are~~ real property. ~~exempt per Section 63-602KK(2), 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. Based upon the definitions of personal and real property in section a. of this subsection 04. of this rule ~~t~~The following items are real property and are not eligible for the exemption in 63-602KK(2), of Idaho Code:~~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)

MEMORANDUM

TO: Alan Dornfest
Property Tax Rules Committee Chair
FROM: George Brown
DATE: August 15, 2013
RE: Proposed Rule 205

The purpose of this memo is to outline the Tax Commission legal staff's interpretation of what personal property consists of for purposes of the personal property tax exemption. This information will necessarily contrast the Commission's opinion with that of Richard G. Smith of Hawley Troxell Ennis and Hawley LLP, expressed in a letter of August, 2, 2013 to the Tax Commission's Property Tax Rules Committee, on behalf of CenturyLink, Northwest Pipeline and AT&T Mobility.

Personal property is defined in Idaho Code § 63-201 as "everything that is the subject of ownership and that is not included within the term "real property." Certain types of property can be identified as real property simply by reference to statutory definition of that term. Real property is defined in Idaho Code § 63-201 as:

(23) "Real property" means land and all rights and privileges thereto belonging or any way appertaining, all quarries and fossils in and under the land, and 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, improvements and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in [chapter 17, title 63](#), Idaho Code. Timber, forest, forest land, and forest products shall be defined as provided in [chapter 17, title 63](#), Idaho Code.

Clearly, certain items like land, fossils and standing timber can be identified as real property with a cursory reading of Idaho Code.

Further analysis must be made to determine if property falls into the category of "improvements" and, therefore, real property. Improvements are also defined in Idaho Code § 63-201 as:

(11) "Improvements" means all buildings, structures, manufactured homes, as defined in section [39-4105](#)(8), Idaho Code, mobile homes as defined in section [39-4105](#)(9), Idaho Code, and modular buildings, as defined in section [39-4301](#)(7), Idaho Code, erected upon or affixed to land, fences, water ditches constructed for mining, manufacturing or irrigation purposes, fixtures, and floating homes, 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. The term "improvements" also includes all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

Once again, Idaho Code makes certain types of property easily identifiable as real property, this time because they are specifically identified as improvements. Buildings, manufactured homes, fences, and floating homes are all specifically identified as improvements and, therefore, real property. But other items, like structures and fixtures, are identified only by the terms themselves.

The term “structure” is not defined in Idaho Code. The American Heritage Dictionary definition of “structure” is “Something constructed, such as a building.” Black’s Law Dictionary’s similar but more legalistic definition is “Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together < a building is a structure >.” Even absent a statutory definition, it would be logical to conclude that most manmade items erected or built on land in a somewhat permanent manner would be commonly considered structures. The average person using their common knowledge would probably identify water towers, fuel depot storage tanks, and high tension power line towers as structures and, therefore, real property.

“Fixtures” on the other hand, are defined by Idaho Code § 63-201 as:

(9) "Fixtures" means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by 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, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building. "Fixtures" does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.

In essence, this definition of “fixture” allows for the annexation of items of personal property into improvements on real property.

The definition of “fixture” was added to Idaho Code § 63-201 by House Bill 599 in 2008 and is largely made up of wording from a similar Colorado statute. The Colorado statute read:

(4) “Fixtures” means those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto. “Fixtures” includes systems for the heating, air conditioning, ventilation, sanitation, lighting, and plumbing of such building. “Fixtures” does not include machines, equipment, or other articles related to a commercial or industrial operation which are affixed to the real property for proper utilization of such articles. In addition, for property tax purposes only, “fixtures” does not include security devices and systems affixed to

any residential improvements, including but not limited to security doors, security bars, and alarm systems.

Colorado Statute §39-1-102.

The first part of Idaho's definition lays out a three factor test, not found in the Colorado statute, that is used in many states to determine whether a piece of personal property will be considered a fixture of the real property improvement to which it is attached. Articles of personal property will be considered a fixture if they meet the three parts of the following test:

1. The article is physically incorporated therein or annexed or affixed thereto in such a manner that removing it would cause material injury or damage to the real property,
2. The use or purpose of such article is integral to the use of the real property to which it is affixed, and
3. A person would reasonably be considered to intend to make the article a permanent addition to the real property.

There are two sentences after the three factor test found in Idaho Code § 63-201(9). The first of these says: "'Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building." That sentence, taken verbatim from the Colorado statute, is not exclusive, many other items can fall into the category of "fixture" but, instead, merely identifies some articles of property commonly considered fixtures found in many buildings, items that are necessary for the operation of the building itself. The second sentence, however, consists of wording different from the Colorado statute, and is the focus of Mr. Smith's letter on the Tax Commission's proposed rule.

The second sentence says: "'Fixtures" does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles." This added clause ensures that items of personal property cannot be considered physically incorporated into an improvement simply because they require common means of attachment to operate properly. The second sentence also ensures things that are easily moveable but potentially unstable in use, like conveyor belts, washing machines, presses and vehicle lifts, are not annexed into real property only because they are attached to it.

What this clause does not do is automatically make all "machinery, equipment, and other articles" personal property. Idaho's version of the clause substantially differs from Colorado's because it does not include language regarding use of articles of property. Idaho specifically removed the language "related to a commercial or industrial operation" found in Colorado's corresponding language and added the traditional three factor test. So, while Colorado specifically excludes an article of property involved in a commercial or industrial operation from fixture status, Idaho relies on the article's connection to a real property improvement to determine whether it is a fixture or personal property, regardless of its commercial status. The residual Colorado language kept by Idaho simply ensures that attachment is not a single factor in determining whether an article is a fixture, so that the three factor analysis is used properly.

The second sentence also does not mean that the act of attaching an otherwise readily movable piece of machinery or equipment precludes it from being considered a fixture under the three factor test. If the act of attaching equipment results in an automatic determination that the equipment is personal property, then almost no equipment would be real property, even though it otherwise met the three factor test. Arguably, this interpretation would leave no reason for the existing three factor test to have been incorporated into the statute in the first place.

Colorado's definition of personal property highlights the differences in the two states' statutes and supports the conclusion that Idaho personal property law cannot be determined by interpretation of Colorado law. That definition is:

(11) "Personal property" means everything that is the subject of ownership and that is not included within the term "real property". "Personal property" includes machinery, equipment, and other articles related to a commercial or industrial operation that are either affixed or not affixed to the real property for proper utilization of such articles. . . . [A]ny pipeline, telecommunications line, utility line, cable television line, or other similar business asset or article installed through an easement, right-of-way, or leasehold for the purpose of commercial or industrial operation and not for the enhancement of real property shall be deemed to be personal property, including, without limitation, oil and gas distribution and transmission pipelines, gathering system pipelines, flow lines, process lines, and related water pipeline collection, transportation, and distribution systems. Structures and other buildings installed on an easement, right-of-way, or leasehold that are not specifically referenced in this subsection (11) shall be deemed to be improvements pursuant to subsection (7) of this section.

Colorado Statute §39-1-102. The definition above clearly indicates Colorado's intent to consider commercial and industrially related property as personal property and strongly suggests that the state's "fixtures" definitional wording is further reference of that intent. Idaho code contains no similar language, and no indications that the Idaho legislature intended to treat property in a similar manner to Colorado. Many of the articles of property specifically identified in Colorado's statute as personal property are at the center of the disagreement in Idaho that this memorandum addresses.

In Idaho, to determine if something is a fixture for purposes of property taxation, the three factor test must be utilized. Machinery and equipment that is attached to an improvement still may or may not be a fixture. An example of this is freezer cases at a supermarket. Most grocery stores have aisles made from freezer cases. These cases are necessarily bolted to the floor to keep them from tipping over when their doors are opened by customers. These cases are moved regularly throughout the store, as any shopper looking for frozen treats has surely experienced. While integral to the use of the store property, the cases are not intended to be permanent additions to the property. Empty supermarkets do not have these aisles left in place, and their removal does not cause significant damage to the property. Therefore, they are personal property because they do not meet the requirements of the three factor test. However, the exact same cases may meet the test when they are permanently installed in the back of the store in the

dairy section. The cases are built into a wall in the store that must sustain much damage to remove them, they are integral to the use of the store property, and they generally remain in the store until their useful life ends.

Reading the second sentence to be determinative of articles' property status leads Mr. Smith to incorporate a use provision for property into Idaho's statute that does not exist. On page 3 of his letter, Mr. Smith says:

[W]hen the "attached" property is used in the commercial operation, it is personal property; the last sentence of section 63-201(9) makes that clear. It provides that real property "does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles."

With these two sentences, the legislature signaled a clear intent to separate "building" functions from "operational" functions. The property that serves a building function is real property; the property used in the commercial operation is personal property, regardless of the manner of attachment.

Colorado's legislature signaled its intent to separate "building" functions from "operational" functions, but Idaho's legislature specifically excluded the Colorado language that signals that intent from Idaho's own statute. Idaho instead chose to focus specifically on the manner of an article's attachment to a property improvement through the three factor test. So, while Mr. Smith's opinion may be accurate under Colorado law, it does not reflect the legislative intent behind Idaho law that the three factor test be used.

Reading Idaho's fixtures definition to incorporate a separate use requirement to determine whether or not an article is personal property essentially nullifies the statutorily mandated three factor test. Many items traditionally identified as real property fixtures under the three factor test, like generators inside dams, settling tanks with buildings built around them, and freight elevators, would all be personal property because they are used for commercial or industrial purposes.

This mistaken reading is pervasive in Mr. Smith's argument of this subject. In a memorandum to an Idaho Association of Commerce and Industry work group dated September 6, 2011 attached to the letter to which this memo replies, Mr. Smith further asserted the opinion that the determination of personal property status lies in the business use of an article of property. In that memo, Mr. Smith said "[Idaho Code § 63-201(9)] is a mandate that machinery and equipment is not to be treated as a fixture, even if it is bolted down or otherwise attached." Mr. Smith's interpretation of Idaho Code § 63-201(9) in his September 6, 2011 memorandum is that no machinery or equipment can be considered a fixture, *even if* it is annexed or attached to an improvement. A proper interpretation of that code section is that machinery or equipment fails the three factor fixtures test if it is *only* attached to enable its proper utilization.

The discussion of what constitutes fixtures and personal property under Idaho law dates back to at least the timeframe in which the promulgation of rules under HB 599 was initially contemplated. An administrative rule meeting before pertinent legislative subcommittees was

held on July 17, 2008 to discuss rulemaking under HB 599, and resulted in objection to the Tax Commission's proposed rules by the committees specifically because the three factor test was not emphasized and because mobility of the items was not adequately considered. A copy of the minutes of that meeting has been attached to this memorandum to demonstrate some of the continuing discussion on personal property definitional issues.

Proposed Rule 205 is the Tax Commission's attempt to classify personal property in order to uniformly apply the newly enacted personal property exemption throughout the many counties in the state, as well as to properties assessed by the Tax Commission. The truncated timeframe to produce this memo did not allow for a more detailed legal analysis of each item of property identified in the proposed rule. I will generate such an analysis should the committee wish to move the rule forward.

In conclusion, I believe that Rule 205 is in conformity with current law found in Idaho Statutes, but acknowledge that the rule is highly contested by the stakeholders interested in the application and administration of the newly enacted personal property exemption found in HB 315 from 2013. An analysis of whether an item of property is personal or real property should start with the definitions of "real property" and "improvement" and an item must meet the requirements of the statutory three factor test to be identified as a "fixture" to an improvement.

CORRECTED MINUTES

Administrative Rule Meeting
IDAPA 35.01.03 - Idaho Property Tax Administrative Rules
(Docket #35-0103-0801)

July 17, 2008
Capitol Annex, Room 117, Boise, ID

In attendance were Germane Joint Subcommittee members from Senate Local Government and Taxation Subcommittee: Chairman Senator Brent Hill (participating via telephone conference call), Senator Tim Corder, and Senator David Langhorst. House Revenue and Taxation Subcommittee members in attendance were: Chairman Representative Dennis Lake, Representative Gary Collins, and Representative Bill Killen, who was representing Representative George Saylor. Legislative Services Office staff present were Mike Nugent, Manager, Research and Legislation, and Charmi Arregui.

Others in attendance were: Terry Accordino and Mike Reynoldson, Micron Technology, Inc.; Dan John, Alan Dornfest, Rick Anderson, Gregory Cade, and Tom Katsilometes, Idaho State Tax Commission; Bill von Tagen, Division Chief, Intergovernmental Law Division, Office of the Attorney General; Erick Shaner, Deputy Attorney General; Randy Nelson, Associated Taxpayers of Idaho; Rich Hahn and Katrina Basye, Idaho Power; McKinsey Miller, Gallatin Public Affairs; John Watts, Veritas Advisors, representing Idaho Chambers of Commerce and Watco Railroads; Bill Roden, Qwest Communications; Jayson Ronk and Alex LaBeau, Idaho Association of Commerce and Industry (IACI); Rick Smith, Hawley Troxell; and Valencia Bilyeu, an interested taxpayer.

The meeting was called to order at 10:00 a.m. by **Representative Lake** who stated that the purpose of this informal meeting was to review a proposed rule by the Tax Commission, IDAPA 35.01.03 (Docket #35-0103-0801) dealing with the separation of assets into personal or real property. He said there was some concern about this separation and that it was a fairly substantial departure from the separation they thought had been negotiated about a year ago. He said the Tax Commission had used House Bill 599aa,aaS,aaS for the basis of promulgating this rule.

Senator Hill asked (via telephone) who was present at the meeting, so introductions were made as reflected in the attendees above.

Mr. Alan Dornfest passed out a handout with four attachments that included a memo in which he reviewed the issues at hand and the process they went through, pointing out this was a staff position and not the decision of the State Tax Commission, who had not yet made their decision. He said the staff's position had come from research in other states. The decision about whether certain items are personal or real property is not a simple one, admitting he had no special expertise in making that decision. He said the legal specialists had more expertise, but that other

states have grappled with this issue, giving New York and California as examples. He also referred to a voluminous compilation of statutes and guidelines from those two states regarding what is real and what is personal. **Mr. Dornfest** clarified that the Notice of Rulemaking for this rule indicates that written comments regarding this proposed rulemaking must be delivered on or before July 23, 2008, which is absolutely wrong. The Department of Administration's website, the rule publishing body, shows a date of August 27, 2008, which is the corrected date, providing an extended comment period with a publication date of July 2, 2008, in the Administrative Bulletin. **Mr. Dornfest** apologized for this confusion, encouraging comments.

Mr. Dornfest said that meetings had been held from June, 2007 through mid-October, 2007 and recommendations had been made, pointing out there was never total agreement among staff at the Tax Commission on this issue of what should be considered personal or real property; nevertheless, the subcommittee made recommendations and submitted a proposed rule to the Commission. The Commission, being the decision-making body on rules, had a hearing on November 21, 2007, and on November 28, 2007, decided the rule was premature and rejected it. This information was provided to the germane legislative subcommittees and one concern expressed to **Mr. Dornfest** was that there was no authorizing legislation, therefore making it difficult to promulgate a rule at that time.

Representative Lake asked how different that rejected rule was from the rule before them today. **Mr. Dornfest** answered that it differed considerably; many of the items in the list prepared were considered to be personal property that are now real property. He said there is a default position and a "but couldn't it be the other," adding that, of course, it could be, depending on many factors. He said the default position on many items changed, subsequent to that rule being prepared for several reasons: (1) Staff had never entirely agreed with what was in that particular list and, (2) There were significant changes in language in the law as a result of House Bill 599aa,aaS,aaS compared to prior law, some dealing with fixtures, improvements, and general personal and real property. With those changes, particularly with regard to the fact that fixtures are now included as improvements and improvements are defined in statute as real property, including fences as well. In reviewing all that, and additional research having been done, they felt that they really needed to rethink what they had come up with the year before as a proposal. The Commission staff, then recognizing they had accepted a great amount of input in the prior version, felt that it would be more beneficial to expand the process into a broader arena than the subcommittee, that decision made subsequent to the final passage of House Bill 599aa,aaS,aaS, signed into law on April 11, 2008, effective January 1, 2009. The Commission wanted more public debate, thus redrafting rules along lines consistent with staff and legal advisor's recommendations, after researching data from other states, publishing that rule, and having an extended comment period through August 27, 2008. **Mr. Dornfest** said that all comments will be considered, and he fully expects a request for a hearing before the Tax Commission as there was last year, and then the Commission will have to make a decision.

Senator Corder asked the question: "If House Bill 599aa,aaS,aaS, even though signed, does not become effective until it meets that trigger of 5%, how is it that there can be a rule change that

would actually make a change that is really not enacted until that trigger date.” **Mr. Dornfest** said that he disagreed about HB 599aa,aaS,aaS not going into effect until that trigger is met; he agreed that one section within HB 599aa,aaS,aaS, the actual exemption, does not go into effect until the trigger is met. He said he reads the rest of that statute as being effective January 1, 2009, and that includes the definitions. He did not read the definitions as being contingent on the trigger. He said he presumed that exemption trigger will not be in effect, and will not have been met this year, so that the actual exemption up to \$100,000 in personal property will not be in effect; he said there are definition issues that assessors must use to assign property, believing it to be advantageous to get clarifications made since the rule would not be in conformity with that statute, all being done in the definition section. **Senator Corder** said it still seemed to him that if the exemption section is not in effect until the trigger is met, but the exemption section is based on how we view the definitions, how can something be exempted that has not been properly defined. **Mr. Dornfest** said he believed that to be the goal, and that within the framework of that statute to try to get that fence built around what that exemption applies to when the trigger is met. He said that without those definitions and clarity, in rule and statute, there won’t be uniformity. If there are serious issues and disagreements on what does finally come forth from the Tax Commission, there is then the opportunity for legislation to clarify those things.

Representative Lake referred to the memorandum from the Tax Commission, quoting from HB 599aa,aaS,aaS, saying “fixtures do not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of the articles.” He said that a substantial amount of the items listed as real property, in his opinion, fall into that classification, having to be affixed in order to use them.

Mr. Alex LaBeau said that he represented over three hundred employers with the Idaho Association of Commerce and Industry, stating there are concerns about guidelines regarding personal and real property currently before them for consideration. From their perspective, there are many items on the current document being classified as operating property or personal property that arbitrarily, in some people’s opinions, are being moved to real property. He said this is causing concern, particularly given the context in which they worked with the Tax Commission last year, even though there was a lack of agreement. The end product that had been ultimately considered by the Commission was something that IACI was very comfortable with, that he considered to be appropriate statements on what is real property and what is personal property. He noted that the people who drafted and redrafted the definitions of fixtures and improvements were here in this room today. He said that one thing in the existing rule process that he wanted to make a statement about (also carried through in the current draft being considered) is this blending of guidelines in rules that is causing concern from a business standpoint because guidelines are not rules. Rules are rules, and guidelines are meant to comply with rules, in his opinion. He suggested that guidelines be a separate document, stating that generally, this is what is meant or these are possibilities that can be considered, but guidelines should not be considered rules by definition.

Representative Lake asked if **Mr. LaBeau** considered the items listed as real and personal in

this proposed rule to be a rule or a guideline. **Mr. LaBeau** said that was a very good question; technically, he said they are a rule. **Representative Lake** said that is how he also interpreted it. **Mr. LaBeau** said that led him to the following definition of the following terms being extremely vague and open to interpretation. He said that, in essence, items have largely been reversed from personal to real in an effort to change the current method, and what is real is determined to be negotiated, so one essentially has to negotiate one's way back, everything being real and negotiating back to personal, including a number of fairly vague items such as asphalt mixing plants. What is a plant; it is a site or facility, such as Micron. What is a built-in storage system; a system includes both personal and real such as coal-handling systems, concrete plants, electric power plants, including but not limited to (which causes concern), leaving that final determination to those considered to be right, unless the preponderance of evidence dictates otherwise, which means that burden of proof falls to the taxpayer to prove why the "including but not limited to" is not appropriate. He pointed out that telecommunications was another very broad term being reclassified as real property; does this include cell phones, computers, PDAs, being very unclear based on the way these rules were drafted. Even though being considered guidelines, he believed them to be considered rules. He mentioned wire and cable; are they real or personal, depending on whether that wire is going through conduit, buried, removed, what is the intent of the owner, pointing out various factors associated with wire being determined as real or personal. He emphasized that they had worked very well together with the Tax Commission, but there are concerns about these rules, offering a solution.

Mr. LaBeau asked, with regard to the way the statute works, if this group would file a report indicating what the germane subcommittee members' recommendation might be to the Tax Commission about the direction the Tax Commission should, perhaps, pursue, recommending that they scrap the current rule and look back to the work completed last summer, version A. He believed that was a sincere, well thought-out negotiated effort, based on a well litigated set of definitions agreed upon by a majority of the business community. He said that version A required a three-part test to determine what is real and what is personal, emphasizing this to be a critical omission in the current rule being considered. The three-factor test in the version A rule last year included: (1) A determination is made as to the annexation of real property. If an item has been annexed in such a way that removing it would cause material injury or damage to the real property, then that fixture improvement may be classified as real property. He pointed out these are well thought-out standards used nationwide, according to his personal experience in the real estate industry, believing them to be critical in any kind of all-encompassing rule in trying to make determinations with clarity. (2) Adoption or application: if use of the purpose of that item is integral to the use of the real property which is connected, then that fixture improvement may be classified as real property, if it meets that test. (3) Intention: if a reasonable person would intend to make the fixture improvement a permanent addition to the real property, then that fixture or improvement may be classified as real property.

Mr. LaBeau emphasized that he believes that the three-factor test must be applied in order to have fairness in negotiations about having property assessed. He asked these members to consider this three-factor test to be considered in legislation; he said this would also solve many

problems using vague terms such as systems or plants. **Mr. LaBeau** said that IACI does not believe these rules satisfy the needs of the legislation as passed by the Legislature to exempt personal property tax, or a portion thereof, but they believe that version A will. IACI members, therefore, recommend that a report be filed requesting the Tax Commission work with interested parties to develop rules, largely dependent on the rules completed last year in version A, that being submitted to the State Tax Commission for ultimate adoption for implementation of HB 599aa,aaS,aaS.

Senator Hill asked about the statute and the definition of 63-201 dealing with personal property, saying that **Mr. LaBeau** had stated in his comments that if considered real property, it becomes the burden of the taxpayer to show that it is personal. He said that the statute is certainly different than that, quoting that personal property is everything that is subject to ownership, unless included in the term real property, so it is presumed personal unless defined as real. He asked what **Mr. LaBeau** finds in these proposed rules that switches that around from statute itself, or does he? **Mr. LaBeau** answered that in part 05, 06 and 07 of the rules it states "generally considered real property" and the guidelines in part 06 are used for determining if real property or personal property . . . plants and systems . . . and he said that without the three-factor test, you have this presumption that they are generally considered real property and that creates a problem for the employer to say that a particular part of a system is not real property. **Senator Hill** said that he was not sure he agreed with that, but he did agree with the three-factor test.

Mr. Dornfest clarified that the Tax Commission does not have any disagreement with the three-factor test, but he said that it was in statute, with regard to fixtures. He read the actual statute from the rules. He said that one of their goals in rulemaking, even though a fine line in drafting, is to not repeat statute. If it is necessary for clarity to repeat statute, they would entertain doing that, if it helps, but in principle they prefer not to repeat statute.

Mr. Rick Smith, Hawley-Troxell attorney, said that he represented a number of taxpayers in connection with the promulgation of the proposed rules last year at the Tax Commission level and he also testified on House Bill 599aa,aaS,aaS when being considered by the Senate. He addressed the process by which this proposed rule had come about compared to the process used last year, as well as the substance of this proposed rule that he thinks differs significantly from the substance of the rule being talked about last year in a more open process. He said he was fascinated by **Mr. Dornfest's** comment about opening up the dialogue, stating that it seemed to him that last year in May, 2007, there could not have been a more open process. He applauded the Tax Commission staff for the way that was handled, forming a special subcommittee especially for this purpose to establish definitions of personal property and real property in anticipation of potential legislation where that distinction would be more important. He understood that subcommittee was formed at the recommendation of legislators who wanted clarity on the process of defining real property versus personal property, adding that it took the rest of 2007 and many meetings, gathering much research.

Mr. Smith said there were areas of disagreement, many relating to the issue of operating

property. He said that there was a provision in the rule (subsection 05 in this rule) applying to operating property; if operating property is held to be within the personal property exemption, then this rule would provide guidance with respect to operating property. The other way they dealt with this was to have two versions of the rule, version A eventually deferred to the debate on operating property, having the three-factor test that is still in statute (HB 599aa,aaS,aaS) but it did not make any effort to identify the portions of operating property that would be considered real or personal. He said the version B represented the subcommittee's view if a person were to consider operating property, what types would be considered real or personal. He said he favored version B, believing it to give better guidance to the Legislature. He said both versions were submitted to the Commission after a deliberation process with many attendees at meetings; the Tax Commission did not adopt either version, feeling it was premature until seeing what the legislation actually looked like, bringing everyone to this point in time.

Mr. Smith pointed out that in version A last November, after a lengthy deliberation process, there were 58 types of property (i.e. cranes, above-ground irrigation pipe) presumed to be considered as personal property, and yet only 27 types of property were considered to be real property. In contrast, in the version that is now part of the rule, he said that only 7 types of property are being considered as personal property and 53 types of property are being classified as real property, emphasizing the confusion in this flip-flop in the way this has been looked at, further raising questions about the process which included much input. He was aware that the public input process on this rule is just beginning and that comments will be submitted. He thought he heard **Mr. Dornfest** say that the drastic changes may be due to the legislation being different than the Commission had anticipated, but there is a definition of fixtures, and they are considered to be real property, questioning if that justifies the Commission's approach of classifying more property as real property.

Mr. Smith said that the discussion here today does disprove that premise because as **Mr. Dornfest** acknowledged, the legislation has the three-factor test that was part of the rule that was being negotiated last year; in both versions, asking how property is attached to the land, adapted to the use for which the property is put, and how it is integrated with the property used. He said sprinklers were a classic example, underground, being adapted to the use of farmland, that fixture being real property. He did not accept the explanation that the statute is a little different, thus justifying a change in the orientation of real property versus personal property. He ended by reinforcing that a category like telecommunications, operating property under statute, doesn't qualify for the exemption, which he believes is an issue that needs to be further discussed, pointing out that the Tax Commission's proposed rule puts telecommunications in their rule anyway and arbitrarily as real property.

Mr. Smith said that if telecommunications does not qualify under the statute, he asked why have it in the rule at all; if it is in the rule, he said the Commission should get it right. He pointed out that a lot of telecommunications property is personal property, such as a switch in a central office that slides into a rack, costing about \$10 million, saying there is no better example of personal property and yet it's classified as real property in this version of the rule, emphasizing that he

believes this rule needs a lot of work. He expressed concern over this year's process and the lack of participation compared to last year.

Senator Corder said that it seemed to him that the amendments to HB 599aa,aaS,aaS were to counteract what the Legislature viewed as tipping the scales too much one way, especially with regard to operating costs. He appreciated the process that took place last year, expressing that the process this year will allow more people to participate, being fully supportive of this current process allowing expression of concerns so the Commission can see if the balance is centered. He admitted that the Legislature gave a different signal in HB599aa,aaS,aaS believing this rule to be an effort to try to move it back in accordance with what the Legislature passed.

Mr. Smith reiterated his appreciation for the process this year inviting some public participation, his point being that the process last year involved the same level of public participation. The difference, he pointed out, was that last year the process included people other than operating property attorneys; industry worked with the staff, in advance of that public process worked through issues to reach a consensus.

Representative Lake quoted Section 67-454 Idaho Code, creating this germane subcommittee as to the process the members will follow going forward from this meeting. He said the report will send a message to the Tax Commission that this rule authority is either not going forward or will be found acceptable.

Senator Langhorst asked where **Mr. Smith** read that telecommunication switching equipment would be considered real property. **Mr. Smith** answered he thought it was in the proposed rule Section 205, subsection 07 (page 77 of rule) and paragraph "uu" (page 79 of rule). **Senator Langhorst** said that he did not specifically see switches mentioned there, asking for clarification from **Mr. Dornfest**. **Mr. Dornfest** replied that with regard to telecommunications, the Tax Commission did not specify switches per se, but he believed the real issue to be that when an item is considered to be real property, but turns out to be portable (which can lead to more questions), some states use the term "movable" answering that they clearly would fall into the personal property camp, if portable. He said the Commission did not mean to imply that a very small pump house has to be considered real property but, in general, a pump house would be larger and considered to be real property. He agreed that perhaps there needs to be further clarification. **Senator Langhorst** added that he doesn't see switching equipment any different than a computer server, believing that would not be considered real property either. He was comfortable with the explanation, questioning if the rule language is clear. **Representative Lake** pointed out that the risk with the rule, as written, could cause great confusion with county assessors who might read the rule line by line and assess properties accordingly, causing problems perhaps.

Representative Killen stated that he attended most of the subcommittee rules meetings in 2007 and he said he had not heard anything at this meeting that he disagreed with. He was struck at the time that there is no simple answer to any of this, short of a five-hundred page booklet, or a more broad interpretation of the rule, open to interpretation, all being part of the process. He

believes there is no optimum solution.

Mr. Dornfest said that in his discussions with various people in past weeks, he is thinking very strongly of making his own recommendation to the Tax Commission that somehow the word “portable” (or another word for it) be moved further up in the rule since it may be too deep into the rule to emphasize that issue. He said that the goal of the rule is to largely create uniformity; he said they would be amenable to what might give clarity to the rule, of course taking into consideration the findings of this germane subcommittee’s recommendations.

Representative Lake asked about operating property being considered to be real property, referring to desk, chairs, and tables that companies own, asking for confirmation that these items would be considered real property. **Mr. Dornfest** deferred to **Mr. Rick Anderson** who said that falls into the portable category and clearly would be personal property. **Representative Lake** questioned operating property as real property and **Mr. Anderson** answered: “the first assumption is yes.” He said that as far as statute is concerned, there has been clarity that operating property is now separate and does include real and personal property. **Mr. Dornfest** referred back to subsection 05 of the rule which he then read, adding that operating property now, by statute, consists of either real or personal property, even though the exemption doesn’t apply.

Mr. Smith said that, with regard to portability, he encouraged the Commission to clarify their proposed rule, but cautioned that statute defines fixtures as “fixtures does not include machinery, equipment or other articles that are affixed to the real property to enable the proper utilization of such property.” He reiterated that if an item of equipment is fixed to the real property, and thus not portable, it still wouldn’t be considered real property, encouraging other ways to clarify the rule, being unsure if changing the word “portable” as the way to do that.

Senator Langhorst asked about the logic that HB599aa,aaS,aaS changed the playing field and that leading to the change of more items being classified as real property in this rule compared to last year’s rule, inquiring if there were other reasons. **Representative Lake** asked about the definition of fixtures with regard to HB599aa,aaS,aaS, asking if that is why there is a substantially different rule. **Mr. Dornfest** answered that he thinks that has a lot to do with it, but also it was a perspective of having had an opportunity to continue their research, deferring to the Commission’s legal staff. **Mr. Erick Shaner** said that South Carolina legislation identified railroads as real property and a list they provided; he said that version A and B took that list of 100 items, and about half were reinterpreted more broadly as personal property as opposed to real property. He stated his disagreement with this at meetings and to the Commission that they were going too far, and he believes that with regard to HB599aa,aaS,aaS, as well as his view all along, there is a pendulum swinging both ways and you either have to determine with a broad brush or refer to a five-hundred page document to clarify. So, he said they “took a broad brush and said real, but of course it could be personal.” He said that fixtures does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles. He said he found that the wording at the beginning of subsection 06 still controls that sentence. He believes that wording still modifies that last sentence, that if it is going to

materially injure it or change the integral nature of the property, you would essentially have nothing left, referring to removing a cooling tower from a structure. He said that a court in New Jersey addressed this issue and that they referred to the justice system as stepping into a legal minefield, pointing out how difficult it is to identify every single piece of property.

Representative Lake and **Senator Hill** agreed to go down the list of property in the rule to allow the Tax Commission to get a feel as to what the legislators are thinking. **Representative Lake** questioned "c" on page 77, asphalt mixing plants simply because not all are created equal, some being stationary, some moved from site to site, so this needs further clarification. **Senator Hill** said that he'd done some research on asphalt mixing plants, agreeing that he keeps coming back to the preface of each item, asking for comments, adding that the rule states that they are "generally considered real property" and stated that all but one mixing plant found on the internet was real property. He said that there are two qualifiers, one being "generally" and the other being "erected, affixed, or attached." If those are prerequisites, then if these things below subsection 07 fit that qualification, then it generally be considered real property, asking for comments.

Mr. Dornfest said that if it is not a fixture by law, or "erected, affixed, or attached" only for the purpose of operating, then it would automatically be excluded. He said that the goal of the list in the rule was to provide clarity to assessors and taxpayers who would be making these decisions, and they could not be definitive in all cases, thus the word "generally."

Representative Lake reiterated that is precisely the problem, that the list will be noticed and not the word "generally" above the list. **Senator Hill** said he agrees that is part of the problem and that a trained reader may pick out the subtleties but some assessors may see the item and miss the other determining factors; his criticism is not so much with the list, but he believes the preface under subsection 07 on page 77 could be much more clearly worded, bringing to the attention of the assessors and taxpayers that these are general guidelines, emphasizing that it still must meet the rules of being a fixture.

Mr. Erick Shaner said that subsection 07 could be ended with the words "generally considered real property," and then add words with regard to portability to make sure it's clear that these could be either real or personal property. He said the remaining words in that sentence come from subsection 08 in statute to emphasize that the item could be real property, even though it is not owned by the person owning the land under the item. **Senator Hill** agreed that was the point trying to be made, pointing out that it could be more clearly worded.

Representative Lake moved down the list to subsection 07 d and he said that crushers around the state are sometimes mobile, wondering how that could possibly be considered as real property. **Senator Corder** said the same comments apply to many of the items on the list, adding that they may be difficult to move, but they are all movable, every single one of them, the same as asphalt mixing plants. He thinks that assessors need to review each case individually to see how mobile they are. **Representative Lake** thinks that the issue of portability needs to be emphasized as criteria for determining whether real or personal property. They discussed other

items on the list, and **Representative Lake** said he thought conveyors should be red-flagged since some are very portable and some very stationary.

Senator Corder thought that conveyors would generally be considered in relation to concrete plants, crushers and other facilities, asking why it was standing alone on the list. **Mr. Shaner** said that the true, simple answer is that it was on the South Carolina list, listed as personal property. **Mr. Dornfest** said that the issue of portability has become paramount, and they can make changes that would be beneficial. **Senator Corder** referred to an asphalt plant determined to be real property, that could have conveyors cut off that had wheels, wondering if it could then become personal property, ending up in confusion with very complex determinations. **Senator Hill** agreed that the issue of portability is paramount.

Mr. Smith said that with regard to portability, he cautioned the subcommittee to be sensitive to the difference between portability and movability because portability, in his mind, did not mean that it was sitting on wheels and could be moved from one location to another. He doesn't believe that to be the criterion which should be used to determine real from personal property. He said there is much machinery and equipment bolted down into a factory that could be moved by unbolting and moved to a different location, but that type of equipment should be considered personal, even though it may not be considered portable. He added that if it damages real property, like a building, by removing or relocating equipment, then it is part of the real property. Even though articles may be fixed, they are not considered fixtures and are not real property simply because they are bolted into the ground.

Senator Langhorst asked about the definition of fixtures and the debate about that definition, asking where else in the rule it talks about whether a fixture is real or personal property. **Mr. Shaner** said that it goes into the analysis like California and Colorado, saying that real property consists of land, improvements, structures on land and fixtures attached to those improvements, then referring to statute. **Senator Langhorst** asked if all fixtures were real property and **Mr. Shaner** replied "yes."

Representative Lake reiterated that the question becomes: "What are fixtures?" **Senator Hill** clarified that this was confusing, agreeing that fixtures are defined in statute. **Representative Lake** asked about milking systems and waste systems, asking if everything inside a dairy barn is real property. **Mr. Dornfest** said that it was his understanding that some of these systems are built-in and, therefore would constitute real property, depending on whether they are built in, deferring to **Mr. Anderson** who agreed, saying that systems are hard to dismantle.

Mr. Shaner said that milking systems can be old and new, the newer ones being built into concrete with roofs overhead, draining into a septic system and pond, adding that he believed an Idaho court case on irrigation systems is good to discuss at this point. The court said that the irrigation system plus pump, irrigation pipes that come from the ground, plus pivots were all part of one system, thus being real property, it was annexed, adapted to that land, with intent for it to stay there. He assumed that a similar analysis could be compared with milking systems, adding

that the Commission would be open to discussion on this.

Representative Lake thought that movable pivots would be personal property, the pump and underground piping being real property. **Senator Langhorst** asked about the three-factor criteria for fixtures, referring to the list of items, asking if those factors applied to this list and, if so, where does that appear in the rule? **Mr. Dornfest** answered "yes, because it is in statute and the rule is meant to be adjunctive to statute so it wasn't repeated verbatim in the rule." **Senator Langhorst** said that clarification helped. **Mr. Dornfest** admitted there was much confusion on this issue, so the Commission obviously needs to do something to clarify this point.

Representative Lake referred to electric power plants (including, but not limited to, generators, lines, towers, and poles); he asked what else is included. **Mr. Shaner** responded it would be limited to those things that are portable, using a broad brush. **Representative Lake** asked if generators, lines, towers, and poles were fixtures, therefore real property. **Mr. Shaner** affirmed that, adding that there is great debate on this around the country, but that is where the Commission has chosen to go.

Representative Lake said he thought that gravel plants, like asphalt plants need more clarification, as well as irrigation systems and what parts are which. He then referred to ovens used for processing on the list, i.e. ovens in a pizza parlor would be personal property, and that was affirmed to be correct. **Mr. Mike Reynoldson**, Micron, said that in terms of ovens, they use ovens in their manufacturing process, a proprietary item, huge and expensive, but they are here today because they have been defining personal and real property in the last thirty years and some items such as air handlers, boilers, cooling towers, air filtration equipment, ovens, etc., their concern being changing what they have done in the past thirty years in defining those items, ovens being a red flag for Micron. **Representative Lake** asked for more information about these ovens and **Mr. Reynoldson** described them as metal, in the clean-room, secure environment, very expensive, but they are movable, part of the semiconductor manufacturing process. He admitted that when the state of Idaho started taxing personal property, they probably didn't contemplate semiconductor manufacturing when this came about. He said Micron had been able to navigate the process defining real or personal property, with the help of Ada County and existing Idaho Code.

Mr. Smith pointed out that this was another example of an item that in version A, this item being agreed upon by everyone on that subcommittee to be personal property and now it's on the Commission's list as real property. He said there has been a switch on the focus on this issue, seeing no reason for the shift, since the three-factor test which was being used as the basis for formulating version A is in statute.

Representative Lake referred to railroads and **Mr. John Watts**, Veritas Advisors, said he was speaking on behalf of railroads. He said that there have been many discussions about this item, and that although they specifically call out rails and ties, in the railroad process the lines and the track items need to be carefully looked at in definition due to a number of things said in this

meeting today, with regard to portability and movability. He said that ties lie upon the top of the ground, they can be picked up, they can be turned into real property by using them to build a corral or fence, but these ties are constantly being replaced, the old ones being used for docks and other items, but as they lie there upon the ground, they are movable, the same with the rail that lies on top of the ties. He said that, similar to a crusher, they cannot operate a railroad without a rail, cautioning everyone to be careful in looking at this, encouraging the Commission to revisit that as they go forward.

Mr. Dornfest said that states such as New York and South Carolina looked at this issue and specifically concluded that basically all aspects of railroad structures were real property, taking guidance there, being open to differences that might arise. **Mr. Watts** said that maybe New York does that, but Idaho does not do that; he said that locomotives and cars are not considered to be real property. **Mr. Dornfest** clarified that he did not mean to imply that the cars would be included. **Mr. Watts** referred back to multi-million dollar telecommunication switchers, integral to the operational systems, saying the switchers on a railroad track by this definition may be considered real property, being replaced frequently: He believes there is argument to be made that "a switch is a switch is a switch."

Representative Lake referred to silos and storage units and bins, asking about the fact that in personal property, cranes, silos and bins are listed, asking for an explanation. **Mr. Dornfest** said that there was a size variation in items such as storage bins, so when portable, they wanted to make that distinction. **Representative Lake** asked them to be more explicit with regard to those items on the list.

Representative Lake referred to sprinkler systems, asking if all items were being classified as real property. **Mr. Anderson** answered "for a starting point." **Representative Lake** said they may want to weigh in more on this item.

Representative Lake asked about tanks and **Mr. Dornfest** said that included all tanks, both above and below ground, excluding portable tanks.

Representative Lake asked about utility meters. **Mr. Dornfest** deferred to **Mr. Anderson** who said that these could be a large industrial base, saying that all these items could classify as personal. **Representative Lake** asked if it was better to not talk about these items and leave it up to the three-factor test, or would it be better to define what is really meant when something is put into rule. **Mr. Anderson** said his opinion would be to leave that off the list. **Mr. Shaner** said that other than a utility meter on a house, he had no idea what that item is referring to, having been on a previous list and had been carried forth to this rule, needing perhaps more research.

Senator Corder reiterated that better clarification might well require five hundred pages, saying that arguments could be made for many things besides railroads, such as irrigation equipment.

Mr. LaBeau said that the reason they used version A was because it started with a list of personal property items on which to apply the three-factor test to determine what part of those items would be real property. He said that in the rules being dealt with here today, everything has been essentially flip-flopped. He said that these items are real property and now the test is on the taxpayer, rather than the burden of proof being on the assessor, to prove that it is personal, assuming it otherwise to be real. That is the flip-flop and why his strong recommendation is to go back to version A which had a tremendous amount of clarity and he believes to be the right path for application of HB599,aa,aaS,aaS.

Senator Hill said he was at a disadvantage, not having seen version A, as well as other subcommittee members, adding that he would prefer to see a longer, more explicit list of items that qualify as personal property that are exemptions to the real property rule. He said that he applauded the Commission for trying to provide clarity by addressing certain items, believing that this process today gives the Legislature a taste of the number of potential court cases that could result, believing that detailed clarification of the rules is probably best to avoid potential and very costly litigation, trying to remain fair. He asked for more clarification on portability, making that more pronounced in the rules so that assessors will have that for guidance. He mentioned dairy barns, suggesting "dairy barns, shelters and built-in milking systems" so everyone knows precisely what is included to prevent misunderstandings in the future. He believes that the subcommittee needs to give the Tax Commission more guidance to go back to the table with these rules.

Representative Lake said he suggested that the members would draft a letter with staff to incorporate the issues discussed in this meeting. **Senator Hill** agreed that these are the main issues, saying that he thinks that **Mr. LaBeau's** suggestion to look at version A was a good idea, seeming to make reasonable, logical sense to people, more than version B. **Representative Killen** clarified that this rule is not version B being looked at today; he said that there were two distinct versions presented, both quite extensive, slightly different, some people preferring one or the other. **Representative Lake** asked what the difference was between the two versions. **Mr. Smith** said that version A received a consensus of the subcommittee, which went to the rules committee and then to the Commission itself, including a very long list of personal and real property items, many of which noted here are currently 180 degrees different in this proposed rule being examined today. He said that the difference between version A and B was that in version B, they took the additional step of identifying the operating property items that they tried to agree to, giving the Commission one version including specific operating property items and one version which would not. He affirmed that the current rule is neither version A nor B; in fact it is totally different than version A, which was the more conservative version discussed last year.

Representative Lake said that since HB599aa,aaS,aaS specifically exempted operating properties from participating in the exemption, it really is a moot point as far as they are concerned, asking if that were true. **Mr. Smith** said that it is rather academic, but he believes it to be bad tax policy to have a rule that says operating property is real property when we know it

is not. He said that if we realize that operating property isn't currently eligible for this exemption, then why not take operating property out of the discussion altogether, but not arbitrarily classify it as real property. **Representative Lake** agreed with him on that point, saying that they should leave it and talk about it as operating property and not try to divide it between real or personal. **Mr. Smith** said "only if we want to have a rule that anticipates the day when operating property will be exempt, then there would be some value in making that qualification at this point."

Representative Killen observed that expansion of clarification is essential, and he saw no problem with duplicating statute in the rule which might help. **Senator Langhorst** said that version A kept being mentioned and that the subcommittee members did not have copies; he said that he hesitated making a decision without looking at that, since that is part of the discussion. He said that if he had version A in front of him, he would like to apply the three-factor test to that list to start making it more specific, possibly coming up with something that might look like version A, obviously being much more specific. **Senator Corder** said that absent version A, he agrees with **Senator Hill**, but he looks forward to more public comments before further decisions are made. **Representative Lake** reiterated that the purpose of this meeting was to gather information, the goal being to hopefully avoid a fight over the rule when it comes up for rules review in January, 2009. **Representative Lake** said the Tax Commission will be hearing from these germane subcommittee members and will also be listening to public testimony; he encouraged all attendees at this meeting to submit their testimony to the Tax Commission during the comment period ending August 27, 2008. **Representative Lake** proposed that a letter be drafted, presented to the germane subcommittee members for their approval, then submitted to the State Tax Commission and **Senator Hill** agreed.

Mr. Rick Smith said it would be very helpful to get copies of versions A and B to all the germane subcommittee members.

Mr. Watts asked a procedural question, if they were contemplating a report, asking if the public comment deadline would be kept in place or will there be something new which would require comments on a different document, wondering the optimum time to respond, before August 27, 2008 or after a potential new rule is drafted. **Mr. Dornfest** said that the proposed rule has been published, going through the normal process, and the Commission can do many things after that comment period such as withdrawing the rule, rewriting it, all comments being considered. He said that the next phase for rulemaking would be a pending rule, so if after August 27, 2008, the Commission adopts the current rule, makes changes, whatever, action is bumped up on behalf of the Commission, taking some action at that point. A hearing could be set up, as was done last year, to help the Commission make those decisions. Subsequent to August 27, 2008, he said the Commission must take action on this proposed rule; it was clarified that the proposed rule between now and August 27, 2008 cannot be changed. **Mr. Dornfest** said they had the published proposed rule, comments will be submitted, a hearing could be set up after August 27, 2008 to make sure all comments are considered, then the Commission would have the current rule on the table at a possible hearing, additional comments submitted, comments from staff with

recommendations, as extensive as they wish, and then the Commission would have all that to consider. He hoped that would clarify the process.

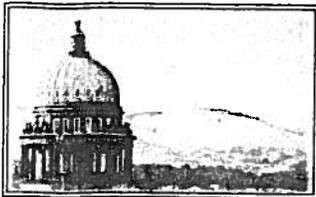
Representative Lake stated that this meeting was the one chance for legislative members to be involved in the rulemaking process, adding that they will make their comments to the Tax Commission, and the rule will be examined carefully prior to rules review in January, 2009.

Senator Corder moved that the germane subcommittee members object to the proposed rule as written, seconded by **Representative Collins**, and the motion passed by a unanimous voice vote.

Representative Killen moved that the chair draft a letter to the State Tax Commission, seconded by **Senator Langhorst**, and the motion passed by a unanimous voice vote.

Senator Hill thanked **Representative Lake** for calling the meeting on this rule and for the participation of all attendees and representatives of the State Tax Commission and the Office of the Attorney General; he emphasized that any criticism was not of them, but of the rule itself, expressing confidence that progress will be made as a result of this meeting.

The meeting was adjourned at 12:08 p.m.



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Director

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AUG 15 2008

August 14, 2008

LEGAL SECTION
STATE TAX COMMISSION
BOISE, IDAHO

Mr. Alan Dornfest
Idaho State Tax Commission
PO Box 36
Boise, ID 83712

Dear Mr. Dornfest:

The germane subcommittees for administrative rules review of the Senate Local Government and Taxation Committee and the House of Representatives Revenue and Taxation Committee held a meeting on July 17, 2008 to review the Idaho State Tax Commission's proposed property tax administrative rules contained in Docket No. 35-0103-0801. The germane subcommittees voted unanimously to object to the proposed rules. The reasons for the objection were:

- Tax Commission needs to clarify portability (or movability) as a basis for separating personal property from real property and separate those systems that are built in place versus those that are movable.
- The statute controlling the separation between real and personal property should be restated in the rule.
- The three-factor test that was in last year's "version A" of the rule should be included. The three-factor test included:
 1. A determination is made as to the annexation of real property. If an item has been annexed in such a way that removing it would cause material injury or damage to the real property, then that fixture improvement may be classified as real property.
 2. Adoption or application - If use of the purpose of that item is integral to the use of the real property which is connected, then that fixture improvement may be classified as real property, if it meets that test.
 3. Intention - If a reasonable person would intend to make the fixture improvement a permanent addition to the real property, then that fixture or improvement would be classified as real property.
- The subcommittees believe that the State Tax Commission and staff need to take the public's comments fully into account in revising this rule.

Sincerely,

Mike Nugent
Division Manager

MPN/ca

cc: Germane subcommittee members
Representative Bill Killen

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
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August 2, 2013

Mr. Alan Dornfest, Chairman
Mr. Rick Anderson
Property Tax Rules Committee
Idaho State Tax Commission
800 Park Blvd., Plaza IV
Boise, Idaho 83712

Re: *Comments on Proposed Rule 205*

Dear Alan and Rick:

This letter will provide comments on the Tax Commission staff's draft of Rule 205, dated July 2, 2013. I submit these comments on behalf of the following taxpayers: CenturyLink, Northwest Pipeline, and AT&T Mobility.

The focus of my comments will be on new section 04. With respect to other provisions, I concur in the comments of Micron, IACI and Idaho Power that I have had the opportunity to review, and do not wish to repeat the concerns of those parties. Before addressing section 04, I would like to comment briefly on the definition of "improvements" in section 01(c). The draft rule recites, as part of that definition, that "improvements" include the categories of buildings, structures, and fences that are referenced in the statute, section 63-201(11). However, the draft rule fails to refer to other statutory categories such as modular buildings and fixtures. Then, after referring to buildings, structures and fences, it adds a "catch-all" for "similar property." We believe that additional reference adds confusion and uncertainty to the definition, and goes beyond the statute. The statute is clear in identifying specific types of property that constitute "improvements," and does not include a "catch-all" or even words like "include" or "including," when referring to these specific items.

With respect to section 04, there are some general problems with the approach of characterizing the examples in subsection (b) as improvements, and then some specific issues

with each. First, some of these items, such as cell towers, have been treated in the past as personal property. There is nothing in the 2008 amendments to the definitions that would justify a change in the treatment of these items. For instance, “real property” was defined to include “improvements, which in turn included “structures,” but cell towers were nonetheless classified as personal property.

Second, I believe the Tax Commission has taken the position in materials submitted to the legislature that the types of property listed in section 04(b) would be considered personal property. In particular, statements of fiscal impact have shown high estimates of the fiscal impact of a complete personal property exemption, and I assume those estimates have included these categories of property. Another example relates to the bill that would have exempted, for each industry within the operating property group, a specified percentage that represented the personal property of each industry within that group. I recall that those percentages were either negotiated with the Commission, or were accepted by the Commission as a fair representation of the proportion of personal property owned by each type of taxpayer. Those percentages are consistent with the treatment of the listed items in subsection 04(b) as personal property, not real property.

Third, since at least 2007, in the many committee meetings, work group sessions and other discussions we have had regarding these types of operating property, the context has always been the issue of whether they represented fixtures. We believe this reflects an acknowledgement by the Commission that the proper framework for determining the characterization of this type of property is to examine whether it is a fixture. Indeed, that is approach used in the preceding draft of this rule, and now, for the first time in six years of dealing with this issue, we see an attempt to characterize many operating property items as “structures” rather than fixtures.

As noted above, the term “improvement” is defined to include specific items, including “buildings,” “structures” and “fixtures.” The current draft relies on the “buildings” and “structures” categories to support the listed examples. (“Some items may not be considered fixtures, but may be structures or buildings.”) Clearly none of the examples could be characterized as buildings. Nor is the “structures” category applicable. The term “structures” is defined in *Black’s Law Dictionary* (9th ed.) as “Any construction, production, or piece of work artificially built up or composed of parts joined together <a building is a structure>.” That definition is so broad that it would include virtually all items of personal property as well as buildings. Thus, in order to give the term some meaning, it must be limited to those structures that have the characteristics of real property, and that simply takes us back to the three-factor test.

The ordinary meaning of the term “structures” does not include the items in subsection 04(b). Pipeline and conduit, for example, cannot fit within a “structures” category according to

any reasonable understanding of the meaning of that term. The same can be said for the other examples.

The attempt to use the “structures” device as a way to resolve this issue also gives no guidance on how to handle the myriad of other types of property that are not listed as examples in section 04(b). If we are to question whether cable and wire, or a generator, or a crane, or like items are personal property, are we to evaluate whether they are “structures”? If so, by what standard? They don’t appear to be structures, but then neither do conduit or pipeline or the other items given as examples. Clearly some standard is necessary – some test by which to determine whether they are personal property. Fortunately, that test is already in the statute – the three-factor test contained in the definition of “fixtures.”

We do concede to one situation in which some of the listed items may be classified as real property. As we have pointed out in a number of meetings and memos (including most recently a memo dated September 6, 2011, copy attached), the 2008 amendments draw a clear distinction between (i) property that is used as part of a building or building system, to support the building’s function, and (ii) property that is used in the commercial or manufacturing operation or process.¹ Thus, the penultimate sentence of the fixtures definition (which is where this analysis should be conducted) provides that building systems are real property: “... systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such building.” Thus, pipe or conduit in a building that supports drinking or waste water systems, or the electrical systems used for light, heating or power, would properly be considered real property because they are essential parts of the building.

In contrast, when the “attached” property is used in the commercial operation, it is personal property; the last sentence of section 63-201(9) makes that clear. It provides that real property “does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles.”

With these two sentences, the legislature signaled a clear intent to separate “building” functions from “operational” functions. The property that serves a building function is real property; the property used in the commercial operation is personal property, regardless of the manner of attachment.

Just as the individual items listed in subsection 04(b) cannot reasonably be considered “structures,” so also they cannot be considered part of the support systems for buildings or other real estate. For instance, the sprinkler systems involved in the *Rayl* case discussed in the attached memo arguably relate directly to the function of the farm land they irrigate. But the pipeline,

¹ Other analyses I have provided on this issue include memos dated July 18, 2007 and September 11, 2007, and a letter dated September 22, 2008.

conduit, railroad track, cell towers and the other items do not support or relate to the farming or other business operation of the real estate to which they are “attached.” They are “machinery, equipment or other articles affixed to the real property to enable the proper utilization of such articles.”

In the previous draft of the changes in this Rule 205, there were comments to the effect that the last sentence of the fixtures definition is inconsistent with the three-factor test, and should be ignored. We strenuously disagree with that position. It cannot be assumed the legislature drafted legislation that would not have a substantive effect, and the intent to clarify the definitions of fixtures and real property to exclude these types of “trade fixtures” is clear from the language used in the 2008 amendment.

All the foregoing analysis supports personal property treatment of all the items listed in subsection 04(b). However, I will make some specific observations with respect to certain of the items:

Cell towers. The last sentence of the fixtures definition provides guidance in classifying property, where it recognizes the distinction between commercial functions and building or real estate supporting systems, as discussed above. When that language is consistently applied for all types of property, cell towers must fall in the personal property category. I am aware that in a recent sales tax case, the Commission determined that cell towers were considered real property. However, the sales tax statute does not contain the specific definitions for real property, personal property and fixtures that are set out in section 63-201, including the last two key sentences of the fixtures definition discussed above. It is also noteworthy that until recently, I understand the counties were treating cell towers as personal property. This position is supported by the Commission’s Personal Property Valuation Schedules, in which towers for both cable and wireless companies are listed.

It should also be noted that cell companies have various types of cell sites and devices for sending and receiving signals. Not all of them have a cell tower (traditional 4-sided lattice tower). Some are just a mono pole (literally a single pole bolted to a concrete pad and sometimes with guyed wires attached for stability). Some sites simply lease space on a building to attach antennas. A rule that cell “towers” constitute real property while mono poles or antennas on buildings would be personal property would ignore the function of the property, and intention of the owner of both the real property and the cell site equipment that the attachments are not permanent additions to the real property.

Underground Storage Tanks. Although my clients do not own such tanks, they are of the same character as pipelines and related property. Unless the storage is for systems-support of the building with which they are associated, they should be considered personal property. Where the function of the tanks is for the business operation, it should not matter whether tanks are above

ground or below ground; in any event, they are attached to real estate only to enable their proper utilization in the business.

Poles and Towers. As with the other property discussed here, poles cannot reasonably be considered “structures.” Nor do they fit in the “fixtures” category. Telephone or other utility poles do not serve or support the land on which they are placed; instead, they are an integral part of the transmission system that includes other personal property – cable and wire. They are part of the business operation of transmitting signals, not part of a system that serves a building or real property. Poles are only affixed to the ground because they cannot stand up on their own. They need to be buried into the ground to make them stand upright, and so are affixed only to ensure their proper utilization. Finally, telephone and electric poles are routinely replaced due to being hit by vehicles, damaged by weather and fire, etc. Many telephone companies replace thousands of poles every year.

Pipelines and conduit. Terry Accordino’s comments address this property in a persuasive manner. The personal property characterization is also supported by the recent case authority, such as the *Colonial Pipeline* case discussed in the attached memo, and it is consistent with Idaho law, such as the *Rayl* case where the irrigation system was real property in part because of how it is adapted to the use of the land, as farmland. As the court noted in *Colonial Pipeline*, a pipeline runs under roads, farm fields, rivers, and cities, with the goal not of operating as part of the accompanying real estate and adapted to it, but instead to be as invisible as possible to the land owner. Because pipeline and conduit are not adapted to the other uses of the land, they need be as unobtrusive as possible.

Segments of pipelines and conduits are removed from time to time, and owners have legal obligations to restore the land at the termination of the lease or easement so there is no damage to the real estate. Indeed, generally accepted accounting principles require the accrual of reserves to reflect the liability for such restoration expenses.

Railroad track. Examples abound of railroad track and ties being replaced, repaired, and re-used somewhere else. Railroad ties that have been replaced are a common tool of landscape architects. It is often necessary to replace and update segments of track, for safety and other reasons. Railroad track and ties are easily removed, with little to attach them to the real estate. And railroad track, ties and ballast are even less adaptable to the land than other types of operating property; they have no connection with or relevance to the operation of the adjoining or underlying land – whether it is farmland or commercial property – and in fact they are a burden to other uses of the land since they divide parcels on either side of the track and provide a barrier to access.

In summary, the draft rule is not consistent with the relevant statutes, or with the statutes’ guidance on the limited categories of property that are classified as real property. It is worth

noting that the Commission has once before adopted a restrictive definition of personal property, only to have the legislative committees reject that interpretation in 2008.²

The taxpayers do offer an alternative approach for drafting the rule, since we understand the interest in providing guidance to assessors in implementing the personal property exemption. The starting point would be for the Commission to identify those items of operating property for each industry that are consistent with the percentages used for that industry in the legislation that used the percentage concept. (In 2013, that was House Bill 276.) The general categories of personal property for each industry were presumably used by the Commission in the calculation of the fiscal impact of that legislation.³

If you should have any questions concerning the matters discussed in this letter, please feel free to contact me.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Richard G. Smith

RGS: Client representatives

² That action occurred by letter dated August 14, 2008, from Mike Nugent of the Legislative Services Office.

³ For example, for the telecommunications industry, the percentage used in the bill for the proportion of personal property value to the total property value was 90%. The Commission developed fiscal impact figures for that amount of property, and in doing so must have identified categories of telecommunications property that represented personal property at that percentage level. Presumably, that was all property except land and buildings.

MEMORANDUM

TO: IACI Personal Property Tax Implementation Work Group

FROM: Rick Smith, Hawley Troxell Ennis & Hawley

DATE: September 6, 2011

SUBJECT: Preliminary Comments for September 6 Meeting

I have reviewed Rick Anderson's memo dated August 29, 2011, and thought it would be helpful to respond with some comments and additional points that I think are relevant to further discussions by this Work Group.

1. ***"The Clear/Not Clear" Listing – Commercial and Industrial Property***

At the last meeting of the Work Group, it was suggested that the Tax Commission representatives review the "Version B" listing of property and identify the items with which they still agree to the Version B classification of property as personal or real property. (This Version B was one of two options presented to the Tax Commissioners in 2007, and was the preferred choice.)

Rick Anderson's memo responds to this request, and notes those items the staff apparently now believes are "clear" as either personal property or real property – as initially classified in the Version B list – and also those items which the staff now believes are "not clear" and with respect to which they no longer can agree should be classified as proposed in Version B.

I believe Rick's listing of items as "not clear" is overly conservative, in leaving with this ambiguous label some types of property that should be "clearly" personal property under Idaho law. I will discuss first those items that relate to a commercial enterprise or industrial operation. I will then address the concept of "constructive annexation" that has been suggested as being relevant to these issues. Finally, I will discuss the proper treatment of some utility-type property, such as the pipelines we have been discussing as a proxy for the property of centrally

assessed taxpayers with similar types of property (such as transmission lines, telecommunications cable and wire, etc.).

There are many items marked as “Not Clear” in the August 29 memo that are machinery and equipment used in a commercial operation or industrial process. The machinery and equipment may be similar to other property that might be included in any building simply to make the building usable for general purposes. An example is a boiler, referred to on page 11 of Rick’s memo. If a certain type of boiler is used in an industrial process, it ought to be personal property. If a different type of boiler is a normal feature of a building – to provide heating for the occupants, for instance – that boiler ought to be considered real property. That distinction is made in Version B. In the August 29 memo, this proposed treatment for all boilers is now shown as being in the “Not Clear” category.

There are many more items similar to this one – at least 18 by my count – where the property is used in a commercial or manufacturing process but is now shown as “Not Clear.” The apparent reason for this position is stated at page 11 of the August 29 memo, where there is a discussion of the argument that equipment that provides “creature comforts” for a building is real property, while equipment used for manufacturing is personal property. The memo concludes that “I do not believe the Idaho property tax statutes have ever put forth such a theory” and that “to address this theory in rule would in my opinion take an inappropriate authority leap.” This position apparently is the reason for changing the classification of many of these items of machinery and equipment from personal property to “Not Clear.”

This distinction – treating equipment that provides “creature comforts” as real property, while similar types of equipment used in manufacturing is considered personal property – is very common. The New York statute discussed in the August 29 memo refers to real property classification for property used for heat, light, power, gases and liquids, but only for such property that is common to all manufacturing structures “and not to those present exclusively because of the particular manufacturing process involved.” (Aug. 29 memo, p. 9, ¶ 4, emphasis added.) Colorado also has a statute providing that real property fixtures do not include items affixed to the building that relate to the commercial or industrial operation of the building. C.R.S. § 39-1-102(4). Thus, there is a distinction between (i) the property related to the operation of the building and (ii) the

property related to the operation of the business in the building. *See Del Mesa Farms v. Montrose CBOE*, 956 P.2d 661 (Colo. App. 1998).

As discussed below, this issue is related to the “adaptability” part of the three-part test for determining the proper classification of property. However, the important point to observe here is that the Idaho statutes are similar to the Colorado rule just mentioned, and this fact is overlooked in the August 29 memo. Section 63-201(9) of the Idaho Code defines “fixtures” as follows:

9) "Fixtures" means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by 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, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property. "Fixtures" includes systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing **of such building**. "Fixtures" does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles. (Emphasis added.)

The last sentence of this provision gives the statutory support the August 29 memo states is needed to differentiate building functions from manufacturing functions. Indeed, statute is a mandate that machinery and equipment is not to be treated as a fixture, even if it is bolted down or otherwise attached. The preceding sentence in the statute discusses the “creature comfort” systems relating to property that is placed in almost every building, but all other types of machinery are not to be treated as real property even if they are affixed.

The distinction between “creature comfort” property in a building and other machinery and equipment comes from the application of the three-factor test. Those factors, as stated in this statutory definition of “fixtures,” are (i) whether the property is affixed to the real property in a way that would cause damage to the property if removed; (ii) whether the property is integral to the real property, and (iii) whether a person would reasonably consider the property to be a permanent

addition to the real property. The second factor examines whether the equipment is an integral and necessary part of the land or building, and so would include as real property the normal heating, lighting, power and related items noted in the statute. It would not include equipment that is used for the manufacturing process itself, even if bolted down.

It is respectfully submitted that the August 29 memo's listing of property types as "Not Clear" fails to recognize the importance of this final sentence of Section 63-201(9). It includes such items as motors and refrigeration and freezing equipment in the "Not Clear" category, where such property should clearly be considered personal property.

2. *The "Constructive Annexation" Concept.*

The August 29 memo was accompanied by a one-page excerpt of quotes from an Idaho case dealing with the "constructive annexation" concept. *Rayl v. Shull Enterprises*, 108 Idaho 524 (1984). This concept relates to the first factor – whether property is physically annexed to the real property. This concept allows the annexation test to be satisfied even where there is a limited degree of attachment. For instance, even though a furnace could be unbolted and removed without causing damage to a building, it is a fixture because it is a "necessary, integral or working part of some other object which is attached." *Rayl*, 108 Idaho at 528, quoting *Seatrains Terminals of California v. County of Alameda*, 147 Cal. Rptr. 578, 582 (1978).

This issue is resolved by the analysis in the previous section. The final sentence of section 63-201(9) clearly indicates that regardless of how a property item is attached – whether it is actual or "constructive" – it will not be considered real property if the equipment is attached to the real estate to allow its proper operation. Thus, all machinery and equipment used in a commercial or industrial process or application would be considered personal property under Idaho law.

3. *Utility Property.*

The Version B list included many categories of utility property as personal property. In summary, the buildings and structures of electric, telephone, pipeline and related companies were classified as real property (i.e., railroad stations, pipeline compressor stations). Property that typically is buried under or constructed on farmland or public roads (i.e., rail track and roadbed, gas pipelines,

electric transmission lines, telephone cable), and that can be repaired, replaced, and moved, was properly classified as personal property. Version B also included telephone central office equipment, which consists of computers that would be considered personal property under any reasonable definition of that term; and electrical generation equipment, which consists simply of very large motors and machines that differ from other types of machinery only by their size and cost (factors that should not change their classification).

The August 29 memo changes the Version B classification of this type of property from personal property to “Not clear,” presumably requiring legislative clarification. However, the proper classification of this property is as personal property, for many of the same reasons discussed earlier in this memorandum.

First, with respect to the annexation requirement, the last sentence of section 63-201(9) makes it clear that even if a pipeline, for instance, were considered “affixed” to the land, it still would be considered personal property if used in the business as opposed to supporting the real estate with which it is associated. As the Colorado court noted in interpreting identical language under that state’s laws, “regardless of whether a particular item is affixed to a building and may otherwise constitute a fixture system, the item constitutes personal property if its use is primarily tied to a business operation.” *Del Mesa Farms, supra*, 956 P.2d at 664.

Second, with respect to the adaptability factor, this type of property is not integral to the operation of the property with which it is associated. Here, it is useful to refer to the case relied on by the Tax Commission, *Rayl v. Shull Enterprises*. The irrigation system was adapted to and integrated with the land on which it was used. The land was farm land; the irrigation system was necessary to the operation of the farm. That is not the case with respect to a gas pipeline or similar types of property. The property is located under (or in the case of transmission lines, over) property that is used for an entirely different purpose – farmland, for instance. In no way can the pipeline be considered integral to the operation of the farmland or other property.

Perhaps for this reason as much as any other, most of the cases we have located have held that this type of property is personal property. See *Colonial Pipeline Co. v. State Dep’t of Assessments and Taxation*, 806 A.2d 648 (Md. 2002); *Yellowstone Pipeline Co. v. State Board of Equalization*, 358 P.2d 55 (Mont. 1960), *cert. denied*, 366 U.S. 917; *Northern Natural Gas Co. v. State Board of Equalization*, 443 N.W.2d 249 (Neb. 1989). The courts in *Colonial*

Pipeline and *Northern Natural Gas* reviewed cases from other jurisdictions and found other cases supporting the personal property classification and only one case holding that such property represents real property.

Third, the intention of the owner in these situations is clearly not to add the pipeline or cable or generators to improve the value of the real property or to make these additions permanent fixtures. As the court stated in *Colonial Pipeline*, the pipeline owner “clearly was motivated by a single factor in installing the pipeline system: to operate its business for profit.... The pipeline, buried beneath the surface of the land, adds nothing to the enjoyment or utility of the land, and would not have been constructed by the landowners in the ordinary use of their land. 806 A.2d at 661-62.

We are aware, of course, that in some states this result has been changed by statute. The August 29 memo refers, for instance, to New York law, and New York has enacted a statute requiring all of these categories of utility property to be classified as real property. This is perhaps one reason why New York is consistently shown in tax burden studies to be near the top of the list in taxes assessed per capita. We must question whether Idaho wants to use New York as a model. It should also be noted that to the extent a different standard is advocated for utility taxpayers than for all other taxpayers, there would be serious constitutional problems. The Idaho Supreme Court held in 1967 that it is unconstitutional to tax utilities in a different manner than other commercial taxpayers. *Idaho Telephone Company v. Baird*, 91 Idaho 425.

In summary, I believe the August 29 memo overlooks a very important provision of the Idaho statute. The only way to interpret section 63-201(9) is to recognize the difference between generic building-related fixtures on the one hand, and equipment used in the operation of the business. The Colorado case of *Del Mesa Farms* expresses this concept very well in applying an identical provision: does the equipment relate to the operation of a building, as a generic “building,” or does it relate to the operation of the business? If it is the latter, then the property is personal property. And this analysis flows directly into the classification of utility property – a straightforward application of the three-factor test leads to the conclusion that the pipelines and related property should be considered personal property.

August 2, 2013

Katrina M Basye
Property Tax Manager
(208) 388-2328
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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
Rule 205 –

Dear Mr. Dornfest and Committee Members:

The following are Idaho Power's comments regarding Rule 205.

Rule 205.01.c

As proposed:

Improvements. Improvements are buildings, structures, fences, and similar property that are built upon land. Improvements are real property regardless of whether or not such improvement is owned separately from the ownership of the land upon or to which the same may be erected, affixed or attached.

Comments:

The definition of improvements should include fixture which will then replicate the language in the statute.

Improvements. Improvements are buildings, structures, fences, similar property that is built upon land, and fixtures. 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.

Rule 205.04(a)

As proposed:

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.~~ ()

Comments:

In the statute under the definition of improvements it is clear that there are different types of improvements. It is not necessary to repeat the language in rule 04(a) because it is already stated in Rule 205.01(c).

Rule 205.04(a)

As proposed:

~~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; ()~~

Comments:

- 1) By including the property listed above ((b)i. – (b)vi.) as real property this contradicts what was reported to the Idaho legislature. In a tax commission report “Revised 1/3/2013 Analysis of 2012 Personal Property Tax in Idaho” (Attachment A) assigned percentages to operating property to reflect their best estimate of the amount of personal property and real property in Idaho (Attachment A pg 6). The proposed rule will inappropriately and dramatically reduce those personal property percentages.

- 2) Legal analysis from the Tax Commission inappropriately eliminates part of the definition of a fixture thereby shifting property that should be classified as personal property to real property.

“Our legal staff believes that analysis should be based primarily on the three factor test and not the last sentence of Idaho Code 63-201(9).”(Attachment B)

In determining if an asset is personal property or real property statute language must be examined in its entirety. The legislature purposefully added the last sentence for clarification.

“Fixtures” means those articles that, although once movable chattels, have become accessory to and a part of improvements to real property by 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, the use or purpose of such articles is integral to the use of the real property to which it is affixed, and a person would reasonably be considered to intend to make the articles permanent additions to the real property.

“Fixtures” do not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles”

- 3) There appears to be misunderstanding that if property is erected upon or affixed to land than it becomes real property. That is simply not true. Supports/towers, etc. that service personal property should be categorized as personal property because the property services the personal property not the realty. (Fixtures do not include equipment that are affixed to real property to enable the property utilization of such articles.)

For example; the cellular equipment cannot operate unless it is a certain distance in the air which requires a tower. Real property does not include the “article” that enables the proper utilization of the cellular equipment. It wouldn’t matter if the supports are outside buried in the ground or inside bolted to a floor.

Also, the classification of property does not change if the property is above or below ground or floats on water.

For example the classification of an above ground tank resting on the ground classified as personal property would not change if it were buried, resting on a tower, or floating.

- 4) There was extensive legal analysis by Erick Shanner (Tax Commission) and Rick Smith (Hawley Troxel) and a list of property was determined to be real or personal property. This list was unanimously approved by the rules committee back in 2007. Perhaps the list should be utilized by this committee (Attachment C).

Sincerely,



Katrina Basye, Property Tax Manager
Idaho Power Company



PO Box 36 • Boise ID 83722-0410
800 Park Blvd., Plaza IV • Boise ID 83712-7742

December 18, 2012 Revised: 1/15/2013

Memo

From: Alan Dornfest, Property Tax Policy Supervisor

Re: Revised 1/3/2013 Analysis of 2012 Personal Property Tax in Idaho

The following document represents the Tax Commission's current analysis of the amount of property tax revenue each taxing district and urban renewal agency currently derives from personal property. To do this analysis, we used taxable values for property assigned by county assessors to categories typically considered to be personal property, as opposed to real property, which typically consists of land and improvements (ie: buildings and similar structures). In addition, tax commission staff assigned percentages to operating property of public utilities and railroads designed to reflect their best estimate of the amount that could be construed to be personal property. For most industry groups within operating property, most property other than land and buildings was considered to be personal property. For electric utilities, land, buildings, generators, and dams were considered real property.

The percentages and categories identified as personal property in this analysis should not be construed as any type of policy statement. In other words, the Tax Commission does not advocate the use of these particular percentages for operating property or, necessarily, the assignment of each category listed in the report to be personal property. As policy makers consider the effects of personal property tax revenue on local taxing districts and urban renewal agencies, any changes in the percentages or assumptions will affect the results reported in this analysis and could increase or decrease the amounts shown.

Similarly, neither the report nor the Commission has any position regarding the advisability of providing replacement money should the legislature decide to exempt all or a portion of personal property.

Questions about this report should be referred to one of the following staff of the Property Tax Division:

Steve Fiscus, Property Tax Division Administrator – 208-334-7730

Alan Dornfest, Property Tax Policy Supervisor – 208-334-7742

Rick Anderson, Tax Policy Specialist – 208-332-6624

Table - 2

| Below are the percentages used to compute the Operating Property personal property. | |
|--|-------------|
| Electrics | 55% |
| Local Exchange Telecommunications (Regulated) | 90% |
| Water Distribution | 90% |
| Petroleum Pipelines | 90% |
| Gas Distribution | 95% |
| Railroads | 80% |
| Private Railcar Fleets Over 500,000 | 100% |
| Long Distance Telecomm. (Unregulated) | 90% |
| Water Transportation | 100% |
| Gas Transmission | 90% |
| Non-Utility Generators (NUGs) | 70% |

Operating Property was computed assuming that Electrics @55%.

MEMORANDUM

May 3, 2013

TO: All County Assessors

FROM: Alan Dornfest, Property Tax Policy Supervisor

RE: Clarification of personal property exemption issues

Since the enactment of the personal property exemption statute and temporary rule 626, which gave general guidance on the administration of this exemption, several questions have been raised by multiple counties. We have been meeting with tax commissioners and legal staff and, although we can't offer complete, definitive resolution at this time, we would like you to be aware of our consensus and general recommendations.

1. Cell Towers. Idaho Code 63-201(11) defines "improvements" as meaning "...all buildings, structures, ...erected upon or affixed to land...." In the same code section, subsection (23) defines "improvements" as real property. We believe that cell towers are structures and therefore are real property. This makes them ineligible for the exemption found in section 63-602KK, Idaho Code. We are willing to listen to the possibility that, in some cases, mobile cell towers, subject to common or frequent re-location, may be an exception that could be considered to be personal property. However, if you report a cell tower on the property tax replacement report to be submitted in November, additional documentation will be needed to support the claim that it is personal property.

2. Equipment on Cell Towers. Equipment, such as satellite dishes, on cell towers may be considered personal property.

3. Exemption for items of taxable personal property. Section 63-602KK(1), Idaho Code provides a separate exemption for items of otherwise taxable personal property provided these items cost no more than \$3,000 and can perform their function: "...without being combined with other items of personal property." To us, this means that an add-on piece of equipment that enhances the functionality of another piece of equipment, but cannot function on its own, does not qualify. This could occur, for example, given a landscaping tractor for which the owner buys a \$2,000 attachment of no stand-alone use. The attachment would not be eligible for the exemption in 63-602KK(1). However, the attachment could be eligible for the \$100,000 exemption that applies to all of the otherwise taxable personal property owned by that taxpayer. So, continuing this example, if the taxpayer owned a total of \$50,000 worth of personal property, notwithstanding the new \$2,000 attachment, all \$52,000 would now be exempt. Provided the additional property did not cause the total value of the taxpayer's personal property to exceed \$100,000, unless needed to establish initial (first year) eligibility, there would be no requirement to report. Except that everything must still be defined as personal property, we view the limitations on what is an "item" as being specific to granting the exemption in 63-602KK(1) for up to \$3,000 cost per item only.

4. Taxpayer. There is a limitation on the \$100,000 exemption found in section 63-602KK(2). The exemption applies to the personal property of a “taxpayer” and the law defines a taxpayer as including: “...*(2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in section 267 of the Internal Revenue Code....*” We view this clause as providing a two-step analysis:

- 1.) Does a “common enterprise” exist?
- 2.) Does the enterprise involve a group having a section 267 relationship?

This stepwise analysis is not intended to be provide an “either/or” determination. Decisions must be made on a case by case basis and we will be drafting examples to further illustrate the necessary principles. We plan to have these developed by the end of next week and will share these with you as soon as they are drafted. We plan to place examples in the permanent rule currently under development.

If you need further information or clarification, please call me (208) 334-7742.

Sincerely,

Alan S. Dornfest
Property Tax Policy Supervisor
Property Tax Division

- cc. Steve Fiscus, Property Tax Division Administrator
Tom Katsilometes, Tax Commissioner
Rich Jackson, Chairman, Idaho State Tax Commission
Ken Roberts, Tax Commissioner
David Langhorst, Tax Commissioner
Matt Virgil, Managing Consulting Appraiser
George Brown, Deputy Attorney General
Erick Shaner, Deputy Attorney General

MEMORANDUM

May 22, 2013

TO: All County Assessors

FROM: Alan Dornfest, Property Tax Policy Supervisor

RE: Clarification of personal property definitional issues

There continue to be questions about the definition of personal property. Section 63-201(9) provides a statutory definition declaring “fixtures” to be real property and using the traditional three factor test (ie: annexation to the real property, use of such articles as integral to the use of the real property, like a key to a building lock, and reasonable intent to make the articles permanent additions to the real property). However, questions arise because of the last sentence in that subsection, indicating that “fixtures” are not: “...*machinery, equipment, or other articles that are affixed to real property to enable the proper utilization of such articles.*”

This language is wholly inconsistent with other Idaho related statutes and case law, as well as the three factor test on this subject. The Idaho legislature has repeatedly emphasized that the three factor test is the central concept of how to determine what is real and what is personal property. Our legal staff believes that analysis should be based primarily on the three factor test and not the last sentence of Idaho Code 63-201(9). It appears to us likely that the last sentence could apply under the scenario where machines are bolted to manufacturing plant floors so that the machines will for example not bounce around while in operation.

We hope this helps to clarify this issue and are planning to include some definitional language to this effect in the proposed permanent rule.

If you need further information or clarification, please call me (208) 334-7742.

Sincerely,

Alan S. Dornfest
Property Tax Policy Supervisor
Property Tax Division

cc. Steve Fiscus, Property Tax Division Administrator
Tom Katsilometes, Tax Commissioner
Rich Jackson, Chairman, Idaho State Tax Commission
Ken Roberts, Tax Commissioner
David Langhorst, Tax Commissioner
Matt Virgil, Managing Consulting Appraiser
George Brown, Deputy Attorney General
Erick Shaner, Deputy Attorney General

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

Sections 63-201, 63-302 and 63-309, Idaho Code.

- 01. Real Property.** Real property means land, all buildings, structures and improvements, or other fixtures of whatsoever kind on land. The term improvements does not include the items identified in Section 63-309, Idaho Code, as personal property.
- 02. Personal Property.** Personal property includes all goods, chattels, stocks and bonds, equities in state lands, easements, reservations and leasehold real properties.
- 03. Improvements or Fixtures.** Improvements or fixtures to real property must meet both of the following criteria:
 - a. Property which is physically attached to the land or other improvements affixed to the land in such a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land.
 - b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively on a relatively permanent basis.
- 04. Three Factor Test.** To clarify the definition in paragraph 03 above, a three factor test shall be applied to determine whether a particular article has become an improvement or fixture to real property. To be considered an improvement or fixture to real property a particular article must meet each of these three tests. The three tests to be applied are:
 - a. Annexation to the real property, either actual or constructive. If an item has been annexed in such a way that removing it would cause material injury or damage to the real property, then that fixture or improvement may be classified as real property.
 - b. Adoption or application. If the use or purpose of that item is integral to the use of the real property to which it is connected, then that fixture or improvement may be classified as real property.
 - c. Intention. If a reasonable person would intend to make the fixture or improvement a permanent addition to the real

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property, then that fixture or improvement may be classified as real property.

- 05. Intent.** For the purpose of determining whether there is intent to make the article a permanent addition to the real property the relevant inquiry is whether the objective circumstances manifest an intent that the item is to be made a permanent addition to the real property. The subjective intent of taxpayers and others is not the controlling factor. In evaluating the objective intent the following factors shall be considered:
- a. The nature of the article
 - b. The manner of annexation to the real property
 - c. The injury to the real property, if any, resulting from the removal of the article
 - d. The completeness with which the article is integrated with the use to which the real property is being put
 - e. The relation which the annexer has with the real property as licensee, tenant at will for years or for life or fee owner
 - f. The relation which the annexer has with the article such as owner, bailee or converter
 - g. The local custom respecting treating such an article as personal property or an improvement or fixture to real property
 - h. The time, place and degree of social, economic and cultural development (e. g., a luxury in one generation is a necessity in another)
 - i. All other relevant facts surrounding the article, the annexation and the real property.
- 06. Operating Property.** 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 rule.
- 07. Leased Personal Property.** The listing, as set forth in Idaho Code §63-306, of leased personal property shall also include the name and address of the other party to the lease and the terms of the lease.
- 08. Guidelines.** The following are guidelines for applying this rule. The decision of the assessing authority as to whether property is real or personal property shall be presumed correct. The burden for overcoming the assessing authority's decision is by a preponderance of the evidence. These guidelines are not intended to be all inclusive.

- a. Equities in land purchased from the state under contract are personal property.
- b. Machinery, tools and equipment are not real property unless they meet the definition of an improvement or fixture to real property, as defined in this rule.
- c. Furniture, trade fixtures, library collections, art work and collectibles, including all such items held for rent or lease are personal property.
- d. Vehicles, aircraft and mobile equipment are personal property.
- e. Signs and signboards, their bases and supports are personal property.
- f. Manufactured housing is subject to the provision of Section 63-304, Idaho Code.
- g. Vault doors, drive in windows, automatic tellers and night depositories are real property when owned by the owner of the building.
- h. Air handling, heating ventilation air conditioning (HVAC) equipment, and humidifiers - (1) building air control systems, including refrigeration equipment, primarily used for the comfort of the occupants is real property. (2) Window and package unit air conditioners are personal property. (3) Air control systems for special processes to maintain controlled temperature and humidity and used primarily for purposes other than the comfort of occupants including air conditioning for electric rooms and vaults are personal property.
- i. Aluminum pot lines are personal property.
- j. Ash handling system, pit and superstructure (See Boilers)
- k. Asphalt mixing plant is personal property.
- l. Auto-Call and telephone system is personal property.
- m. Automobiles, recreational vehicles, and other vehicles are personal property.
- n. Beneficiation equipment, foundations and all machinery required to process ore including crushers, grinders and floatation equipment is personal property.
- o. Boilers including stacks and superstructure used primarily for service of real property are real; other boilers including stacks and superstructure are personal property.
- p. Booths for welding are personal property.
- q. Bucket elevators whether open or enclosed and including casing are personal property.
- r. Bulkheads and external walls that enclose additional land area within a building perimeter are real property, other bulkheads

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and walls are real property if they meet the criteria established in the general rule above.

- s. Buildings are real property.
- t. Cable whether above or below ground for transmission of information, data, power or other services is personal property.
- u. Coal handling systems (See Boilers)
- v. Cold storage—built-in cold storage rooms within building are real property, cold storage refrigeration equipment is personal property.
- w. Conduit and vaults used in telephonic services when underground are real property.
- x. Control booths are personal property.
- y. Conveyor, conveyor housing, structure, steel foundations that support conveyors or conveyor tunnels that meet the definition above are real property otherwise they are personal property. Conveyor units including belt, drives, motors and assets that don't meet the definition of real property above are personal property.
- z. Coolers -- portable walk-in coolers are personal property.
- aa. Cooling towers the primary use of which is the comfort of occupants within buildings or other real property are real property. Other cooling towers are personal property.
- bb. Cranes are personal property.
- cc. Crane runways including supporting columns or structure whether inside or outside of building that meet the definition of real property above are real property, otherwise they are personal property, crane runways that are bolted to or hung on tresses or can be moved are personal property.
- dd. Dock levelers are personal property.
- ee. Drying rooms that meet the definition above for real property are real property, drying room heating, cooling, environmental control systems, equipment and other assets are personal property.
- ff. Dust catchers or other filtration equipment are personal property.
- gg. Farm equipment is personal property.
- hh. Outside fencing other than railroad fencing, whether for security or decorative is real property.
- ii. Fire alarm systems are personal property.
- jj. Fire walls are real property.
- kk. Foundations for machinery and equipment including those made from steel and regardless of how they are attached to the building or other real property are personal property.

- ll. Greenhouse assets that meet the definition of real property are real property, greenhouse benches, heating, cooling, watering and other environmental systems are personal property.
- mm. Gravel plant machinery and equipment is personal property.
- nn. Kilns – structures used for lumber drying, concrete block drying and circular down draft (beehive) are real property, kiln systems including heating, drying and other equipment are personal property.
- oo. Laundry steam generating equipment is personal property.
- pp. Lighting --yard lighting is real property, special purpose lighting and illumination equipment is personal property.
- qq. Mixers are personal property.
- rr. Mobile homes are personal property.
- ss. Motors except those that are required for building occupant comfort are personal property.
- tt. Net profit of mines which is the amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses as defined in Section 63-2802, Idaho Code, or by State Tax Commission rule is personal property.
- uu. Ore bridge foundations are real property.
- vv. Ovens used for processing are personal property.
- ww. Process piping including foundations and bridges whether above or below ground are personal property.
- xx. Pumps except those that are required for building occupant comfort are personal property.
- yy. Pump house including the sub-structure are real property.
- zz. Racks and shelving, portable or removable are personal property.
- aaa. Reservations and Easements including reserved mineral rights and divided ownership of property rights – personal (Easements convey use but not ownership.)
- bbb. Construction work in progress – Classification based on type of property
- ccc. Ready-mix concrete plant is personal property.
- ddd. Refrigeration and freezer equipment, but see air conditioning, is personal property.
- eee. Sanitary systems are real property.
- fff. Scale houses are real property.
- ggg. Scales – truck or railroad scales including pit are personal property.

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- hhh.** Silos— storage silos are real property unless portable or movable, silos used during a manufacturing process are personal property.
- iii.** Spray Ponds— masonry reservoir is real property, spray pond piping and equipment is personal property.
- jjj.** Sprinkler system used for crop or landscape irrigation is real property if buried, above ground irrigations systems are personal property.
- kkk.** Stone crushing plant— machinery and equipment is personal property.
- lll.** Portable storage bins are personal property.
- mmm.** Substation building is real property.
- nnn.** Substation switchyard and control machinery and other electrical equipment are personal property.
- ooo.** Tanks— tanks used as part of a manufacturing process are personal property. Underground fuel tanks are personal property.
- ppp.** Tipple structure is personal property.
- qqq.** Unloader runways are real property.
- rrr.** Utility meters and auxiliary equipment are personal property.
- sss.** Water treatment and softening plant, water pumping buildings and structures are real property, water treatment and softening equipment is personal property, water lines used primarily for potable and sanitary water are real property, water lines for processing whether above or below ground are personal property, water pumps and motors are personal property.
- ttt.** Wells, pumps, motors and equipment are personal property
- uuu.** Wiring -- power wiring integral to machinery, equipment or for processing is personal property.
- vvv.** Inventory of spare parts and supplies is personal property.
- www.** Electric power plants - generators, associated prime mover and auxiliary equipment are personal property
- xxx.** Electrical power lines and auxiliary equipment whether above or below ground are personal property
- yyy.** Electrical towers and poles --transmission and distribution and associated fixtures are personal property
- zzz.** Switching equipment, circuit equipment and other central office equipment used by the telecommunications industry are personal property.
- aaaa.** Remote terminals and related equipment used in transmitting telecommunications signals are personal property.

- bbbb.** Wire and cable used in transmitting telecommunications signals, including aerial, buried, and underground wire and cable, are personal property.
- cccc.** Poles and towers used in the telecommunications industry are personal property.
- dddd.** Railroad track, including rail, ties, ballast, and other track material are personal property.
- eeee.** Railroad fences, snow sheds and signs are personal property.
- ffff.** Railroad stations and office buildings are real property.
- gggg.** Railroad building and miscellaneous structures are real property.
- hhhh.** Railroad shops and engine houses are real property
- iiii.** Railroad storage warehouses are real property.
- jjjj.** Railroad water stations and fuel station buildings are real property.
- kkkk.** Railroad water stations and fuel station equipment is personal property.
- llll.** Railroad trailer on flat car/container on flat car (TOFC/COFC) terminals, buildings and paving is real property.
- mmmm.** Equipment of railroad trailer on flat car/container on flat car (TOFC/COFC) terminals is personal property.
- nnnn.** Railroad communication systems, signals and interlockers are personal property.
- oooo.** Railroad power transmission systems, roadway machines and shop machinery are personal property.
- pppp.** Railroad rolling stock, including locomotives, freight cars, and work equipment are personal property.
- qqqq.** Railroad construction work in process is classified as real property or personal property based on type.
- rrrr.** Pipeline compressor station, measuring and regulating stations, communication and other structures, and associated components are real property.
- ssss.** Below and above ground pipelines other than water and gas mains, natural gas lines, and associated components of pipeline companies are personal property.
- tttt.** Measuring and regulating station equipment and associated components of pipeline companies are personal property.
- uuuu.** Communication equipment and associated components of pipeline companies are personal property.
- vvvv.** Purification, liquefaction and vaporizing equipment and associated components of pipeline companies are personal property.

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www. Below and above ground water pipes other than water and gas mains, pumping equipment, measuring and regulating equipment and associated components of water companies are personal property.



Idaho Association of
Commerce & Industry
The Voice of Business in Idaho®

August 6, 2013

Mr. Alan Dornfest, Chairman
Mr. Rick Anderson
Property Tax Rules Committee
Idaho State Tax Commission
800 Park Blvd., Plaza IV
Boise, Idaho 83712

RE: Comments on Proposed Rule 205

Dear Alan and Rick:

Thank you for the opportunity to comment on the proposed Rule 205. We hope you find the comments compelling and take our points into consideration as we move forward with a challenging effort to eliminate the personal property tax.

The statute is clear that improvements and fixtures are real property. The permissive nature of Rule 205 (4) is unacceptable. The application of the three-part test is appropriate in making such a determination, but we find the re-emergence of consideration of a “list” of examples disturbing when the focus should center on the appropriate application of the test by regulators and assessors. The list as it is contemplated in the rule is a clear violation of the structure and function of the statute that defines real property and the components thereof.

In addition, the use of such list would run afoul of other statutes, such as the exemption for pollution control equipment found in 63-602P. Clearly, if pipelines and conduit or even tanks are used in pollution control equipment, they would continue to qualify for an exemption. Therefore, to use those items as an “example” in the rule is not appropriate. A rule of this nature is not advisable, and we will oppose the rules in the germane committees if adopted by the commission.

While we are opposed to the idea of a list as contemplated in the draft rule, we understand the concern over providing a real world example of how the test may yield results in the classification of properties. Perhaps this could be handled through guidance, but our recommendation would be to revisit the law itself and insert the percentages on operating property as has been contemplated in several statutory drafts. We believe this would be the easier path to ensuring limited contention in areas in which there is some difficulty in providing a consistent application of the law.

In order to enhance the clarity of the application of the law in rule, we would recommend the following changes to rules that were previously adopted in 2009:

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)

~~Comment: This definition is incomplete, as written, eg., it omits reference to “standing timber.” The stricken language includes statutory language, but is unnecessary, with the first sentence. Unless there is some reason for the rearrangement of language, leave the definition of real property as it is in the statute, and merely reference the applicable statute, except as referenced in subparagraph b.~~

~~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.~~

~~Comment: Although this language is in the statutory provision relating to the definition of “real property,” it is a clear invitation to courts to engage in legislating in the name of interpreting the “spirit, meaning, and intent of the law.” The courts of this state do not need such an invitation and will “interpret” without it. In addition, neither the rule nor the statute limits such interpretation to the laws of the state of Idaho or to decisions of Idaho courts. Endorsement of court-imposed legislation, or resorting to the “spirit and intent” of the law may have potential negative implications in other areas of the law as well. If a broader definition of “real property” is needed, it is better for the legislature, and use of the legislative process, to drive such a definition.~~

(5-8-09)

~~c. Improvements. Improvements are buildings, structures, and fences, and similar property erected or affixed to land, fixtures, fences, and water ditches for mining, manufacturing or irrigation, 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.~~

~~Comment: The definition of “improvements” needs to include “fixtures.” It is preferable to use the statutory definition, or at least, reference the statutory definition. (63-201(11), Idaho Code.)~~

(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~~ ~~An item of property~~ article which satisfies ~~meets~~ all three of the following tests shall constitute a ~~, the item becomes~~ a fixture and therefore taxable as a part of the improvement to 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~~ materially reduce the value or functionality of the remaining real property ~~for its intended use~~; and

Comment: Without further definition, the meaning and intent of “constructively incorporated” is unclear. The statute requires a “fixture” to be “physically incorporated” or “annexed or affixed.” (63-201 (9), Idaho Code)

The reference to reduction in “value or functionality of the remaining real property for its intended use” is an attempt to quantify what is meant by “material injury or damage.” Removal of some articles that are part of the improvements to real property may cause “injury or damage” to the real property, but actually increase the overall value of the remaining property, or its removal may not have an effect on the functionality of the property for its intended use. The purpose of this suggestion is to encourage examination of what is meant by “material injury or damage to real property.”

(5-8-09)

ii. Adaptation. The use or purpose of ~~the article~~ ~~an item~~ is integral to the use of the ~~real property~~ improvement to which it is affixed ~~or attached~~; 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)

We appreciate the opportunity to comment on the proposed Rule 205. Please let us know if you have any questions about this input.

Sincerely,



Alex LaBeau
President



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July 15, 2013

Property Tax Rules Committee
Idaho State Tax Commission
800 Park Blvd., Plaza IV
Boise, ID 83712-7742

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

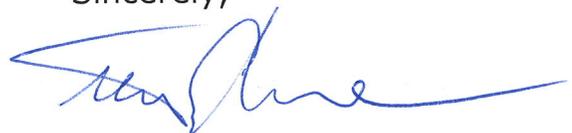
running to a parcel (as opposed to just passing through it). Alternatively, just having a buried pipeline running through a parcel of land doesn't necessarily enable the land to function any better. For pipelines, I would argue that there will be cases where they could meet the exception in §63-201(9) 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

Assessors' comments on Proposed Rule 205: August 21, 2013

Mike McDowell - I strongly disagree with any changes that move us away from the 3 part test. This appears to move in that direction. Regardless of what the private industry folks' self serving opinions may be, the long understood real -v- personal property 3 part test should carry the day.

Brent Saurey - The three-part test sounds good to me !

Sharon Worley - I say we pull the rule and give it to the legislators again because at this point we are at square one again. Rule 205, section 04 is not my favorite. I don't know if this rule does give us the guidance we are looking for. Too bad it is all about big business and not the homeowner.

Ron Fisher - I feel that Terry makes some good points, particularly with reference to "Trade Fixtures". I really don't see that the word "primary" really helps much with the clarification of the exceptions in 63-201(9). Both Micron and Hawley Troxell seem to have a much better grasp of the intent of the legislature as to what personal property should really be.

I also feel that the examples of improvements that are not eligible for the exemption in RULE 205.04b are arbitrary, and not really very well thought out by the Tax Commission. I do agree that this law needs clarification by the legislature to give us some clear direction (which both Micron and Hawley Troxell seem to have a much better handle on the definition of personal property.

However, if the rule goes through as written, I can see a whole mess of legal problems because of the shift of property considered by both the Tax Commission and the Assessors as personal property suddenly becoming deemed as real property and, therefore, not eligible for the exemption.

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 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, that are 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. ()

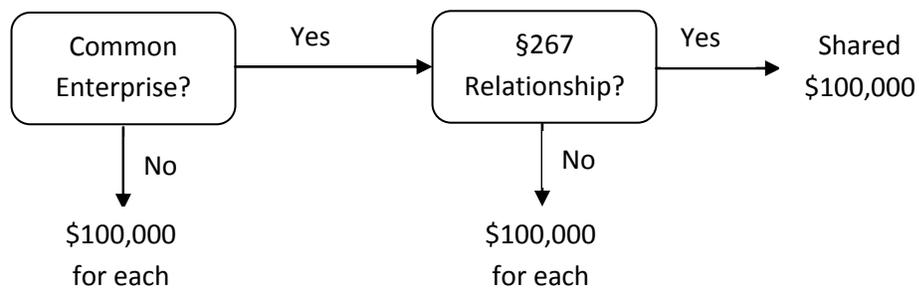
b. Personal property exempt in accordance with statutes other than Section 63-602KK(2), Idaho Code, shall not be included in determining when the one hundred thousand dollar (\$100,000) limit provided in Section 63-602KK(2) is reached. ()

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 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. ()

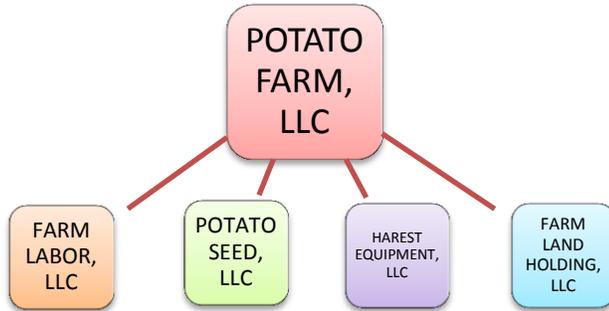
08. Illustrations of Eligibility Situations Related to Common Enterprise and Related Ownerships. If the taxpayer owns more than one (1) business within one (1) county, he may be entitled to more than one (1) one-hundred thousand dollar (\$100,000) exemption within the county. For purposes of this exemption, 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:

()



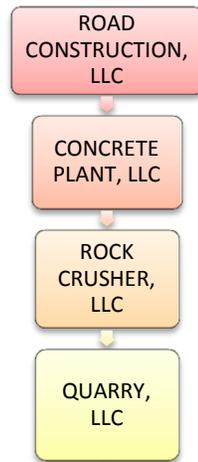
a. First, an analysis must be made to determine if a common enterprise exists. If entities or individuals are organized to manage a common scheme of business, they would be in common enterprise. ()

i. Horizontal Commonality is explained by 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.

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



Here, a business operation is split so that each step in a process is designated to a different LLC. All the steps rely on the one below in order to produce the final product, or process.

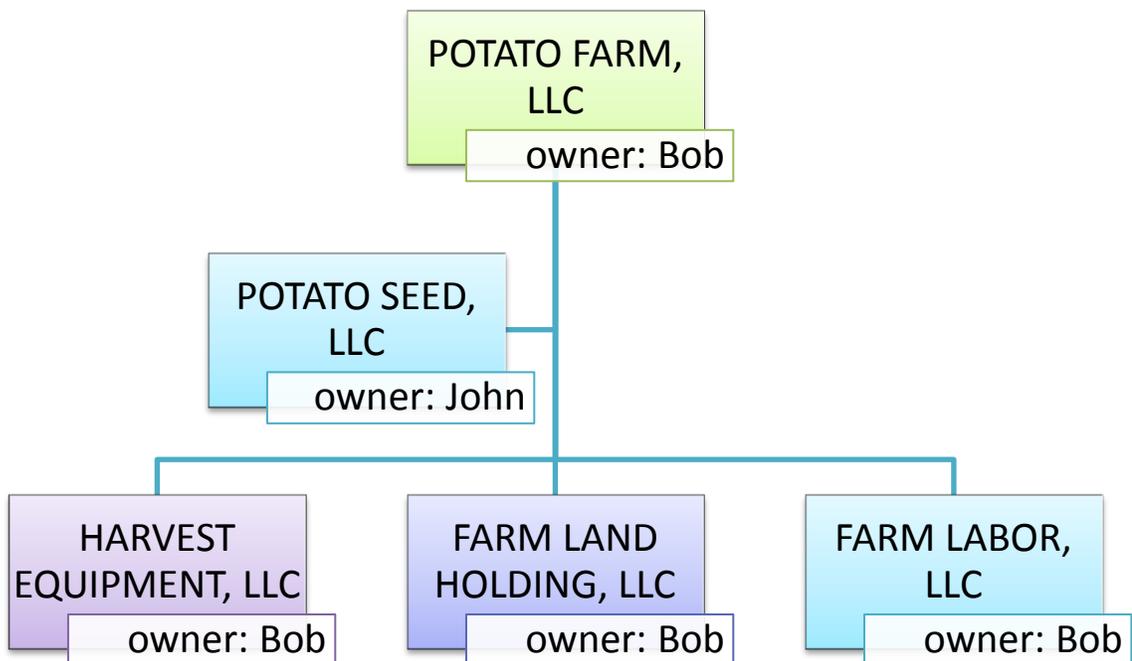
b. Second, an analysis would be made to determine whether the ownership between the entities are within the relationships identified in Section 267 of the Internal Revenue Code.

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. ()

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

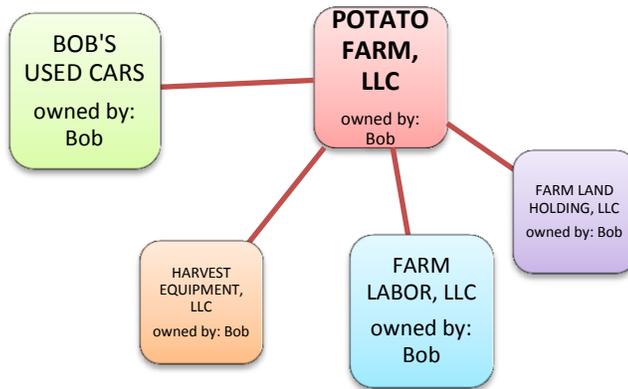
i. Example 1. This is an example of common enterprise, but being entitled to two (2) exemptions because the owners are not related in a manner as described in Section 267 of the Internal Revenue Code. ()



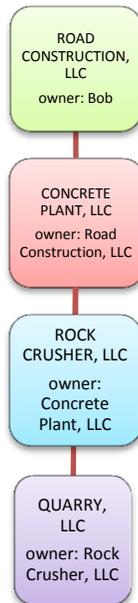
[So long as Bob and John are not related in a manner identified in IRC 267, two exemptions exist. One for Potato Seed, LLC. The other for all of Bob's businesses, because they are in a common enterprise and all owned by him.](#)

ii. Example 2. This is an example of the same owner with multiple businesses not all united in a 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. ()



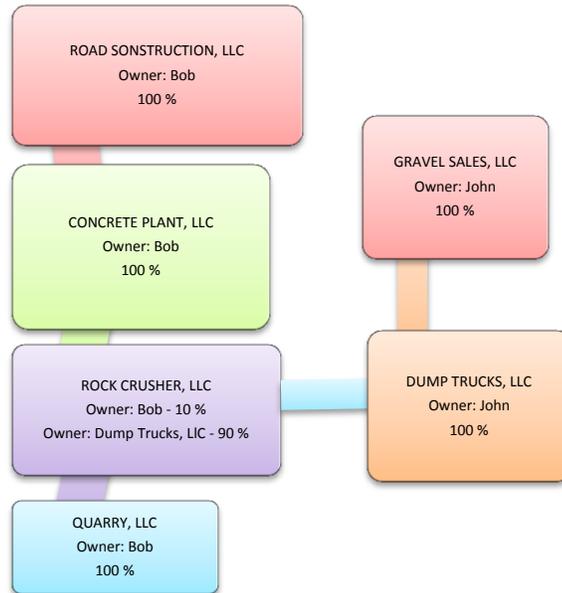
iii. Example 3. This is an example of multiple businesses being entitled to only one (1) exemption because common enterprise exists. ()



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)()

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)