

APPENDIX I

Office of the Attorney General

**Idaho Open Meeting Law Manual
Sections 67-2340 through 67-2347, I.C.
2011**

**Office of the
Attorney General**

**Idaho
Open Meeting Law
Manual**

Idaho Code §§ 67-2340 through 67-2347



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State of Idaho Office of Attorney General Lawrence Wasden

INTRODUCTION

Open and honest government is fundamental to a free society. The Idaho Legislature formalized our state's commitment to open government by enacting the Idaho Open Meeting Law in 1974. The Open Meeting Law codifies a simple, but fundamental, Idaho value: The public's business ought to be done in public.

One of my duties as Attorney General is to ensure that state agencies and officials comply with the Idaho Open Meeting Law. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government.

My Office is committed to assisting Idaho's state and local officials in complying with their obligation under this law. Toward that end, my Office regularly conducts training sessions for state and local officials throughout Idaho.

My Office has prepared this updated manual for your use and reference. This manual's purpose is to inform government agencies of their obligations, and citizens of their rights, under Idaho's Open Meeting Law.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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POLICY CONSIDERATIONS UNDERLYING THE OPEN MEETING LAW

The Idaho Open Meeting Law¹ was designed to ensure transparency of the legislative and administrative processes within state and local governments. The Legislature articulated this policy in the Act's first section:

The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.²

Open meetings offer the public a chance to observe the way their government operates and to influence their government in positive and important ways. Closed meetings often can lead to distrust of governmental decisions and acts.

Those who conduct meetings must remember this policy above all when deciding whether a meeting should be open. If a meeting is closed, there must be a compelling reason, supported by the statute itself, or by subsequent court rulings.

Remember, when in doubt, open the meeting.

¹ Idaho Code §§ 67-2340 to 67-2347 (2011).

² *Id.* at § 67-2340.

QUESTIONS AND ANSWERS

PUBLIC BODIES OR AGENCIES COVERED BY THE OPEN MEETING LAW

Question No. 1: What public bodies or agencies are subject to the Open Meeting Law?

Answer: The Open Meeting Law provides: “All meetings of a *governing body* of a *public agency* shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. . . .”³ “Governing body” is defined to mean the members of any public agency “with the authority to make decisions for or recommendations to a public agency regarding any matter.”⁴ “Public agency” is defined to encompass various categories of governmental entities and subdivisions at all levels of government.⁵ The governing bodies of public agencies that are created by or pursuant to statute, as well as public agencies that are created by the Idaho Constitution, are subject to the Open Meeting Law.⁶ The only public agencies that are statutorily exempt from the Open Meeting Law are the courts and their agencies and divisions, the judicial council and the district magistrates commission.⁷ Deliberations of the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission, in a fully submitted contested case proceeding, are also exempted from the requirement that they take place in open public meeting.⁸

Question No. 2: Does the Open Meeting Law apply to a public agency headed by a single individual as contrasted with a multi-member body?

Answer: No. Section 67-2341(5) defines a governing body to mean “the members of any public agency *which consists of two (2) or more members*, with the authority to make decisions for or recommendations to a public agency regarding any matter.” (Emphasis added.) By definition, the Open Meeting Law applies only to a governing body which consists of two or more members

³ Idaho Code § 67-2342(1) (emphasis added).

⁴ Idaho Code § 67-2341(5).

⁵ Idaho Code § 67-2341(4).

⁶ Attorney General Opinion No. 77-30

⁷ Idaho Code § 67-2341(4)(a).

⁸ Idaho Code § 67-2342.

and thus does not apply to a public agency headed by a single individual.

This also extends to *employees* of a public agency headed by a single individual; meetings held by employees of a department headed by a single individual (or multiple parties, for that matter) do not have to be open to the public. An illustrative example of this principle arose in the 2008 case of *Safe Air For Everyone v. Idaho State Dep't of Agriculture*.⁹ There, the Idaho State Department of Agriculture (ISDA) invited representatives from federal, state, and tribal agencies to a meeting to discuss issues surrounding crop residue burning. The meeting was closed to the public. Several employees of the ISDA attended the meeting, but the director did not.

An environmental group sued the ISDA, arguing that the employees' participation in the meeting constituted a violation of the Open Meeting Law because the director had delegated decision-making authority to the employees, thus making the employees a "governing body." The Supreme Court disagreed, stating that

[b]y definition, a 'governing body' [under the Act] must have 'the authority to make decisions for or recommendations to a public agency regarding any matter.' The employees do not have *the* authority' to make decisions for or recommendations to the ISDA. Any decision they make can be countermanded by a supervisor, and their supervisor can likewise deny them permission to make recommendations. . . . [T]he authority to make decisions for the agency or recommendations to the agency must be statutorily based.¹⁰

Of course, it should be noted that under the Idaho Administrative Procedure Act (A.P.A.) various state agencies must hold open public meetings when they adopt rules or when they determine certain contested cases.¹¹ The open public meeting requirements of the A.P.A. apply regardless of whether the public agency is headed by a single individual or by a multi-member body.

⁹ 145 Idaho 164, 177 P.3d 378 (2008).

¹⁰ *Id.* at 168, 177 P.3d at 382.

¹¹ Idaho Code § 67-5201 to 67-5292.

Question No. 3: When is a subagency of a public agency subject to the Open Meeting Law?

Answer: A subagency of a public agency is subject to the Open Meeting Law if the subagency itself “is created by or pursuant to statute, ordinance or other legislative act.”¹² In *Cathcart v. Anderson*, the Washington Supreme Court interpreted a Washington statute similar to section 67-2341(4)(d). The court held that, under the language “created by or pursuant to,” it is not necessary that a statute, ordinance or other legislative act expressly create a subagency so long as there is an enabling provision which allows that subagency to come into existence at some future time.

Question No. 4: Are advisory committees, boards and commissions subject to the Open Meeting Law?

Answer: The Open Meeting Law defines “public agency” to include “any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act,”¹³ and “governing body” to include any body “with the authority to make decisions for or *recommendations* to a public agency regarding any matter.”¹⁴ Thus, advisory committees, boards and commissions are subject to the Open Meeting Law if the body is created by or pursuant to statute, ordinance, or other legislative act and if the body has authority to make recommendations to a public agency.

In contrast, an administrative committee, board or commission is not subject to the Open Meeting Law if it is not entrusted with the formation of public policy, but merely carries out the public policy established by a governing body, and if its activities do not constitute the making of “decisions for or recommendations to” a public agency.¹⁵ Likewise, the Open Meeting Law does not apply to voluntary, internal staff meetings if the group is not created by or pursuant to statute, ordinance or other legislative act, even though the discussions may lead to recommendations to the governing

¹² Idaho Code § 67-2341(4)(d); *Cathcart v. Anderson*, 85 Wash. 2d 102, 530 P.2d 313 (1975); Attorney General Opinion No. 7-75.

¹³ Idaho Code § 67-2341(4).

¹⁴ Idaho Code § 67-2341(5) (emphasis added).

¹⁵ *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 572, 548 P.2d 45, 72 (1976).

body.¹⁶ Generally, however, if you are ever unsure of whether a meeting should be open, it is this Office's recommendation to err on the side of opening the meeting.

Question No. 5: Does the Open Meeting Law apply to the governor?

Answer: The Open Meeting Law has no application to the governor when he is acting in his official executive capacity, since the Open Meeting Law does not apply to a public agency headed by a single individual.

CHARITABLE ORGANIZATIONS (501C(3)) AND HOMEOWNER'S ASSOCIATIONS

Question No. 6: Do charitable organizations have to comply with the Idaho Open Meeting Law?

Answer: The Open Meeting Law applies only to governmental entities. Typically, charitable organizations are private. Generally, nonprofit organizations are governed by their chartering documents and bylaws. Additionally, Title 30, Chapter 3 of the Idaho Code, provides the legal foundation for Idaho nonprofits. Consult the chartering documents, bylaws and Idaho Code, Title 30, Chapter 3, to determine the requirements of corporate records and meetings.

Question No. 7: Do homeowners associations have to comply with the Idaho Open Meeting Law?

Answer: No. The Open Meeting Law applies only to governmental entities. Homeowners associations are private entities. Homeowners associations are generally governed by agreements between the members and the association and their bylaws. Members should consult their association documents and bylaws to determine the association rules for meetings.

¹⁶ See *Safe Air For Everyone v. Idaho State Dep't of Agriculture*, 145 Idaho 164, 177 P.3d 378 (2008); *People v. Carlson*, 328 N.E.2d 675 (Ill. App. Ct. 1975); *Bennett v. Warden*, 333 So.2d 97 (Fla. 1976).

PUBLIC ACTIONS OR ACTIVITIES COVERED BY THE OPEN MEETING LAW

Question No. 8: What constitutes a meeting under the Open Meeting Law?

Answer: The Open Meeting Law defines “meeting” to mean “the convening of a governing body of a public agency *to make a decision or to deliberate toward a decision* on any matter.”¹⁷ “Decision” is then defined to include “any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, *at any meeting at which a quorum is present.*”¹⁸

The term “deliberation” is also a defined term and means “the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.”¹⁹ Note that this does not require any discussion or preliminary decision making. Even the receipt of information relating to a “decision”—i.e., a measure on which the governing body will have to vote—amounts to deliberation, and therefore triggers the definition and requirements of a “meeting” under the Open Meeting Law.

Question No. 9: Does the term “meeting” include such things as informal gatherings, briefing sessions, informal discussions, attendance at social functions, etc.?

Answer: As noted above, a “meeting” is the convening of a governing body to make a decision or deliberate toward a decision. Additionally, a quorum must be present.²⁰

The California Court of Appeals discussed the dual facets of deliberation and action in *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*:

¹⁷ Idaho Code § 67-2341(6) (emphasis added).

¹⁸ Idaho Code § 67-2341(1) (emphasis added).

¹⁹ Idaho Code § 67-2341(2).

²⁰ *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 571, 548 P.2d 45, 71 (1976).

It [California's open meeting law] declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To "deliberate" is to examine, weigh and reflect upon the reasons for or against the choice Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.²¹

The California court then reasoned and ruled:

An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a non-public, pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry in discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences of board members designed for the discussion of public business.²²

A similar result was reached by the Florida Supreme Court in the case of *City of Miami v. Berns* wherein the Florida court ruled that public officials violate Florida's open meeting law when they meet privately or secretly and transact or agree to transact public business at a future time in a certain manner.²³ The Florida court went on to state that, regardless of whether a meeting or gathering is formal or informal, "[i]t is the law's intent that any meetings,

²¹ *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 69 Cal. Rptr. 480, 485 (Cal. Ct. App. 1968).

²² *Id.* at 487.

²³ *City of Miami v. Berns*, 245 So.2d 38 (Fla. 1971).

relating to any matter on which foreseeable action will be taken, occur openly and publicly.”²⁴

The same considerations must be applied with respect to the Idaho Open Meeting Law. Therefore, it is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever a quorum of the members of the governing body of a public agency meets in order to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as a quorum is present and the intent is to deliberate or make a decision, then the meeting must be open.

The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.

Question No. 10: Since any meeting of two county commissioners constitutes a quorum under Idaho law, are county commissioners prohibited from having any contact with each other outside of a duly organized open meeting?

Answer: While it is the opinion of the Attorney General that the Open Meeting Law must be complied with whenever a quorum of the members of a governing body of a public agency meet to decide or deliberate on matters which are within the ambit of official business, this Office does not believe that the Legislature intended for the Open Meeting Law to act as a bar to all communications between individual county commissioners outside of open meetings.

Question No. 11: Are adjudicatory deliberations exempt from the Open Meeting Law?

Answer: Only for those agencies expressly exempted. The Open Meeting Law excludes the deliberations of certain agencies (the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission), in fully submitted adjudicatory proceedings,

²⁴ *Id.* at 41; see also *Canney v. Bd. of Pub. Instruction of Alachua Cnty*, 278 So.2d 260 (Fla. 1973); *Bd. of Pub. Instruction of Broward Cnty v. Doran*, 224 So.2d 693 (Fla. 1969).

from the requirement of open public meeting.²⁵ In creating this exemption for adjudicatory deliberations by only these three agencies, it appears the Legislature intended that non-adjudicatory deliberations at these agencies, and all deliberations at all other agencies—i.e., except for the above-described informal or impromptu discussions of a general nature—must be conducted in a public meeting. Of course, the subject matter under adjudication may be separately identified under the Open Meeting Law as justifying a closed executive session.

Question No. 12: Can I still address questions and comments to a commissioner or board member individually related to a pending matter?

Answer: In other words, as representatives, can I still contact members of a governing body with unsolicited “information or opinion relating to a decision” that is pending before the public agency?²⁶ The Idaho Supreme Court has addressed this specific question.

In *Idaho Historic Preservation Council v. City Council of Boise*, a divided Court overturned a Boise City Council decision that allowed a corporation to demolish a building in Boise.²⁷ In reviewing an appeal from the City’s Preservation Commission, members of the City Council stated at the public [open] meeting that they had received numerous telephone calls concerning the issue. Although the Court framed the issue in terms of due process, it may also raise open meeting questions.

In overturning the City’s decision, the Court stated:

[W]hen a governing body sits in a quasi-judicial capacity, it must confine its decision to the record produced at the public hearing, and that failing to do so violates procedural due process of law. This Court has also observed that when a governing body deviates from the public record, it essentially conducts a second fact-gathering session without proper notice, a clear violation of due process. Since the substance of the telephone calls received by the members of the City Council was not

²⁵ Idaho Code § 67-2342(2).

²⁶ Idaho Code § 67-2341(2).

²⁷ *Idaho Historic Pres. Council v. City Council of Boise*, 134 Idaho 651, 8 P.3d 646 (2000).

recorded or disclosed at the public hearing, the Commission had no opportunity to rebut any evidence or arguments the City Council may have received from the callers.

Id. at 654, 8 P.3d at 649 (internal citations omitted).

The Court concluded:

This decision does not hold the City Council to a standard of judicial disinterestedness. As explained above, members of the City Council are free to take phone calls from concerned citizens and listen to their opinions and arguments prior to a quasi-judicial proceeding. In order to satisfy due process, however, the identity of the callers must be disclosed, as well as a general description of what each caller said.²⁸

Therefore, in the event that unsolicited information is received and considered by a governing board member, the appropriate action is to disclose the source of the information and the substance of the information so that it may be included within the public record. In sum, any information that you wish to use to form the basis of your decision must be made a part of the public record.

PROCEDURAL REQUIREMENTS OF THE OPEN MEETING LAW

Question No. 13: What are the notice requirements of the Open Meeting Law?

Answer: The Open Meeting Law requires two types of notice: (1) meeting notice and (2) agenda notice. The notice requirements are satisfied by posting meeting notices and agendas in a prominent place at the principal office of the public agency, or, if no such office exists, at the building where the meeting is to be held. The Open Meeting Law does not require publication of the notice in a newspaper or advertisement. However, other statutes governing particular entities may require publication of notice.

The Open Meeting Law also requires that notice be posted at specific minimum times prior to the meeting. These times vary,

²⁸ *Id.* at 656, 8 P.3d at 651.

depending on the type of meeting being held. The notice of an executive session must state the authorizing provision of law.

Question No. 14: What are the notice and agenda requirements for a regular meeting?

Answer: For “regular meetings,” the Open Meeting Law requires no less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice, unless otherwise provided by statute.²⁹ Any public agency that holds meetings at regular intervals at least once per calendar month, which are scheduled in advance over the course of the year, may satisfy this notice requirement by posting meeting notices at least once each year of its regular meeting schedule. Agenda notice must still be posted at least 48 hours before the meeting.

Question No. 15: What are the notice and agenda requirements for a special meeting or executive session only meeting?

Answer: For “special meetings,” or when only an “executive session” will be held, meeting and agenda notice must be posted at least twenty-four (24) hours before the meeting, unless an emergency exists. An emergency is a situation which involves injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of the section would make such notice impractical, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. This notice and an accompanying agenda must be given by the secretary or other designee of each public agency to any representative of the news media who has requested notification of such meetings and the secretary must make a good faith effort to provide such advance notification to them of the time and place of each meeting.³⁰

Question No. 16: What must an agenda contain?

Answer: What constitutes an “agenda” to satisfy the posting requirement is not set forth in the Open Meeting Law. However, an “agenda” is defined in *Black’s Law Dictionary* (9th ed.) as a “list of

²⁹ Idaho Code § 67-2343.

³⁰ Idaho Code § 67-2343(2) and (3).

things to be done, as items to be considered at a meeting, [usually] arranged in order of consideration.” The agenda notice requirement is not satisfied by merely posting a weekly schedule of the governing board which sets forth the time, place of the meetings, and who is participating. Rather, the notice must specifically set forth the purpose of the meeting and “items of business.” Agenda items should be listed with specificity and not buried in catchall categories such as “director’s report.”

Question No. 17: May an agenda be amended after posting?

Answer: Yes. The procedure depends on when the agenda is amended.

More than 48 hours before the start of a meeting (or more than 24 hours before a special meeting), the agenda may be amended simply by posting a new agenda.

Less than 48 hours before the meeting (or less than 24 hours before a special meeting), but before the meeting has started, the agenda may be amended by: (1) posting the new agenda, and (2) making and passing a motion at the meeting to amend the original agenda and stating the good faith reason the new items were not included in the original agenda notice.

After commencement of the meeting, the agenda may be amended to accommodate unforeseen issues, provided that: (1) there is a motion made that states the good faith reason the new item was not on the original agenda, and (2) the motion to amend is adopted by the governing body.

To sum up, amending an agenda during a meeting or less than 48 hours before the start of a meeting (24 hours for a special meeting) requires: (1) a motion, (2) a good faith reason why the item was not included in the original agenda, (3) a vote adopting the amended agenda, and (4) a record of the motion and vote in the minutes of the meeting.

Question No. 18: May qualifications or restrictions be placed on the public’s attendance at an open meeting?

Answer: A public agency may adopt reasonable rules and regulations to ensure the orderly conduct of a public meeting and to ensure orderly behavior on the part of those persons attending the

meeting. In *Nevens v. City of Chino*, a California appellate court nullified a city council measure, which prohibited the use of any tape recorders at city council proceedings.³¹ While acknowledging that the city council had an absolute right to adopt and enforce rules and regulations necessary to protect its public meetings, the court held that the rule prohibiting tape recorders was too arbitrary, capricious, restrictive and unreasonable. A similar holding might be reached if a governing body prohibits the use of cameras if their presence is not in fact disruptive of the conduct of the meeting.

Another limitation is that the body cannot make it practically impossible for the public to be present at a meeting. For example, in *Noble v. Kootenai County*, a board of commissioners conducted a site visit to a proposed subdivision. When arriving at the site, the board intentionally avoided a group that was gathered near the entrance to the site location and conducted its site visit outside the group's hearing. The court held that this was a violation, stating that "Idaho's open meeting laws . . . are designed to allow the public to be present during agency hearings. At the very least this means that the public must be permitted to get close enough to the hearing body to hear what is being said."³²

In any event, the governing standard is the reasonableness of the rules and regulations. Use of a timed agenda, "heavy gavel" and/or compliance with Robert's Rules of Order or some other procedural guideline may serve to facilitate the orderly conduct of a public meeting.

Question No. 19: Does the Open Meeting Law require the governing body of a public agency to accept public comments and testimony during meetings?

Answer: No. While other statutes, such as the Local Planning Act, may require the solicitation of public comments, the Open Meeting Law does not expressly require the opportunity for public comment.³³

³¹ *Nevens v. City of Chino*, 44 Cal. Rptr. 50 (Cal. Ct. App. 1965).

³² *Noble v. Kootenai County*, 148 Idaho 937, 943, 231 P.3d 1034, 1040 (2010).

³³ See *Coalition for Responsible Government v. Bonner County*, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (on file with the Office of the Attorney General).

Question No. 20: May the members of a governing body vote by secret ballot at an open meeting?

Answer: No decision at any meeting of a governing body of a public agency may be made by secret ballot.³⁴

Question No. 21: If a voice vote is used, must the minutes of the meeting reflect the vote of each member of a governing body by name?

Answer: If a voice vote is taken, the minutes of the meeting must reflect the results of all votes, but the minutes need not indicate how each member voted, unless a member of the governing body requests such an indication.³⁵

Question No. 22: May a vote be conducted by written ballots?

Answer: A vote may be conducted by written ballot, but written ballots would not comply with the Open Meeting Law unless the ballots are made available to the public on request and unless the members casting the ballots are identifiable by signature or other discernible means.³⁶ The reason identification of the vote of individual members is treated differently between voice votes and votes by written ballot is that, with respect to voice votes, members of the public in attendance can readily ascertain the vote of individual members of the governing body. In contrast, a vote by written ballot is tantamount to a secret vote, unless such ballot is signed or identifies the name of the voting member.

Question No. 23: What types of records must be maintained under the Open Meeting Law?

Answer: The Open Meeting Law requires that the governing body of a public agency must provide for the taking of written minutes of all of its meetings, but it is not necessary to make a full transcript or recording of the meeting, except as otherwise provided by law.³⁷ These minutes are public records and must be made available to the

³⁴ Idaho Code § 67-2342(1).

³⁵ Idaho Code § 67-2344(1)(c).

³⁶ Attorney General Opinion No. 77-13.

³⁷ Idaho Code § 67-2344(1).

general public within a reasonable time after the meeting. The minutes must include, at a minimum, the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes and, upon the request of a member of the governing body, the vote of each member by name.

Other statutes may provide more specific requirements for particular entities.

In addition, section 67-2344(2) provides that minutes of executive sessions must be kept, but they need contain only sufficient detail to identify the purpose and topic of the executive session and do not need to include the disclosure of material or matters that compromise the purpose of the executive session. The minutes pertaining to the executive session, however, must include a reference to the specific statutory subsection authorizing the session.

Question No. 24: Are there any prohibitions on where a public meeting may be held?

Answer: Yes. Section 67-2342(3) specifically provides: “A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.” Thus, for example, a public meeting may not be held at a private club if the private club excludes women from membership, even if women are allowed entrance for the purpose of attending the meeting.

Question No. 25: Does the Open Meeting Law permit holding a meeting by telephone conference call?

Answer: Yes. The Open Meeting Law specifically authorizes the holding of a meeting by telephone conference call. However, at least one member of the governing body or the director or chief administrative officer must be physically present at the meeting

location designated in the meeting notice.³⁸ Additionally, the communications among the members of the governing body must be audible to all persons attending the meeting. Care should also be taken to ensure that votes are not made in such a way to permit an illegal secret ballot or vote.

Question No. 26: Are discussions conducted via telephones, computers, cell phones (including texting) or other electronic means exempted from the Open Meeting Law?

Answer: As discussed in this manual, the Open Meeting Law applies to the deliberations and discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of the Open Meeting Law.

Similarly, members of a public board may not use computers or texting to conduct private conversations among themselves about board business. A one-way e-mail or text communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Open Meeting Law; however, such e-mail or text communications are public records and must be maintained by the records custodian for public inspection and copying.

SPECIFIC STATUTORY EXEMPTIONS: EXECUTIVE SESSIONS

Question No. 27: What types of meetings may be closed under the Open Meeting Law?

Answer: A closed meeting—that is, an “executive session”—may be held for the reasons listed in § 67-2345(1):

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need, unless a vacancy in an elective office is being filled;

³⁸ Idaho Code § 67-2342(5).

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(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided by law;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

This provision enumerates specific and not general statutory exemptions to the requirement of conducting an open meeting. It is the Attorney General's opinion that a public agency cannot conduct an executive session to consider general personnel matters, but can only meet in executive session to consider those specifically enumerated personnel matters found at section 67-2345(1)(a) and (b); that is, "to consider hiring a public officer, employee, staff

member or individual agent” or “to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student.” Additionally, Idaho Code section 67-2345(3) specifically directs that the exceptions be construed narrowly. No entity should try to “shoehorn” an issue into an executive session exception.

With respect to labor negotiations, section 67-2345(2) specifically provides that labor negotiations may be conducted in executive session if either side requests closed meetings. Further, any subsequent negotiation sessions may continue without further public notice, notwithstanding the notice requirements of section 67-2343.

An executive session may be held to consider acquiring an interest in real property that is not owned by a public agency. However, an executive session cannot be held for the purpose of acquiring an interest in real property owned by a public agency.³⁹

It should be noted that the Open Meeting Law establishes circumstances where executive sessions are permissible. In other words, the act authorizes, but does not require, closed meetings. In addition, even though certain enumerated matters may be “considered” in an executive session, it must be emphasized that: “[N]o executive session may be held for the purpose of taking any final action or making any final decision.”⁴⁰

It is important to remember that section 67-2345(1) sets forth specific procedural steps to be followed in order to have a valid executive session. *Failure to do so will invalidate any action taken as a result of the executive session. Additionally, it may subject the board members to liability for those actions.* Procedurally, the presiding officer must identify the specific authorization under the Open Meeting Law for the holding of an executive session and at least a two-thirds ($\frac{2}{3}$) vote in favor of the executive session must be recorded in the minutes of the meeting by individual vote.

³⁹ Attorney General Opinion No. 81-15.

⁴⁰ Idaho Code § 67-2345(4); Attorney General Opinion No. 77-44; Attorney General Opinion No. 81-15.

Question No. 28: What procedure must be followed before an executive session, closed to the public, may be held?

Answer: It must be noted that executive sessions take place only at meetings. Before any executive session may be held, there must be a valid open meeting and a vote to hold an executive session. Every such “meeting” must satisfy the Open Meeting Law’s notice and agenda requirements.⁴¹ If the governing body of a public agency then wishes to consider matters which may legally be considered in a closed meeting, an executive session may be held if two-thirds ($\frac{2}{3}$) of the members vote to hold an executive session. Prior to such vote, the presiding officer must identify the authorization under the Open Meeting Law for the holding of an executive session. Then, when the vote is taken, the individual vote of each member of the governing body must be recorded in the minutes.⁴²

Question No. 29: May legal counsel meet privately with the governing body of a public agency to discuss threatened or pending litigation?

Answer: Yes. Section 67-2345(f) expressly provides that an executive session may be held “[t]o communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.”

Question No. 30: Must the governing body’s attorney be present during an executive session?

Answer: Generally, the governing body’s attorney need not be present when the governing body meets in executive session. An exception is an executive session authorized under Idaho Code section 67-2345(1)(f): “To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.” (Of course, the attorney’s “presence” may be facilitated via a telecommunications device.) An executive session under this subsection is solely for the purpose of communicating with legal counsel on pending or probable litigation.

⁴¹ Idaho Code § 67-2343.

⁴² Idaho Code § 67-2345(1).

Question No. 31: If a more specific statute requires open meetings and has no provision for executive sessions, is the executive session provision of the Open Meeting Law still applicable?

Answer: Yes. The executive session provision takes precedence over other statutes that may apply to a particular entity. Thus, even if a statute requires all meetings of a governing body to be open, executive sessions may still be held.⁴³

PENALTIES FOR NONCOMPLIANCE

Question No. 32: What is the validity of action taken in violation of the Open Meeting Law?

Answer: If an action, or any deliberation or decision making that leads to an action, occurs at any meeting that fails to comply with the provisions of the Open Meeting Law, such an action may be declared null and void by a court.⁴⁴

Any member of the governing body taking such an action, who participates in any such deliberation, decision making, or meeting, is subject to a civil penalty not to exceed fifty dollars (\$50).⁴⁵ The maximum civil penalty for a subsequent violation is five hundred dollars (\$500).⁴⁶

Any governing body member who knowingly violates a provision of this act is subject to a civil penalty of not more than five hundred dollars (\$500).⁴⁷

It is the opinion of the Attorney General that the Idaho Legislature intended that such fines be paid by the individual member of the governing body, not the governing body itself.

Question No. 33: Who enforces the Open Meeting Law?

Answer: The Attorney General enforces the Open Meeting Law in

⁴³ *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

⁴⁴ Idaho Code § 67-2347(1).

⁴⁵ Idaho Code § 67-2347(2).

⁴⁶ Idaho Code § 67-2347(4).

⁴⁷ Idaho Code § 67-2347(3).

relation to the public agencies of state government. County prosecuting attorneys enforce the Open Meeting Law in relation to the local public agencies within their respective jurisdictions.⁴⁸

Any person affected by a violation of the Open Meeting Law is entitled to bring a lawsuit in the magistrates' division of the county in which the public agency normally meets for the purpose of requiring compliance with the provisions of the Open Meeting Law. The lawsuit would ask the court to declare any improper actions void and to enjoin the governing body from violating the Open Meeting Law in the future. Such a lawsuit must be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of the Open Meeting Law. Any other lawsuit must be commenced within one hundred eighty (180) days of the time of the violation.⁴⁹

Question No. 34: If there is a violation of the Open Meeting Law at an early stage in the process, will all subsequent actions be null and void?

Answer: Yes. Section 67-2347(1) clearly indicates that an action or any deliberation or decision making that leads to an action, which occurs at any meeting not in compliance with the provisions of the Open Meeting Law, will be null and void. The 1992 Legislature added the “deliberation or decision making that leads to an action” language to the provisions of section 67-2347(1). This language clarifies the consequences of a violation under the previous requirement.

The Idaho Supreme Court has held that the procedure for voiding actions taken in violation of the Open Meeting Law must be read literally. Thus, any action may not be declared void if it is not challenged within the thirty-day time limit established by section 67-2347(6).⁵⁰

Question No. 35: If a violation of the Open Meeting Law occurs, what can a governing body do to correct the error?

Answer: The governing body should follow the steps outlined in

⁴⁸ Idaho Code § 67-2347(5).

⁴⁹ Idaho Code § 67-2347(6).

⁵⁰ *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

Idaho Code § 67-2347(7) to “cure” the violation. A violation is cured by repealing any action taken at an illegal meeting or disregarding deliberations made in violation of the Open Meeting Law. Should it choose to, a governing body may, in a properly noticed meeting, repeat the deliberation or decision that occurred at the illegal meeting.

Question No. 36: Are members of the governing body of a public agency criminally liable for violations of the Open Meeting Law in which they knowingly participate?

Answer: The Open Meeting Law specifically provides civil monetary penalties for violations. The Open Meeting Law does not expressly provide for criminal liability for knowing violations. Nonetheless, it is possible that a member of a governing body may be guilty of a misdemeanor for violations of the Open Meeting Law in which he or she knowingly participates.

Idaho Code Section 18-315 provides:

Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Idaho Code Section 18-317 states:

When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

In *Alder v. City Council of City of Culver City*, the court considered the California Open Meeting Law (the Brown Act), which included no penalty provisions or provisions for enforcement when violations occur.⁵¹ Relying on two California statutes identical to Idaho Code sections 18-315 and 18-317, the California court ruled that violations of the Open Meeting Law were punishable as misdemeanors even though the Open Meeting Law did not expressly make violations punishable as misdemeanors.

⁵¹ *Alder v. City Council of City of Culver City*, 7 Cal. Rptr. 805 (Cal. Ct. App. 1960).

THE STATUTE

(Idaho Code §§ 67-2340 to 67-2347)

67-2340. Formation of public policy at open meetings. The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

67-2341. Open Public Meetings—Definitions. As used in this act:

(1) “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with sections 67-2342 through 67-2346, Idaho Code.

(2) “Deliberation” means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

(3) “Executive session” means any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.

(4) “Public agency” means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

(5) “Governing body” means the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.

(6) “Meeting” means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

(a) “regular meeting” means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.

(b) “special meeting” is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

67-2342. Governing bodies—Requirement for open public meetings.

(1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

67-2343. Notice of meetings—Agendas.

(1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a

good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

67-2344. Written minutes of meetings.

(1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes pertaining to executive sessions. Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

67-2345. Executive sessions—When authorized.

(1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds ($\frac{2}{3}$) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

67-2346. Open legislative meetings required. All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a

standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

67-2347. Violations.

(1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of

the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) [Curing a violation.]

(a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

**SUMMARY OF DECISIONS INTERPRETING THE IDAHO
OPEN MEETING STATUTE**

IDAHO ATTORNEY GENERAL'S OFFICE

REPORTED DECISIONS

1. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997) (actions that violate Open Meeting Law that are not challenged within the time limit established by Idaho Code § 67-2347(4) are not void).
2. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994) (merely alleging violation of Open Meeting Law, without additionally alleging a specific “palpable injury,” is insufficient to confer standing).
3. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185 (1986) (an aggrieved party will not prevail in a claim for improper notice under the Open Meeting Law when they cannot demonstrate any disadvantage stemming from the deficient notice).
4. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985) (Open Meeting Law’s provisions authorizing executive sessions preempt Idaho Code § 31-713’s requirement that all meetings of county commissioners must be public).
5. *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985).
6. *Baker v. Ind. School Dist. of Emmett*, 107 Idaho 608, 691 P.2d 1223 (1984).
7. *State v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981).
8. *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).
9. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).
10. *Idaho Historic Preservation Council v. City Council of Boise*, 134 Idaho 651, 8 P.3d 646 (2000).

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11. *Farrell v. Lemhi County Board of Commissioners*, 138 Idaho 378; 64 P.3d 304 (2002).
12. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).
13. *Safe Air For Everyone v. Idaho State Dep't. of Agri.*, 145 Idaho 164, 177 P.3d 378 (2008).
14. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).
15. *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 132 P.3d 397 (2006).
16. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).
17. *Acheson v. Klauser*, 139 Idaho 156, 75 P.3d 210 (Idaho Ct. App. 2003).
18. *Noble v. Kootenai County ex rel. Kootenai County Bd. of Comm'rs*, 148 Idaho 937, 231 P.3d 1034 (2010), reh'g denied (May 19, 2010).

UNREPORTED DECISIONS

(On File with the Office of Attorney General)

1. *Coalition for Responsible Government v. Bonner County*, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (insufficient notice in agenda may trigger Open Meeting Law violation).
2. *State v. Thorne*, et al.; Idaho Fourth Judicial District No. 3L-97763 (1994).
3. *Playfair v. S. Lemhi Sch. Dist. 292 Bd. of Trustees*, CIV. 09-375, 2009 WL 2474205 (D. Idaho Aug. 12, 2009).

ATTORNEY GENERAL'S OFFICE ANALYSES

1. Attorney General Opinion No. 08-3, 2008 WL 4360202.
2. Attorney General Opinion 85-9, (December 31, 1985) 1985 WL 167852.
3. Attorney General Opinion 89-7, (July 19, 1989) 1989 WL 4084.

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting Notice posted 5 or more calendar days prior to the meeting date.
[Idaho Code § 67-2343(1)]
- Agenda Notice posted at least 48 hours prior to the meeting.
[Idaho Code § 67-2343(1)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes.
[Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 67-2344(1)]

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Special Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting. [Idaho Code § 67-2343(2)]
- Notification provided to the news media. [Idaho Code § 67-2343(2)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

**State of Idaho
Office of the Attorney General
OPEN MEETING LAW CHECKLIST
*Executive Sessions***

Session Date and Time: _____

Session Location: _____

[Idaho Code § 67-2342(4) and (5)]

Executive Session Only

- Meeting and Agenda Notice posted **at least 24 hours** prior to the session. [Idaho Code § 67-2343(3)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

Executive Session During Regular or Special Meeting

- Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 67-2345.
- $\frac{2}{3}$ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 67-2345(1)]

During Session

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Session

- Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 67-2344(2)]
- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

_____ (print name), _____ (print title),
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 67-2345,
CONVENE IN EXECUTIVE SESSION TO: (identify one or more of the following)

- Consider personnel matters [Idaho Code § 67-2345(1)(a) & (b)]
- Deliberate regarding labor negotiations or acquisition of an interest in real property [Idaho Code § 67-2345(1)(c)]
- Consider records that are exempt from public disclosure [Idaho Code § 67-2345(1)(d)]
- Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 67-2345(1)(e)]
- Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 67-2345(1)(f)]
- Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 67-2345(1)(j)]
- Conduct labor negotiations [Idaho Code § 67-2345(2)]

Purpose/Topic summary (required): _____
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

(less than 48 hours before regular meeting or 24 hours before special meeting)

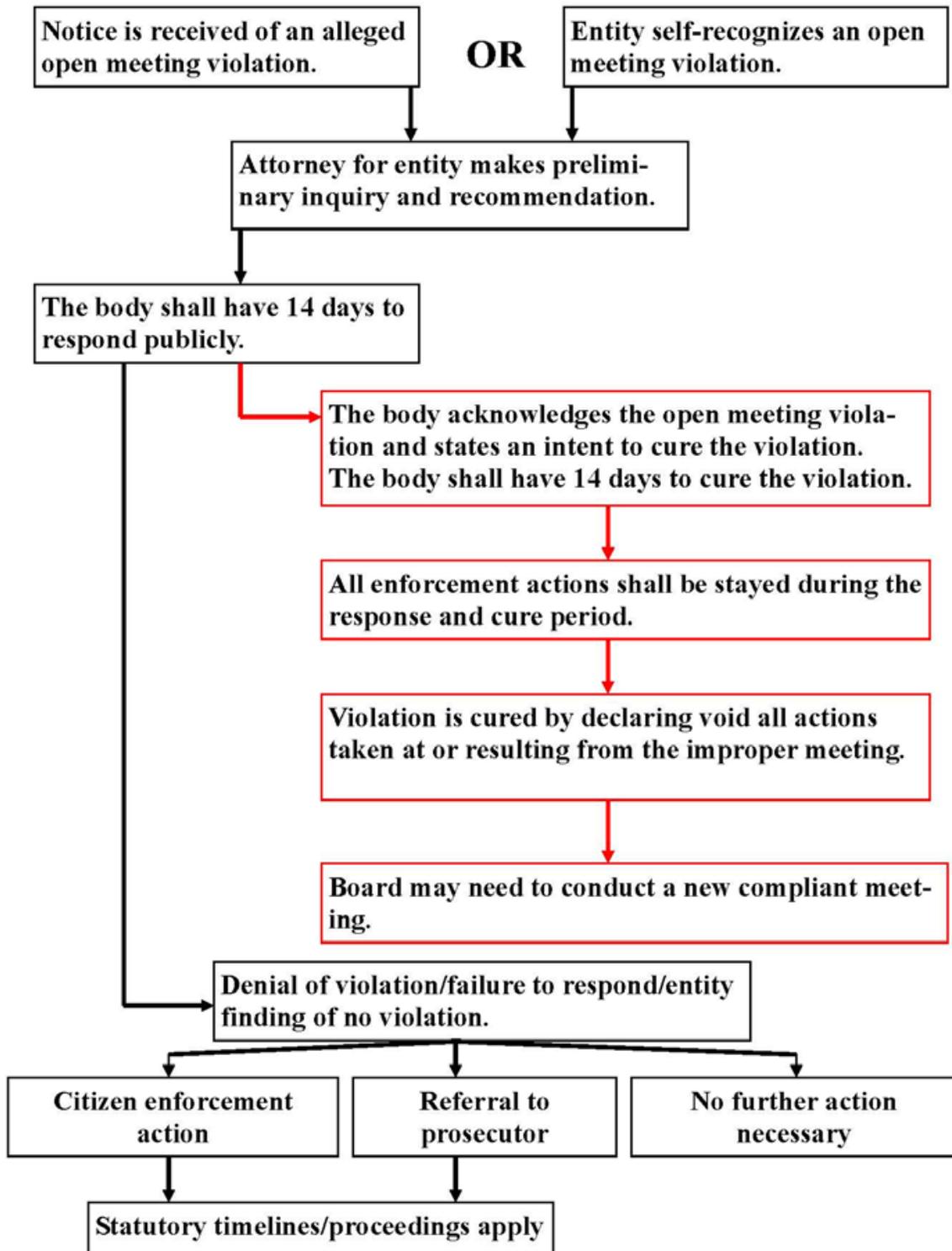
(print name), _____
(print title),
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE
§ 67-2343, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

Good faith reason item not included in posted agenda (required):

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____ (print name), Chair	_____	_____	_____
_____ (print name), Member	_____	_____	_____
_____ (print name), Member	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

Curing Process – Idaho Code § 67-2347(7)



APPENDIX A

**Idaho Supreme Court Decisions
Idaho Board of Tax Appeals Decisions
District Court Decisions**

SELECTED IDAHO SUPREME COURT CASES

(In chronological order, ending with the most recent cases)

Erwin v. Hubbard, 4 Idaho 170, 37 P. 274 (1894).

It was the duty of the taxpayer to furnish the assessor, on demand, the statement on oath and if he neglected or failed to do so, it was the duty of the assessor to assess such taxable property within his jurisdiction and in that case the taxpayer could not recover taxes paid under protest on property so assessed.

Cheney v. Minidoka County, 26 Idaho 471, 144 P. 343 (1914).

Anyone, who claims any property tax exemption, must identify a specific provision of law plainly giving the exemption.

Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

The term “property” within the constitutional provision requires all “property” to be taxed uniformly by value.

Lewiston Orchards Irrigation District v. Mary E. Gilmore, Nez Perce County Treasurer, 53 Idaho 377, 23 P.2d 720 (1933).

An irrigation district is not a municipal corporation within the meaning of Article 7, § 4, *Idaho Constitution*; therefore, land acquired by an irrigation district for nonpayment of delinquent assessments is not exempt from property taxation.

Board of County Commissioners of Ada County v. Sears, Roebuck & Co., 74 Idaho 39 (1953).

The assessor's value is presumed to be correct.

In re Felton’s Petition, 79 Idaho 325, 316 P.2d 1064 (1957).

Administrative remedies, provided by the legislature relative to the assessment of property, must be pursued by the taxpayer as a condition precedent to judicial action.

Sunset Memorial Gardens, Inc. v. Idaho State Tax Commission, 80 Idaho 206, 327 P.2d 766 (1958).

There are three kinds of tax exemptions, those based on ownership alone, those based on ownership and use, and those based on use alone. Exemption statutes may be roughly classified as belonging to one of three groups: (1) Those making ownership of the property by a certain institution or class of people the test; (2) Those making the particular use of the property rather than the ownership the test; and (3) Those making both ownership and use the test. This classification of importance is especially true in connection with exemption of charitable, religious, and educational institutions. If ownership is the test, then the use is often held immaterial. If use is the test, then the ownership is generally immaterial.

Tobias v. State Tax Commission, 85 Idaho 250, 378 P.2d 628 (1963).

The procedure prescribed by the legislature, regarding levying, assessing and collecting taxes, must be strictly observed. The board of equalization may only hear appeals that are prescribed by law to be within their jurisdiction each time they meet.

Abbot v. State Tax Commission, 88 Idaho 200, 398 P.2d 221 (1965).

The value of property for purposes of taxation as determined by the assessor is presumed to be correct.

Janss Corp. v. Board of Equalization Blaine County, 93 Idaho 928 (1970).

Absent a showing that an assessed valuation of a property was prejudicially discriminative or that the assessment was otherwise unlawful or erroneous, the presumption prevails that the value affixed by the assessor is correct.

Title and Trust Company v. Board of Equalization, Ada County, 94 Idaho 270, 278 (1971).

To be entitled to relief, the taxpayer has the burden by clear and convincing evidence (See HB 302 in the Addendum Q for more recent legislative action relating to issue of level of proof.) to overcome the presumption that the assessor and board of equalization have performed their duties correctly.

Merris v. Ada County, 100 Idaho 59, 64, (1979).

The value of the property for purposes of taxation as determined by the assessor is presumed to be correct. The burden of proof is upon the taxpayer to show by clear and convincing evidence that he is entitled to the relief claimed. New law is somewhat different than this decision; see House Bill (HB) 302 (from the 2003 legislature) in the Addendum.

Ada County v. Red Steer Drive-Ins of Nevada, Inc., 101 Idaho 94, 609 P.2d 161 (1980).

A taxpayer is entitled to relief where the valuation fixed by an assessor is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious and systematically discriminatory.

Idaho State Tax Commission v. Staker, 104 Idaho 734, 663 P.2d 270 (1982)

This case addressed the appeal process for the decisions on equalization by the state tax commission. The Supreme Court ruled that it was the only entity with jurisdiction for appeal of these decisions. The Supreme Court can hear these appeals if it chooses; it is not required to do so.

Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984).

Determination of an institution's charitable status is necessarily an individual matter, to be decided on a case-by-case basis. In determining charitable status of a non-profit corporation under §63-602C, I.C., a number of factors must be considered: (1) the stated purpose of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the "charity" provided is based on need.

An institution may be entitled to an exemption where it performs a function which might otherwise be an obligation of government and, thus, a nonprofit corporation may benefit only a limited group of people and still be considered "charitable" if that group of people possess a need which government might be required to fill; however, where there is no

assistance to individuals which might normally require government funds, the institution must meet a stricter test: it must provide benefits to the community at large.

Coeur d' Alene Public Golf Club, Inc. v. Kootenai Board of Equalization, 106 Idaho 104, 675 P.2d 819 (1984).

For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit.

Simmons v. Idaho State Tax Commission, 111 Idaho 343, 723 P.2d 887 (1986).

Homeowners are not a suspect class and the exemption under §63-602G, I.C., for homeowners furthers legitimate state interests, such as fostering home ownership and equalizing the tax burden between residential and business properties; therefore, this section does not violate the equal protection provisions of Constitution, Article 1, § 2, or the Fourth Amendment to the United States Constitution.

Bogus Basin Recreational Association v. Boise County Board of Equalization, 118 Idaho 686, 799 P.2d 974 (1990).

Exemptions are never presumed, and the burden is on a claimant to establish clearly a right to exemption.

Fairway Development Co. v. Bannock County, 119 Idaho 121, 804 P.2d 294 (1990).

The taxpayer cannot ignore the statutory appeal process by paying the tax under protest and then filing an action under §63-1308, I.C., for refund of the tax; such a collateral attack upon the decision of the assessor and the board of equalization is not permitted.

Corporation of Presiding Bishop of Church of Latter-Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993).

General summary:

Tax exemptions cannot be presumed, but instead must be explicitly granted by statute. If an ambiguity arises in a tax exemption, courts must not only interpret the statute in favor of the state, but must choose the narrowest possible reasonable construction of the statute.

Rules of law reinstated in this case:

- (a) It is solely the province of the legislature to make laws and the duty of a court to construe them and if the law, as construed by a court, is to be changed, that is a legislative not a judicial function;
- (b) Unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing a statute;
- (c) The standard rules of statutory interpretation require a court to give effect to the legislature's intent and purpose and to every word and phrase employed;
- (d) When construing a statute, a court will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions;
- (e) Where the language of a statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction;

- (f) The language of the tax exemption statutes must be given its ordinary meaning and an exemption will not be sustained unless within the spirit as well as the letter of the law;
- (g) A court may not presume exemptions, nor may it extend an exemption by judicial construction where not specifically authorized by a statute;
- (h) Tax exemptions exist as matter of legislative grace for the purpose of fairness, equality, and uniformity; therefore, these laws are to be construed according to “strict but reasonable”

rule of statutory construction;

(i) When an ambiguity arises in construing tax exemption statutes, a court must choose the narrowest possible reasonable construction;

(j) All tax exemption statutes must be strictly and narrowly construed against the taxpayer, who must show a clear entitlement; and

Findings specific to statute that is now §63-602B, I.C.:

(a) Where the state legislature has chosen not to implement an unlimited property tax exemption for religious properties, a court must protect and advance only those exemptions specifically delineated by the legislature;

(b) The religious corporation had to establish that it qualified for property tax exemption for parsonage; and

(c) Qualification for this exemption depends on ownership and use of the property.

Findings specific to statute that is now §63-602C, I.C.:

(a) An organization seeking a charitable property tax exemption must be charitable and must use its property exclusively for the charitable purposes for which it was designed or for those purposes combined with some other statutorily exempted use and

(b) The organization has the burden of proving clear entitlement to the charitable exemption by satisfying the requirements set forth in *Canyon County Assessor v. Sunny Ridge Manor, Inc.* (listed below) and *Coeur d’Alene Public Golf Club, Inc. v. Kootenai Board of Equalization* (listed below).

Findings specific to the facts of this case:

(a) For the purposes of the property tax exemption for religious corporations or societies, a “parsonage” is a building owned by a religious organization and occupied as a residence by a designated minister who ministers to a specific localized congregation that gathers to worship at frequent and regular intervals; a parsonage is not merely a residence owned by a religious organization in which an ordained member of that organization resides; (This localized congregation requirement is based on the sound policy that, since the exemption shifts the property tax burden onto the people of the county, those people should receive something in return – a place to worship in the community and a minister to conduct the services.)

(b) The mission president’s home did not qualify for exemption as parsonage; the mission president had no affiliated meetinghouse and no local congregation, did not serve the function of a minister or parson, and never met with all missionaries at one time in one place; and the missionaries attended the Sabbath and other services at a church in the area where they are staying; and

(c) The use made of the home could not be considered charitable so as to qualify for the

property tax exemption for charitable corporations or societies.

Ada County Assessor v. Taylor, 124 Idaho 550, 861 P.2d 1215 (1993).

Where agreement between sellers and taxpayers was found to be a contract to purchase home, taxpayers were owners of the property for the purposes of §63-602G, I.C., and were entitled to homeowner's exemption.

Hermann v. Blaine County Board of Commissioners, 126 Idaho 970, 895 P.2d 571 (1995).

When a property owner builds a new residence and fails to notify the assessor of the date of occupancy pursuant to §63-3905, I.C. (now §63-317, I.C.), the new residence can constitute "inadvertently omitted property" within the meaning of §63-306, I.C. (Note: The law that was §63-306, I.C., in 1995 became §63-301, I.C., in 1997. The phrase "inadvertently omitted property" is not in §63-301, I.C. §63-301, I.C., refers to "any property which has been omitted from the property roll" instead of "inadvertently omitted property.")

Greenfield Village Apts. v. Ada County, 130 Idaho 207, 938 P.2d 1245 (1997).

Since former law similar to §63-208, I.C., required that actual and functional use shall be a major consideration when determining market value for assessment purposes, assessor erred in refusing to consider restrictive covenants limiting use of the property to low-income housing with rent restrictions for the actual and functional use of the property was as rent-restricted, low-income housing.

Riverside Development Company, Inc. v. Kootenai County Assessor, 137 Idaho 382, 48 P.3d 1271 (2002)

Actual and functional use of unimproved lots held by developer was as single-family residential lots, and evidence supported assessor's valuation where unsold lots were indistinguishable from other lots in the development when the assessor look at retail values of comparable lots in the subdivision to determine the market value of the unsold lots. The Court also cited a prior finding that factual determinations by administrative agency are not erroneous when they are supported by competent and substantial evidence even though conflicting evidence exist.

Troy G. and Linda M. Mitchell v. Board of Equalization of Nez Perce County, 138 Idaho 52, 57 P.3d 763 (2002)

The taxpayer argued the assessor could not decide the fair market value of the single-family residence on 4.70 acres because Idaho law does not require full disclosure of sales price. The Court ruled the fact that state law did not require disclosure of sale price failed to prove the assessor lacked sufficient information to make a reasonably accurate assessment and it recognized comparable sales are only one factor to consider and differences of opinion on value will occur. The Court also ruled the assessor did not need to know the sale price of every property in the county to be able to apply the sales comparison approach. A taxpayer must show the value fixed by the assessor was manifestly excessive, fraudulent, or oppressive, or it was arbitrary, capricious, and erroneous resulting in discrimination against the taxpayer.

Community Action Agency v. Board of Equalization of Nez Perce County, 138 Idaho 82, 57 P.3d 793 (2002)

The Court applied the principle of strict construction against the Community Action Agency (CAA) even though: (1) CAA had the charitable function of providing housing to those in need below market rate with the government grants inadequate to make up the difference; (2) private donations somewhat lessened government's burden; (3) CAA never operated for profit; (4) CAA's assets would be disbursed to charities if it were dissolved; and (5) CAA had received the exemption in prior and subsequent years.

The Court ruled CAA did not meet the requirements to be considered a charity because: (1) it required the residents in the low-income housing to pay rent; (2) it received federal and state grants; and (3) it did not provide a general public benefit.

The Court also concluded quasi estoppel does not apply because the county was justified in reexamining properties previously granted an exemption and also justified in revisiting the issue and again granting the exemption.

Senator, Inc. v. Ada County Board of Equalization, 138 Idaho 566, 67 P.3d 45 (2003)

The taxpayer argued the statutory requirement to give major consideration to "actual and functional use" meant the assessor must use the actual vacancy rate rather than a market derived vacancy rate to decide the value of the mobile home park. The taxpayer admitted that a buyer purchasing the mobile home park would not pay a certain amount for the rented spaces and pay a lower amount for the unrented spaces.

The Court decided the actual and functional use of the rented and the unrented spaces was the same because the real property was being valued, not the business being operated on it. The Court concluded the actual and functional use of real property for tax assessment purposes is its existing use and the use for which it is designed or intended. The Court also upheld the district court decision that the valuation did not include business goodwill.

Student Loan Fund of Idaho, Inc. v. Payette County, 138 Idaho 684, 69 P.3d 104 (2003)

The law exempting fraternal, benevolent or charitable corporations or societies from property taxation has two initial requirements: 1) the property must belong to a charitable organization and 2) the property must be exclusively used for the purpose for which the corporation was organized. If either of these requirements is not met, no exemption should be granted. Where use is the criterion, the exemption is lost if the property is put to other uses. This taxpayer was not entitled to any property tax exemption because the majority of the property was not used exclusively for charitable purposes; 38.45 of 54.9 acres were used by a farmer in exchange for lawn maintenance, the house was used by a person who provided janitorial and security services, and a separate business entity shared the office space with this taxpayer and paid support fees.

Union Pacific Land Resources v. Shoshone County Assessor, 140 Idaho 528, 96 P.3d 629 (2004)

The State Tax Commission (STC) has the responsibility to decide if property is to be classified as operating property or non-operating property. Once the decision has been made that property is operating property, the only recourse available to the county assessor is to file a petition for a writ of review because the assessor cannot appeal the decision that the

property is operating property. The assessor may only ask the STC to reexamine the assessment or allocation, not the classification.

Castrigno v. McQuade and Ada County Board of Equalization, 141 Idaho 93, 106 P.3d 419 (2005)

The appellants were seeking a property tax refund on an occupancy tax assessment arguing, among other things, that the 2001 occupancy assessment notice received from the county was defective under Idaho law and denied them procedural due process. (The notice included only a prorated value but not the full value as now required in Property Tax Rule 317.) The Court concluded the appellants failed to appeal their original or revised 2001 assessment to the board of equalization within the statutory timeframe and failed to provide an adequate basis upon which to excuse their failure to exhaust administrative remedies. The Court ordered the appellants to pay attorney's fees and costs to Ada County. Among others, the following rulings of law were reiterated:

1. The valuation placed on property by a county assessor for tax purposes is presumed to be correct.
2. Relief can be granted only if an assessor's valuation of property for tax purposes is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious and erroneous.
3. Taxpayers' failure to exhaust administrative remedy of timely appealing their assessment and tax liability to county board of equalization (BOE), as statutorily prescribed, deprived district court of jurisdiction....
4. The construction and application of a legislative act are pure questions of law ... to which the Supreme Court exercises free review.

Ada County Board of Equalization v. Highlands, Inc., Smith Family, L.L.C., 141 Idaho 202, 108 P.3d 349 (2005)

The taxpayer argued that § 63- 602K, I.C., only required the land to be leased to a "bona fide lessee for grazing purposes." The Court ruled: having a lease with a bona fide rancher is not enough to qualify for the speculative agricultural exemption (§ 63- 602K, I.C.), the lessee is required to actively "use" the property for grazing purposes. The Court also said, not only had the lessee not used the land for grazing, but had not even taken steps to be able to use the land for grazing, such as providing water sources or fencing. Among others, the following rulings of law were also reiterated:

1. Statutes granting tax exemptions are strictly construed against the taxpayer and in favor of the state
2. Taxpayer must show a clear entitlement to an exemption, as an exemption will never be presumed.

Idaho Power Company v. Idaho State Tax Commission, 141 Idaho 316, 109 P. 3d 170 (2005)

The decision explained the unit method of appraisal and discussed the inclusion of values for non-taxable "regulatory assets." The Court affirmed the district court's decision that the regulatory assets did not generate income and addressed the argument that just because an asset earns a rate of return set by the Idaho Public Utilities Commission does not mean the asset is generating income. Among others, the following rulings of law were also reiterated:

1. An "arbitrary valuation" for tax purposes is one that does not reflect the fair

- market value or full cash value of the property.
2. As assessor's appraisal of property is presumed correct, but the court will grant relief where the valuation fixed by the assessor is manifestly excessive, fraudulent or oppressive or arbitrary, capricious, and erroneous resulting in discrimination against the taxpayer.

Brandon Bay, Limited Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006)

The dispute in this case centered on the real property valuations of Brandon Bay and Kenmare Trace, two low-income apartment developments located in Payette County, that operated under the provisions of the federal Low-Income Housing Tax Credit program (LIHTC also known as Section 42 Housing). The primary issue in this case was whether the tax credits allocated under the LIHTC should be included in the real property assessment of the apartments for taxation purposes.

1. The Idaho Supreme Court held that Section 42 tax credits "are not a contract right exempt from consideration in the valuation of real property. The tax credits are better characterized as "rights and privileges" belonging to the land under the definition of "real property" in I.C. § 63-201(18), as they do not exist separate from an ownership right in the low-income housing."

2. "When determining the value of low-income housing developments, the value of § 42 tax credits should be included in the assessment."

PacifiCorp vs. Idaho State Tax Commission, 2012 Opinion No. 153, Docket No. 38307, (2012)

The Idaho State Tax Commission appealed the District Court's judgment, holding that PacifiCorp proved by a preponderance of the evidence that the Tax Commission's valuation of its operating property in Idaho was erroneous pursuant to Section 63-409(2), Idaho Code. The contention was that the District Court's decision was not supported by substantial and competent evidence because the appraisal methodologies utilized by PacifiCorp's appraiser are unreliable.

1. The Idaho Supreme Court held by a 3-2 decision that the District Court's judgment was supported by substantial and competent evidence.

2. The dissenting opinion felt that PacifiCorp failed to establish an entitlement to a 20.88% reduction in taxable value of its property under the cost approach, based upon external obsolescence.

IDAHO STATE BOARD OF TAX APPEALS AD VALOREM DECISIONS

In the Matter of the Appeal of Elizabeth Carter from the decision of the Board of Equalization of Ada County for tax year 2006; Appeal No. 06-A-2146:

... Appellant's case was constructed around a comparison of assessed values.... Assessed values are not considered good evidence of market value.

In the Matter of the Appeal of William P. and Barbara Worrell from the decision of the Board of Equalization of Ada County for tax year 2006; Appeal No. 06-A-2030:

... Appellant's case was constructed around a comparison of assessed values.... Assessed values are not considered good evidence of market value.

IDAHO DISTRICT COURT DECISIONS

Boise Hospitality, LLC, Boise Hotels and Lodging, Eagle-Meridian Lodging vs. Ada County Assessor and Ada County Board of Equalization, CV OC 2011-07629

This case is a real property tax appeal from the Ada County Board of Equalization for tax years 2010 and 2011. The case initially consisted of eight separate cases consisting of appeals of four separate properties for two separate years. The cases were initially presented to the Ada County BOE and then appealed to the Board of Tax Appeals. They were then brought to the District Court as appeals *de novo*.

The District Court concluded that the hotel owners failed to prove that the Ada County Assessor's Office appraisals were erroneous. The District Court concluded that the appraisal methods followed by the county appraisers were in accordance with industry standards and were approved by the Idaho State Tax Commission. There was no reason to disturb the values determined by the Assessor and confirmed by the County BOE and Idaho Board of Tax Appeals.

APPENDIX B

Sample Forms

- Ada County Informational Sheet
- Sample Appeal Form
- Sample Appeal Form Instructions
- Bingham County Appeal Form
- Bingham County Appeal Form Instructions
- Blaine County Appeal Form
- Payette County Informational Sheet
- Payette County Appeal Form
- Twin Falls Sample Memo
- Sample Notice of Action
- Ada County Notice of Action
- Madison County Notice of Action
- Boundary County Notice of Hearing
- Sample Affidavit of Representation
- Board of Tax Appeals Form

ADA COUNTY ASSESSOR

Robert H. McQuade, Assessor

Understanding your Assessed Value

The Assessor is required by state law to place current market value on all taxable property each year. This value is determined by an appraisal process, which includes analyzing construction costs, reviewing recent sales data, and may require a personal visit to the property. The sales information is gathered from the multiple listing service, property owners, realtors, builders, developers and independent appraisers.

Discussing your Assessed Value with the Deputy Assessor (Appraiser)

If you feel that your assessed value is higher than what your property would probably sell for on the open market, then we encourage you to submit market information to support your position. The appraiser assigned to assess your property will consider any evidence you wish to submit. Typical market information comes in the form of a realtor's comparative market analysis, copies of independent appraisals done for sales or refinance, repair estimates or any other pertinent data. Many property owners submit additional market information during the appeal process, and often values are adjusted to reflect the new evidence.

Board of Equalization (Filing the Appeal)

If you are not satisfied with the final assessment of value, it is your right as a property owner to file an appeal with the Ada County Board of Equalization. The appeal will only address the market value of your property. An appeal to the Board is not a forum to protest property taxes.

Appeal Forms

A copy of your **Assessment Notice** *must* accompany your application. Please return the completed appeal form to the **Ada County Commissioners Office**, 200 Front St., Boise ID 83702. You may also submit your form via facsimile or U.S. mail, please not both. **COMPLETED FORMS MUST BE RECEIVED OR POSTMARKED NO LATER THAN 5:00 P.M. ON THE DATE INDICATED ON THE ASSESSMENT NOTICE**

Contact Person

There is a place on the appeal form to list a contact person. It is very important that we know the correct name, address and phone number of the property owner or the property owner's representative so that we may contact them, if necessary.

Presenting your Appeal To the Board of Equalization

In a challenge to the assessor's valuation of property, the value of the property for purposes of taxation as determined by the assessor is presumed to be correct; the burden of proof is upon the taxpayer to show that they are entitled to the relief claimed.

*When you arrive for your hearing, please have **five (5) copies** of all records and/or evidence that you wish to submit in support of your appeal. (One for each Board Member, one for the Assessor, one for yourself)*

In short, you must prove that the assessed value is not market value through a factual or legal reason. In presenting your appeal, the best evidence is typically sales data from the marketplace, written analysis from a realtor or other professional source. State your appeal objectively and factually.

The Board of Equalization will give your case due consideration based on your evidence.

County Seal Here

County Name Here 12pt Font

ASSESSMENT APPEAL FORM

A copy of the Assessment Notice must accompany this application. Complete both pages of this form.

THIS FORM MUST BE RECEIVED OR POSTMARKED NO LATER THAN 5:00 P.M. ON THE DATE INDICATED ON THE ASSESSMENT NOTICE

QUESTIONS: County Assessor's Office
CONTACT: 123 W. Main St. 2nd fl. Any, ID 83700
(208)207-7200

MAIL, FAX OR DELIVER: County Commissioners' Office
COMPLETED FORM TO: 123 W. Main St. 3rd fl. Any, ID 83700
(208) 207-7000 Fax: (208) 207-7009

PROPERTY INFORMATION

1. Parcel # (one parcel per form)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(From Assessment Notice - upper right-hand side)

2. Property Address _____

3. Appeal Concerns (check all that apply):
- | | | |
|--|---|--|
| <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Vacant Land |
| <input type="checkbox"/> Mobile Home | <input type="checkbox"/> Industrial | <input type="checkbox"/> Agricultural Land |
| <input type="checkbox"/> Homeowner's Exemption | <input type="checkbox"/> Business Personal Property | <input type="checkbox"/> Other _____ |

4. Do you wish to attend a public appeal hearing and present oral testimony before the board? Yes No

5. Is there more than one property, with the same issue/argument, to be filed and heard together at one hearing? (If yes, separate forms must be completed and filed for each property appealed.) No Yes > Total Number

--

APPELLANT INFORMATION

6. Appellant is: Individual Husband/Wife Partnership Corp/LLC Trustee Other _____

7. Name: _____ Phone: _____

8. E-mail Address: _____ Fax: _____

9. Mailing Address: _____ City: _____ State: _____ Zip: _____

10. Will someone other than the owner appear before the Board of Equalization No Yes (Complete Questions 11 - 13)

11. Name: _____ 12. Contact's Phone: _____

13. Mailing Address: _____ City: _____ State: _____ Zip: _____

IDAHO STATUTES

- A. ASSESSMENT -- MARKET VALUE FOR ASSESSMENT PURPOSES.** (§ 63-205) (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission. (2)Personal property coming into the state after January 1 shall be assessed as of the date of entry into the state in accordance with sections § 63-311(3) and § 63-602Y, Idaho Code.
- B. TAXPAYER'S RIGHT TO APPEAL.** (§ 63-501A) (1) Taxpayers may file an appeal of an assessment with the county board of equalization. An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. An appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. An appeal of an assessment listed on the missed property roll must be filed on or before the board of equalization adjourns on the day of its January meeting. The board of equalization may consider an appeal only if it is timely filed. (2) Appeals from the county board of equalization shall be made pursuant to section § 63-511, Idaho Code.
- C. THE APPELLANT BEARS THE BURDEN OF PROOF IN SEEKING AFFIRMATIVE RELIEF TO ESTABLISH THAT THE DETERMINATION OF THE ASSESSOR IS ERRONEOUS** (§§ 63-502/ 63-511).
- D.** An appellant or the assessor may appeal a determination by the Board of Equalization within 30 days after mailing of notice of a decision of the board of equalization, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals (§ 63-511).

OWNER'S STATEMENT

14.

Assessor's Value from Notice:

Owner's Estimate of Value:

Purchase of Property:

\$ _____

Total:

\$ _____

Price: \$ _____

Purchase Date: ____ / ____ / ____

15. **Comparable property sales will help support your appeal (Sales should be prior to January 1st. Lien Date):**

PARCEL #	STREET ADDRESS	DATE OF SALE	SALE PRICE
1.		/ /	\$
2.		/ /	\$
3.		/ /	\$

16. **Has the property been appraised within the last 5 years by a licensed appraiser other than the Assessor's office? If yes, Appraisal date:** ____ / ____ / ____ **Appraised Value:** \$ _____

17. **Property is currently occupied by:** Owner Tenant **If Rented, Monthly Rent:** _____

18. **Has the owner made any renovations, additions, or remodels since the purchase of property? Yes** ____ **No** ____
If yes, Construction Cost _____ **Date of Completion** _____

Details: _____

19. **Why are you appealing your Value? Please provide a detail explanation for your appeal to be valid.**
 (Use additional pages, if necessary)

- The following are not grounds for appeal:**
- Your Taxes are too high.
 - Your Value changed too much in one year.
 - You cannot afford the taxes.

20. **You may submit additional information to support your appeal of the assessed value.**

Please check the following statement that applies to your intentions:

- I intend to submit additional evidence prior to my appeal hearing.
- My appeal is complete. I have provided all the evidence that I intend to submit, and request that my appeal be reviewed based on the evidence submitted.

21. **I hereby affirm that the foregoing information is true and correct; I understand that I bear the burden of proof and I must provide evidence supporting my appeal, and that I am the owner [or owner's authorized agent] of the property described above.**

Signature of owner/agent

Date signed

Print Name

Signature of owner/agent

Date signed

Print Name

INSTRUCTIONS FOR COMPLETING AN APPEAL FORM

Introduction

Properly completing an appeal form is critical for a property owner. Please follow these instructions carefully. If you have questions, please contact the appraiser assigned to your property.

A separate appeal form must be filed for each property you wish to appeal.

Definition:

This form refers to the property owner or their representative as the "appellant".

PROPERTY INFORMATION

The following fields gather information about the property that is being appealed.

- LINE 1 The parcel number is located on the upper right hand side of the assessment notice.
- LINE 2 The physical property address for this appeal.
- LINE 3 Check all boxes that describe the concerns on this appeal.
- LINE 4 Check "yes" if appellant will appear and will provide oral testimony on this appeal before the board of equalization. If a hearing is scheduled for oral testimony and the appellant does not appear, it may be grounds for dismissal.
- LINE 5 Check "no" if appellant has one property for appeal. If the appellant has more than one property with a similar value discrepancy, please complete an assessment appeal form for each additional property and check "yes" and input the total amount of appeals filed so that they may be heard together.

APPELLANT INFORMATION

The following fields gather information about the appellant or their personal representative. If a representative is indicated, correspondence will only be directed to them.

- LINE 6 Mark the box that best describes the ownership of the subject property.
- LINE 7 Deeded owner's name(s).
- LINE 8 Email address of Deeded owner. Write N/A if you do not have email.
- LINE 9 Owner's mailing address (may be different than the physical property address under appeal).
- LINE 10 Check "yes" if someone else will be representing you on this appeal. Otherwise check "no". If you check yes, you must provide input to questions 11, 12 and 13. Complete an affidavit of representation and submit it with your application.
- LINE 11 The name of the person representing the owner.
- LINE 12 The phone number of the person representing the owner.

LINE 13 The mailing address of the person representing the owner.

OWNER'S STATEMENT INFORMATION

Providing factual, succinct data to support your appeal, especially if you do not intend on attending the hearing, is critical for the board's understanding of your appeal. The appraiser assigned to your property will also review your property's assessed value. Your written data presentation may result in a revised valuation. Therefore, the more thorough the data and explanation, the easier it may be to reach an agreement eliminating the need for an appeal hearing. All fields should be completed.

LINE 14 Provide the total assessed value (found on the assessment notice), the appellant's estimated value and the most current purchase price with transaction date for the property under appeal.

LINE 15 Provide three comparable sales of "like" properties that best support the owner's estimate of value (this data may be found through sales data from the marketplace, written analysis from a realtor, appraisal or other professional sources).

LINE 16 If a licensed appraiser valued the property under appeal within the last five years please provide the date and appraised value. **NOTE:** contact the appraiser for your property. This information may assist in a changed value and eliminate the need to appeal.

LINE 17 Check the appropriate occupancy of the property under appeal. If tenant is selected, enter the monthly rental amount.

LINE 18 If there have been any changes to the property under appeal please list the change(s), cost(s) of construction and the date(s) the change(s) was completed.

LINE 19 Provide an explanation for this appeal, if needed, please attach additional pages.

LINE 20 Check the first box if there is additional evidence not provided with this appeal form that will be submitted before the hearing. Check the second box if all evidence has been provided on the appeal form and all necessary supporting documents (including a copy of assessment notice) are attached.

LINE 21 Carefully review your entire appeal packet. Sign and date the form and submit by mail or in person to the Commissioner's office at 200 W. Front St. 3rd fl. Boise, ID 83702.

BINGHAM COUNTY ASSESSMENT APPEAL FORM

A copy of the Assessment Notice
must accompany this application.
Complete both pages of this form.

THIS FORM MUST BE RECEIVED OR POSTMARKED NO LATER THAN 8:00 P.M. ON THE DATE INDICATED ON THE ASSESSMENT NOTICE

QUESTIONS Bingham County Assessor's Office
CONTACT: 501 N. Maple #305 Blackfoot, ID 83221
(208)782-3017

MAIL, FAX OR DELIVER Bingham County Commissioner's Office
COMPLETED FORM TO: 501 N. Maple #204 Blackfoot, ID 83221
(208)782-3013

PROPERTY INFORMATION

1. Parcel # (one parcel per form) _____
(From Assessment Notice – upper right-hand corner)
2. Property Address _____
3. Appeal Concerns (check all that apply):
- | | | |
|--|---|--|
| <input type="checkbox"/> Residential | <input type="checkbox"/> Commercial | <input type="checkbox"/> Vacated Land |
| <input type="checkbox"/> Mobile Home | <input type="checkbox"/> Industrial | <input type="checkbox"/> Agricultural Land |
| <input type="checkbox"/> Homeowner's Exemption | <input type="checkbox"/> Business Personal Property | <input type="checkbox"/> Other _____ |
4. Do you wish to attend a public appeal hearing and present oral testimony before the board? Yes No
5. Is there more than one property, with the same issue/argument, to be filed and heard together at one hearing? (If yes, separate forms must be completed and filed for each property appealed.) Yes No
Total Number

APPELLANT INFORMATION

6. Appellant is: Individual Husband/Wife Partnership Corp/LLC Trustee Other _____
7. Name: _____ Phone: _____
8. Mailing Address: _____ City: _____ State: _____ Zip: _____
9. Will someone other than the owner appear before the Board of Equalization No Yes (If Yes, complete Questions 10-12)
10. Name: _____ 11. Contact's Phone: _____
12. Mailing Address: _____ City: _____ State: _____ Zip: _____

IDAHO STATUTES

- A. ASSESSMENT – MARKET VALUE FOR ASSESSMENT PURPOSES.** (§ 63-205) (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission. (2) Personal property coming into the state after January 1 shall be assessed as of the date of entry into the state in accordance with sections § 63-311(3) and § 63-602Y, Idaho Code.
- B. TAXPAYER'S RIGHT TO APPEAL.** (§63-501a) (1) Taxpayers may file an appeal of an assessment with the county board of equalization. An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. An appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. An appeal of an assessment listed on the missed property roll must be filed on or before the board of equalization adjourns on the day of its January meeting. The board of equalization may consider an appeal only if it is timely filed. (2) Appeals from the county board of equalization shall be made pursuant to section § 63-511, Idaho Code.
- C. THE APPELLANT BEARS THE BURDEN OF PROOF IN SEEKING AFFIRMATIVE RELIEF TO ESTABLISH THAT THE DETERMINATION OF THE ASSESSOR IS ERRONEOUS** (§§ 63-502/ 63-511).
- D.** An appellant or the assessor may appeal a determination by the Board of Equalization within 30 days after mailing of notice of a decision of the board of equalization, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals (§ 63-511).

OWNER'S STATEMENT

13. Assessor's Value from Notice: Owner's Estimate of Value: Purchase of Property:
 \$ _____ Total: \$ _____ Price: \$ _____
 Purchase Date: / /

14. Comparable property sales will help support your appeal (Sales should be prior to January 1st, Lien Date):

<u>PARCEL #</u>	<u>STREET ADDRESS</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____

15. Has the property been appraised within the last 5 years by a licensed appraiser other than the Assessor's office?
 If yes, Appraisal date: / / Appraised Value: \$ _____

16. Property is currently occupied by: Owner Tenant If Rented, Monthly Rent: \$ _____

17. Has the owner made any renovations, additions, or remodels since the purchase of property? Yes _ No ___
 If yes, Construction Cost _____ Date of Completion _____
 Details: _____

18. Why are you appealing your Value? Please provide a detailed explanation for your appeal to be valid.
 (Use additional pages, if necessary) **THE FOLLOWING ARE NOT GROUNDS FOR APPEAL:**

- * Your Taxes are too high.
- * Your Value changed too much in one year.
- * You cannot afford the taxes.

19. You may submit additional information to support your appeal of the assessed value.
 Please check the following statement that applies to your intentions:

- I intend to submit additional evidence prior to my appeal hearing.
- My appeal is complete. I have provided all the evidence that I intend to submit, and request that my appeal be reviewed based on the evidence submitted.

20. I hereby affirm that the foregoing information is true and correct; I understand that I bear the burden of proof and I must provide evidence supporting my appeal, and that I am the owner (or owner's authorized agent) of the property described above.

 Signature of owner/agent Date signed Print Name

 Signature of owner/agent Date signed Print Name

INSTRUCTIONS FOR COMPLETING AN APPEAL FORM

Introduction

Properly completing an appeal form is critical for a property owner. Please follow these instructions carefully. If you have questions, please contact the appraiser assigned to your property. A separate appeal form must be filed for each property you wish to appeal.

Definition:

This form refers to the property owner or their representative as the "appellant".

PROPERTY INFORMATION

The following fields gather information about the property that is being appealed.

- LINE 1 The parcel number is located on the upper right hand corner of the assessment notice.
- LINE 2 The physical property address for this appeal.
- LINE 3 Check all boxes that describe the concerns on this appeal.
- LINE 4 Check "yes" if appellant will appear and will provide oral testimony on this appeal before the board of equalization. If a hearing is scheduled for oral testimony and the appellant does not appear, it may be grounds for dismissal.
- LINE 5 Check "no" if appellant has one property for appeal. If the appellant has more than one property with a similar value discrepancy, please complete an assessment appeal form for each additional property and check "yes" and input the total amount of appeal filed so that they may be heard together.

APPELLANT INFORMATION

The following fields gather information about the appellant or their personal representative. If a representative is indicated, correspondence will only be directed to them.

- LINE 6 Mark the box that best describes the ownership of the subject property.
- LINE 7 Deeded owner's name(s) and phone number.
- LINE 8 Owner's mailing address (may be different than the physical property address under appeal).
- LINE 9 Check "yes" if someone else will be representing you on this appeal. Otherwise check "none". If you check yes, you must provide input to questions 11, 12 and 13. Complete an affidavit of representation and submit it with your application.
- LINE 10 The name of the person representing the owner.
- LINE 11 The phone number of the person representing the owner.
- LINE 12 The mailing address of the person representing the owner.

OWNER'S STATEMENT

The following fields gather information about the assessed value of the property, comparable property sales and the reason for the appeal of the value assessed on your property.

- LINE 13 The assessed value from the notice, the owner's estimate of the value of the property and the purchase price of the property along with the purchase date.
- LINE 14 List comparable property sales that will support your appeal. These sales should be prior to January 1st lien date. List parcel # (if known), street address, date of sale and sale price for each property sale.
- LINE 15 If the property has been appraised within the last 5 years by a licensed appraiser other than the Assessor's office list the appraisal date and appraised value.
- LINE 16 Mark if the property is currently occupied by the owner of the property or if a tenant is renting the property. If there is a tenant renting, list the monthly rent.
- LINE 17 Mark if there has been any renovations, additions or remodels since the purchase of the property. If there has been, list the construction cost, date of completion and any details of the renovations, additions or remodel.
- LINE 18 Explain in detail the reason you are appealing the assessed value of your property. Use additional pages, if necessary. The following are not grounds for appeal: your taxes are too high, your value changed too much in one year, or you cannot afford the taxes.
- LINE 19 Additional information to support your appeal of the assessed value can be presented at the board of equalization hearing. Mark if you intend to submit additional evidence or if you have submitted all the evidence that you intend to.
- LINE 20 Sign the appeal form affirming that the information you have provided is true and correct, that you understand that you bear the burden of proof and must provide evidence supporting your appeal, and that you are the owner or the authorized agent of the owner of the property described on the appeal.

**BOARD OF EQUALIZATION APPEAL FORM
OWNER'S STATEMENT**

NOTE: This form must be received by the Board of Equalization no later than the 4th Monday in June.

Parcel Number _____ Protest Number _____

Owner Name _____ Contact Name _____

Property Address _____ Telephone # _____

Fax # _____

Legal Description _____ Mailing Address _____

e-mail Address _____

Owner's Opinion Of Market Value

Blaine County's Assessed Value

\$ _____ Land \$ _____

\$ _____ Improvements \$ _____

\$ _____ Other (PP, etc) \$ _____

\$ _____ TOTAL VALUE \$ _____

Reason owner feels value should be changed: _____

Date owner purchased property _____ Purchase Price \$ _____

Property is currently occupied by: Owner _____ Tenant _____ If Rented, Monthly Rent \$ _____

Has owner made any renovations, additions or remodels since purchase of property? YES _____ NO _____

If yes, state cost \$ _____, dates _____ and kinds of renovations, additions or remodels _____

List three (3) sales that the owner feels are comparable to the appealed property

	Name	Location	Sale Price	Sale Date
1)	_____	_____	\$ _____	_____
2)	_____	_____	\$ _____	_____
3)	_____	_____	\$ _____	_____

Owner Signature _____ Date _____

1000/10/15 1/10/15 1/10/15

OFFICE OF
The Board of Payette County Commissioners

DISTRICT 2 MARC SHIGETA, CHAIRMAN
DISTRICT 1 RUDY ENDRIKAT
DISTRICT 3 LARRY CHURCH



1180 3RD AVENUE N., ROOM 104
PAYETTE, IDAHO 83661-2478
PHONE (208) 642-6015

Understanding your Assessed Value

The Assessor is required by state law to place current market value on all taxable property each year. This value is determined by an appraisal process, which includes analyzing construction costs, reviewing recent sales data, and may require a personal visit to the property. The sales information is gathered from the multiple listing service, property owners, realtors, builders, developers and independent appraisers.

Discussing your Assessed Value with the Assessor (Appraiser)

If you feel that your assessed value is higher than what your property would sell for on the open market, then we encourage you to submit market information to support your position. Supporting documents might include the following: sales of similar properties; copies of contracts; closing statements; appraisal by licensed appraiser; any unique characteristics of your property; other information pertaining to the market value of your property. The appraiser assigned to assess your property will consider any evidence you wish to submit.

Board of Equalization (Filing the Appeal)

If you are not satisfied with the final assessment of value, it is your right as a property owner to file an appeal with the Payette County board of Equalization. The appeal will only address the market value of your property. An appeal to the Board is not a forum to protest property taxes.

Appeal Forms

A copy of your Assessment Notice must accompany your application. Please return the completed appeal form to the Payette County Commissioners Office, 1130 3rd Ave. N. Room 104, Payette, ID 83661. COMPLETED FORMS MUST BE RECEIVED NO LATER THAN 5:00 p.m. ON THE DATE INDICATED ON THE ASSESSMENT NOTICE.

Presenting your Appeal to the Board of Equalization

In a challenge to the assessor's valuation of property, the value of the property for purposes of taxation as determined by the assessor is presumed to be correct; the burden of proof is upon the taxpayer to show that they are entitled to the relief claimed.

When you arrive for your hearing, please have five (5) copies of all records and/or evidence that you wish to submit in support of your appeal. (One for each Board Member, one for the Assessor, one for yourself)

In short, you must prove that the assessed value is not market value through a factual or legal reason. In presenting your appeal, the best evidence is typically sales data from the marketplace. State your appeal objectively and factually.

The Board of Equalization will give your case due consideration based on your evidence.

NOTICE OF APPEAL

Before the Board of Equalization

_____ County, Idaho DATE: _____

Appellant's Name(s) _____

Address _____

Check One:

Appeal filed by: _____ An Individual _____ Husband & Wife _____ Partners

_____ A Corporation _____ Trustee _____ Other

Appellant(s) will be represented by: _____ Himself _____ Themselves

_____ Company Officer Name & Title _____

_____ Attorney Name & Address _____

Assessors I.D. Number	Description of Property Legal Description	Assessors Appraised Value
		Land _____
		Buildings _____
		Other _____
		Total _____

Appellant(s) opinion of the Market Value of the above described property is:

Land \$ _____ Buildings \$ _____ Other \$ _____ Total \$ _____

Brief remarks setting forth grounds of this appeal: _____

Appellant _____ Appellant _____

ACTION OF THE BOARD OF EQUALIZATION:

_____ Sustain the Assessor

_____ Change the market value of subject property as follows:

Land \$ _____ Buildings \$ _____ Other \$ _____ Total \$ _____

DATED: _____

Signed: _____
(Chairman)

Date

Name

Address

City

RE: Parcel Number _____

Dear _____:

The Twin Falls County Board of Equalization met for the purpose of holding an appeal hearing on your property's assessed value.

After considering the evidence and testimony before us, we hereby entered a valuation for your property of _____ value.

If you are not satisfied with this result, you may appeal to the State of Idaho Board of Tax Appeals or District Court within thirty (30) days after the mailing of this notice. The State of Idaho Board of Tax Appeals forms are available from our offices between the hours of :00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday.

Sincerely,

George Urie
Chairman

Tom Mikesell
Commissioner

Terry Ray Kramer
Commissioner

Cc: Gerald R. Bowden, Assessor

Draft of letter to taxpayer suggesting what should be taken to BOE.

When a taxpayer has concerns about the assessor's valuation it is best to call the Assessor's office and discuss the valuation with the appraiser to review the factual information as well as any neighborhood information: this makes for a better understanding for both the taxpayer and the appraiser. Often the taxpayer and the assessor's office reach an agreement and avoid having to take the issue before the Board of Equalization. But before calling the appraiser you should have the following information:

- *The land size*
- *Property characteristics such as the age of the house, area of the house, number of bedrooms, bathrooms, etc.; and the physical condition of the property*
- *Information on comparable sales in the neighborhood such as sale price, date of sale, and property characteristics, etc.*
- *A copy of the appraisal report if you have recently had the property appraised by an independent appraiser*

Having the above information gives the appraiser an opportunity to correct any factual errors and to take into consideration recent sales activity in the neighborhood.

If after talking to the Assessor's appraiser you cannot come to an agreement, you need to file an appeal.

To best support what you believe to be the value of your property, you will want to have the following evidence ready to present at the hearing before the Board of Equalization:

- *The factual information presented to the appraiser in the initial conversation, As well as;*
- *A written narrative of your presentation*
- *A map and relevant photographs of any property referenced at hearing*
- *A listing of information on recent comparable sales*
- *An opinion letter (e.g., realtor's comparative market analysis, cost to cure estimate, or an appraisal)*
- *A copy of any value calculations, and other material in support of your case.*
- *Personal testimony or that of witnesses may also be offered into evidence.*

BOARD OF EQUALIZATION

Parcel Description PAR #4600 OF SE4NW4 S & W OF CANAL SEC 9 2N 1E #242350 R	Parcel Address: 1234 Idaho Street Anytown, ID 12345	Parcel Number: S1234567890 Assessment Roll: Primary Year: 2007 Log ID: 7687
--	--	--

Owner Information

Joe Citizen
Shirley Citizen
6896 Main Street
Anytown, ID 12345

NOTICE OF ACTION

This action reflects the decision of the Board of Equalization

The County Commissioners sitting as the Board of Equalization took the following action on the applicant's property assessment appeal.

- Assessor's value affirmed – No Change

- Your value has been changed as reflected below

Current Description	Category Code	Lots/Acres	Original Value	BOE Decision Value	Status
Irrigated Agricultural Land	10	6.000	\$6,500	\$6,500	Upheld
Homesite Land	100	1.000	\$90,000	\$90,000	Upheld
Waste	190	1.000	\$0	\$0	Upheld
Residential Bldg	310		\$138,400	\$100,000	Modified
Improvements	320		\$93,000	\$93,000	Upheld
Total Taxable Value			\$327,900	\$289,500	

This action reflects the decisions of the County Board of Equalization. Your next step for appeal is to the State Board of Tax Appeals or to the District Court within 30 days of the mailing of this notice (see Idaho Code 63-511).

An Appeal form for the State Board of Tax Appeals must be obtained by contacting the County Clerk at (208) 123-1234

[Number] replace with the number of packets of information that an appellant must supply at the appeal hearing.

[Location] replace with the physical location of where the appeals will be heard.

[Contact for BTA appeal] replace with whoever needs contacted to file an appeal to BTA.

[Phone Contact for BTA appeal] replace with 7 digits phone number of whoever needs contacted to file an appeal to BTA.

[County] replace with County name.

[Assessor Street] replace with street address of Assessor's office.

[Assessor City] replace with city name of Assessor's office.

[Area Code] replace with the Assessor's office area code.

[Assessor Phone] replace with 7 digit phone number of Assessor's office.

[Assessor Fax] replace with 7 digit fax number of Assessor's office.

[Assessor] replace with Assessor's name.

[Commissioner Street] replace with the street address of the Commissioner's office.

[Commissioner City] replace with city name of Commissioner's office.

[Web address] replace with Assessor's web address. If you do not have a web presence, don't forget to delete the previous "OR" in front of this field.

Ada County Board of Equalization

12/10/2007



Year: 2007	Parcel:	Assessment Roll: Primary
Log ID:	Received Date: 6/6/2007	Appraiser:

HEARING INFORMATION

Date: 06/26/2007 Time: 5:00 am
 Contact Name: Address:
 Phone: Ext.

Physical Location	
Address:	
Group Type: MANUF	Group#: 520
Description: EMBASSY	
Zoning:	Twn/Rng/Sct: 3N / 1W / 01

Owner Information
Name:
Mailing Address:

Assessment Roll	Property Occupancy	State Category Code	Acres	Assessed Value	Valuation Method
Primary	Non-Occupancy	650		6,000	BOE
Total Parcel Values			Assessed Amt.	6,000	
			HO Value		
			Taxable Amt.	6,000	

Assessor Recommendation				
Type	SCC	Acreage	Value	Reason
SCC	650		6,000	Chrx Error
Taxable Value			6,000	

Final Values					
Process	Type	SCC	Acreage	Value	Status
Final	SCC	650		6,000	Upheld
Taxable Value				6,000	

Board of Equalization Decision

- Current roll assessment affirmed - NO CHANGE
- Assessor's recommendation accepted (see above).
- Your assessed value has been changed as indicated (right).

for the Ada County Board of Equalization, by _____ Mo/Day/Yr

Notice of Action

This action reflects the decisions of the Ada County Board of Equalization. Your next step for appeal is to the State Board of Tax Appeals to the District Court within 30 days of the mailing of this notice (see Idaho Code 63-511).

1 Appeal form for the State Board of Tax Appeals must be obtained by contacting the Ada County Clerk at (208) 287-6981.

**BOARD OF EQUALIZATION
STATEMENT OF FINDINGS**

NOTICE OF ACTION

This action reflects the decision of the Madison County Board of Equalization.

**YOUR NEXT STEP FOR APPEAL IS TO THE STATE BOARD OF TAX APPEALS
VIA THE MADISON COUNTY RECORDER OR TO THE
DISTRICT COURT WITHIN 30 DAYS OF THE MAILING OF THIS NOTICE.**

THIS DECISION APPLIES TO THE PARCEL SPECIFIED ON THE REVERSE SIDE OF THIS FORM

The following action has been taken:

- Assessor's value affirmed – No change.
- Your market value has been changed as reflected below:

Category	Description	Quantity	Market Value

Notes or remarks:

Madison County Board of Equalization

Signed _____ Date _____

CERTIFIED MAIL _____
Return Receipt Requested

Date

Appellant Name & Address

RE: Parcel #

Dear _____:

This letter is to notify you that we have set Tuesday, July 3, 2007 at 4:00 p.m. to sit as a Board of Equalization concerning your property. The meeting will take place in the Commissioners' Chambers in the Boundary County Courthouse at 6452 Kootenai Street, Bonners Ferry, Idaho.

Any person requiring a special accommodation due to a disability should contact the Boundary County Commissioners' Office at (208) 267-7723. This contact should be made at least two working days prior to the meeting.

Sincerely,

_____, Deputy

For _____
Clerk of the Board of Equalization

cc: Boundary County Assessor
Boundary County Prosecutor

Logo Here Insert County Assessor Office Title Here

Affidavit of Representation

STATE OF _____

COUNTY OF _____

The undersigned, being first duly sworn upon oath, testifies as follows:

1. I am over the age of 18 years, I make this affidavit voluntarily, and I am competent to testify concerning the matters stated herein based upon my personal knowledge.
2. I am the property owner of _____
Parcel Number
3. I hereby authorize the person named below to serve as my representative at the [County] County Board of Equalization hearing concerning this property.

Print Representative Name

4. I understand that correspondence about my appeal will only be distributed to my designated representative.

Dated this _____ day of _____, 20____

Signature: _____

Printed Name: _____
Property Owner

SUBSCRIBED AND SWORN before me, a Notary Public for the State of _____, this _____ day of _____ 20 ____.

Notary Public for the State of _____
Residing at: _____
Commission Expires: _____

BOE Procedure

All decision letters must be mailed out by 5 pm on the 2nd Monday in July.

BOE Decision appeal

Boar of Tax Appeal Form must be completed. A copy of this form along with the appeal file, which includes all documents presented by all parties at the BOE hearing, and a certified copy of the minutes of the proceedings of the BOE, (it is best to have a transcript of the hearing) are sent to the Board of Tax Appeals and the County's legal representative. A copy of the appeal form is sent to the Assessor to notify them of the appeal just so he is aware of the appeal.

Board of Tax Appeal decision

The Board of Tax Appeals will send a letter with their decision to all parties.



Board of Tax Appeals

Property Tax Appeal Form

BTA Docket Number

For each parcel assessment appealed, please file a separate form.

1. Appellant Name: _____
Appellant is a: Natural Person Corporation LLC Public Officer
 Partnership Joint Venture Trust Other _____

2. Appellant Mailing Address: _____ Zip Code _____

3. Appellant Phone: (____) _____ - _____

4. Representative Name: _____ Title: _____

a. Mailing Address: _____ Zip Code _____

b. Representative Phone: (____) _____ - _____

c. Attorney's Idaho License #: _____

5. Appellant hereby appeals from the decision of the _____ County Board of Equalization, which is dated _____, _____, and was mailed on _____, _____ (if known).

6. Exemption Claimed: _____ Exemption Statute: _____

7. The subject property is: (Check all that apply)
 Residential Commercial Industrial Mobile Home
 Forest Land Agricultural Land Vacant Land Other _____

8. Attach a copy of the assessment notice related to the appeal; Parcel #: _____

<u>Values Set by the County Board:</u>		<u>Appellant's Value Claim:</u>	
Land	\$ _____	Land	\$ _____
Improvements	\$ _____	Improvements	\$ _____
Other	\$ _____	Other	\$ _____
Total Market Value	\$ _____	Total Market Value	\$ _____

10. Basis or reason(s) for appeal: _____

11. The undersigned attests the contents of this appeal are correct.

Appellant's Signature (or Duly Authorized Representative) _____ Date Signed _____

Print Name _____ Title _____

This appeal must be filed with the County Auditor.

Date Filed With County Auditor

See Reverse Side for Instructions

Instructions

Use this form to appeal a decision of the County Board of Equalization.

Important: This appeal form and any attachments must be **filed with the County Auditor** within **thirty (30) days** after mailing of a decision of the Board of Equalization or pronouncement of a decision at hearing. (Idaho Code Section 63-511)

The following instructions relate to the numbers on the front side of this form.

1. Please print the full name of the person filing the appeal (Appellant's name).
2. Provide the mailing address of the person filing the appeal. The Appellant must keep the Board informed of any changes in mailing address or telephone number.
4. The right to appear and practice before the Board is limited to the following classes of persons.

Natural Persons. A natural person may represent himself or herself or be represented by an attorney.

Corporations. Duly authorized directors or officers of the corporation being represented.

LLC's. Duly authorized members of the LLC being represented.

Partnerships, Joint Ventures and Trusts. Duly authorized partners, joint venturers, or trustees representing their respective partnerships, joint ventures or trusts.

Authorized Attorneys. Duly authorized attorneys licensed to practice law in the State of Idaho.

Public Officers. Public officers or designated representatives when representing a governmental agency.

6. If an exemption is claimed, please identify the exemption and the applicable Idaho statute.
8. To perfect the appeal, a copy of the current assessment notice for the parcel you are appealing must be attached. If one is not available, please provide a statement noting this.
9. The Appellant must specify the total value claim for the parcel, however it is not necessary to allocate the value between land and improvements.
10. Enter a summary statement of the reason(s) for this appeal. As desired, you may attach additional documentation to this form in support of the appeal.
11. Must be signed by either the Appellant or Duly Authorized Representative as listed in #4 above.

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APPENDIX C

Appraisal Methods

APPRAISAL METHODS

MARKET VALUE

Idaho's property tax is based on the market value of property. Section (§) 63-201(15), Idaho Code (I.C.), defines market value as "...that amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment."

The assessor is responsible for determining the market value of all locally assessed property for property tax purposes within his jurisdiction that is not expressly exempted. The amount of United States dollars for which a property is most likely to sell is not necessarily the actual sales price. Motivations, negotiating skills, market knowledge of buyers and sellers vary, so a particular sale may not reflect "market value." Given access to enough information about the sales of properties, the assessor can determine a property's most likely selling price.

Several criteria must be met for a transaction to qualify as an arm's-length sale and be included with other arm's-length sales in the analysis of market value. The July 2007 Edition of the Standard on Ratio Studies from the International Association of Assessing Officers provides that every arm's-length sale should be included in the analysis unless data for the sale are incomplete, unverifiable, or suspect, the sale fails to pass one or more specific test of acceptability, or a representative sample of sales that occurred during the study period can be randomly selected to provide reliable statistical measures. This standard also identifies sales which can be automatically excluded from the analysis unless a larger sample is needed or further research is conducted to determine that the sales are open-market transactions. The types of sales which may be automatically excluded are: sales involving government agencies and public utilities; sales involving charitable, religious, or educational institutions; sales involving financial institutions; sales between relatives or corporate affiliates; sales of convenience; sales settling an estate; forced sales; or sales of doubtful title. More detail on concerns relating to these types of sales and other types of sales may be found on pages 74 through 76 of the standard.

Appraisal Date

An appraisal is an estimate of value for a particular property, as of a specific point in time. The purpose of a mass appraisal is to estimate the values of all properties within a jurisdiction. To insure that all assessments are made on the same basis, an appraisal date has been established.

In Idaho, all property is assessed annually as of 12:01 A.M. on the first of January in the year in which the taxes are levied. For example, the appraisal date for the 2014 assessment year would be 12:01 A.M., January 1, 2014. An appraisal for property tax purposes should reflect a property's value as of the lien date (January 1). (§§63-205 and 63-206, Idaho Code, I.C.)

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The Principle of Substitution

One concept of central importance in an appraisal is the principle of substitution. That is: "A buyer will pay no more for a property than he would to purchase an equally desirable property, assuming no undue delay." In other words, the market value of a property is the amount for which comparable property typically sells. The principle of substitution is central to appraisal regardless of the method used to determine market value.

The Three Approaches to Value

The three approaches to value – Comparative sales (Market), Income and Cost – are used to determine market value. Each allows the certified property tax appraiser to use different information to estimate market value. The assessor is required to consider each approach when estimating market value (Property Tax Rule 217.02). Although one or more of the approaches might not be applicable to a specific property, each must be considered and the certified property tax appraiser should be able to explain why any approach was not used.

The Comparative Sales Approach

The comparative sales approach is central to all three approaches to value. To a greater or lesser degree, all approaches are based on the comparative sales approach. The comparative sales approach is merely an analysis of the recent market history of properties comparable to the property being appraised. Put differently, market value, as determined by the comparative sales approach, is the price typically paid for comparable properties.

Research is required to discover the typical sale price for a specific type of property, in a certain condition, and in a particular location. Only by examining a number of sales can the certified property tax appraiser be certain of what constitutes typical value. There are different ways to implement the comparative sales approach. Each utilizes sales information in a slightly different manner.

The comparative sales approach is a direct comparison of sales of properties comparable to the property to be appraised (the "subject property"). For a property to be comparable to the subject, it must be similar in a number of respects. Construction, location, physical condition, remaining economic life, and functional utility must be similar. The greater the similarity between properties, the more comparable the properties are and the greater the likelihood that the arm's length sale price of one property reflects the market value of the other. By examining a number of sales the certified property tax appraiser can determine a typical value.

Few properties are identical, but there are methods to adjust for differences between otherwise similar properties. The most accurate method is to let the market

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determine the value of the differences, based on the principle of contribution. [Check glossary and IAAO's Property Assessment Valuation (PAV), Second Edition, 1996, pg. 22-23].

For example, let's assume that two residential properties are located side by side. The only difference between them is that only one house has a fireplace. Both properties sell on the same day. The property with the fireplace brings \$1,000 more than the property without. Moreover, throughout the county, houses with fireplaces typically sell for \$1,000 more than those without. This demonstrates when valuing property in this county the contributory value of a fireplace is \$1,000.

Rent Multipliers

Rent multipliers are normally regarded as a function of the comparative sales approach. A rent multiplier is a factor which, when applied to income (normally potential gross income), produces an estimate of property value. In other words, a rent multiplier is the number of times a rent must be paid to equal a property's market value.

There are two common types of rent multiplier. The first is the "gross income multiplier" (GIM). This multiplier reflects the number of times that one full year's rent must be paid to equal the value of the property. The second type is the "gross rent multiplier" (GRM). This multiplier reflects the number of times that one month's rent must be paid to equal the value of the property.

For example, if economic rent (Glossary and IAAO's PAV, Second Edition, 1996, pg. 204-205) for a single-family residence were \$750 per month, and if the market value of that residence were \$100,000, the indicated monthly GRM would be 133, or \$100,000 divided by \$750. Obviously, the GRM is a number 12 times greater than the GIM. Therefore the annual GIM would be 11.11.

$$\$100,000 \text{ (the property's value)} / \$750 \text{ (The property's monthly rent)} = 133 \text{ (GRM)}$$

or:

$$\$100,000 \text{ (the property's value)} / \$9,000 \text{ (the property's annual rent)} = 11.11 \text{ (GIM)}$$

Although usually considered to be an application of the income approach, when rent multipliers are used to appraise residential property, their use is considered an application of the comparative sales approach. Even so, their use is identical in both cases.

Rent multipliers must be developed from properties which are very similar. The properties must be of the same type, in comparable locations, having similar land-to-building ratios and improvements must be of the same age and physical condition.

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The Cost Approach

The second approach to value is the cost approach. Since it readily lends itself to mass appraisal, it is widely used for assessment purposes. The cost approach to value is the process of determining the cost new of replacing or reproducing a particular property, then subtracting from the cost new the loss in value from all forms of depreciation the property has accrued up to that point. The process can be described as follows:

$$\text{COST NEW} - \text{DEPRECIATION} = \text{CURRENT VALUE}$$

When using the cost approach to appraise real property, land and buildings are treated separately, since land is not constructed and does not depreciate. The land value is normally estimated through the comparative sales approach and its value is added to the value of the improvements.

COST NEW

Cost new can be expressed in four ways: reproduction cost, replacement cost, historic cost, and original cost. There are significant differences between them. The cost of construction includes all direct and indirect costs. (Glossary, PAV pg. 130)

Reproduction Cost: Reproduction cost is the cost of replacing a property with an exact duplicate. It is an accurate indicator of value for most types of property only if that property reflects functional utility typical today and is constructed from materials currently used. In most cases, the property must have been built recently. Reproduction cost is typically used to appraise improvements having value by virtue of something other than their functional utility -- historical buildings or new building with no income history, for example.

There are problems inherent in using reproduction cost. Construction materials and methods constantly evolve, so reproducing an improvement is often more expensive than it was to originally build. The additional expense is rarely realized in the property's sale. Older construction normally lacks an amount of contemporary functional utility. (Glossary, PAV pg. 154) For example, today's ceilings are lower to provide for more efficient heating. Electrical wiring, plumbing, and floor plans are different today. Today, increased functional utility is provided at a considerably reduced cost. Functional utility is a major factor affecting the value of any property, but reproduction costs may not reflect today's costs of functional utility. Reproduction cost is typically used for insurance purposes.

Replacement Cost: Replacement cost is the cost of replacing the functional utility of an improvement. It is used to appraise most conventional properties and also, eliminates many of the problems associated with reproduction cost. Replacement cost takes care of changes in construction materials and technology while expressing the improvement's value in terms of the contemporary cost of functional utility. Current costs are more readily available and easier to determine than historic ones.

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Replacement cost is based on the current market, so information is more abundant. As a result, replacement cost for most properties is usually considered a more accurate estimate than reproduction cost.

Because replacement cost interprets a property's utility in terms of today's costs, it accounts for functional obsolescence. It is by far a more accurate expression of cost new for older properties than is reproduction cost.

Historic Cost: Historic cost is the original construction cost. Obviously, if an improvement is very old, the costs of construction may have changed dramatically, so historic cost must be adjusted for inflation to reflect today's dollars. Even then, historic cost will probably not reflect contemporary functional utility, so it is generally not regarded as an accurate indicator for most types of property. It is most frequently used in the valuation of short-lived items, like personal property, and in the valuation of rate-based utilities.

Original Cost: Original cost is the price paid for a property by its original owner. While not recommended for determining construction costs, original cost does have uses. Original cost (of improvements only) reflects all accrued depreciation. The difference between replacement cost new and original cost on the date of sale is the basis for determining depreciation from the market.

Determining Cost New: Four methods are commonly used to determine typical cost new: the quantity survey (also called engineering breakdown) method, the unit-in-place method, the square-foot method, and trending. There are advantages and drawbacks to each.

Quantity Survey (Engineering Breakdown): Typically used by architects and engineers, the quantity survey requires the identification of each individual component of an improvement -- each board, nail, and screw -- and determining the installed cost for each. The costs of all the components (including site preparation, permits, etc.) are totaled to determine cost new. One example of use would be for remodeled houses. Though regarded as one of the most accurate methods of determining the cost new of recent construction, the quantity survey's disadvantage is that its use requires considerable time and expertise. These facts generally make it unsuitable for mass appraisal purposes.

Unit-in-Place (Segregated Cost): The unit-in-place method measures either reproduction or replacement cost. It is slightly less accurate than the quantity survey for estimating reproduction cost, but it requires less time and expertise. The unit-in-place method involves determining the installed cost of groups of components. It is not necessary to identify each individual nail, board, and screw in a structure; their value is included in more generalized components, such as foundation, roof cover, cabinetwork, or exterior siding. As with the quantity survey, the value of the components is totaled to determine cost new of the building.

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Because it is generally accurate and does not require a great deal of time, this method is frequently used in mass appraisal. Many cost manuals, including the Marshall Valuation Service, contain sections for use with the unit-in-place method.

Square-Foot (Comparative Unit): The square-foot method is the method most commonly used in mass appraisal for determining cost. It involves classifying improvements by type, using basic specifications, converting total cost of comparable improvements to dollars per unit (square-foot) or per volume (cubic-foot). Other than trending, the square-foot method is the quickest and easiest method available to the certified property tax appraiser. Moreover, if the improvement has been accurately classified, it is normally very accurate.

Trending (Factoring): The fourth method of determining cost new is trending, also called "factoring". Trending is nothing more than multiplying an inflation adjustment factor by a cost new determined at some point in the past. If, for example, a building was constructed five years ago for \$100,000 and the cost of similar construction has increased 10% since that time, Trending would indicate a current Cost New of \$110,000 -- ($\$100,000 \times 110\%$). Care must be taken that the cost to be trended is correct, or trending cannot be used.

Though less accurate than other methods, trending is the quickest method available and, if properly used, has value in a mass appraisal program. Trending becomes less accurate as the value to be trended becomes older. Factoring a three-year-old cost new produces more accurate results than does factoring a fifteen-year-old cost new. Moreover, factoring a value which already the result of a trend compounds the inherent inaccuracy of the method.

Depreciation

Depreciation is the accrued loss in value from cost new attributable to any cause. Depreciation is caused by physical deterioration, functional obsolescence, and economic obsolescence. Accurate measurements of depreciation are essential for accurate cost approach estimates.

Depreciation is said to be either curable or incurable. Identifying depreciation as curable or incurable is necessary to determine the method used to measure accrued depreciation.

Physical Deterioration: Improvements can be expected to last for a period of time (economic life). Economic lives vary due to the type of improvement, the use and maintenance it receives, and the quality of construction. As a structure ages, its remaining economic life (REL) decreases. Renovation and remodeling can extend an REL, but eventually, the costs involved outweigh the value such renovations will add to the property. At this point, the improvement has reached the end of its economic life.

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Physical Deterioration is said to either be curable or incurable, depending on the cost to cure. The cost at which it becomes incurable depends on the principle of contribution; at some point the expense to cure a problem becomes greater than the benefits derived from the cure. For example, the cost of replacing broken windows rarely outweighs the value which new windows would add to the building's resale value. Such depreciation is normally considered curable. On the other hand, it is possible, but expensive, to replace a foundation. By the time a building reaches the age when its foundation needs to be replaced, the cost of replacing the foundation usually exceeds the value of the building, even with a new foundation. In this situation, the physical deterioration is considered incurable.

Functional Obsolescence: The ways in which a property can be utilized -- a property's functional utility -- contributes greatly to value. At a given time, in a given market, property buyers prefer certain uses or manners of use for various types of property. More is paid for properties which can be used in preferred ways. Functional obsolescence is an absence of functional utility. The loss in value is inherent in the property, but not caused by physical deterioration.

For example, ceilings were once higher than those of today. Higher ceilings require more energy to heat the room. Today's energy costs are greater than they were in the past. Consequently, buildings with high ceilings will tend to sell for less than will comparable buildings with lower ceilings. This loss in value is inherent in the property, itself, but is not the result of physical deterioration.

Functional obsolescence is either curable or incurable -- again, depending on the principle of contribution. At some point, the cost to cure the problem is greater than the benefits from the cure.

An example of curable functional obsolescence would be a five-bedroom single-family residence with only one bathroom. Today's typical buyer of five-bedroom homes has several children, so the need for two bathrooms is obvious. The extra bathroom would increase the sale price of the home enough to justify the expense of installation.

An example of incurable functional obsolescence would be a single-family residence with a poor floor plan. Moving the structure's internal walls would normally be so expensive that the cost would not be realized at resale.

Economic (External) Obsolescence: Economic obsolescence is a loss in value from causes outside the property, itself. An example of economic obsolescence would be a residence adjacent to a sewage treatment plant. Though there may be nothing wrong with the property, itself, its location near the sewage treatment plant will likely cause

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the property to sell for less than if it were located in a more favorable area. For all practical purposes, economic obsolescence cannot be cured.

Measuring Depreciation: Several methods can be used to measure depreciation. Any type of depreciation can be measured by its effect on market value. If the assessor has a sufficient amount of sales information, the loss in value from any type of depreciation can be measured directly from the market. If sufficient sales are not available, though, the assessor must resort to other methods.

Depreciation resulting from physical deterioration or functional obsolescence can be measured in several other ways. The most commonly used measurement is determining the cost to cure the problem. The cost to cure is equal to the amount of depreciation. For example, if a house requires repainting amounting to \$1,100, the loss in value to the property would also be considered \$1,100.

Functional obsolescence can also be measured by rent loss. For example, let's assume that two four-bedroom single-family residences sit side by side. Both are rented. The only difference between these properties is that the first has two bathrooms; the second has one. The first rents for \$450 per month; the second rents for \$400 per month. In this particular area, the monthly gross rent multiplier is 135. Thus, the loss in value due to the absence of the second bathroom (functional obsolescence) is \$6,750 (or \$50 x 135).

Depreciation can also be measured through rental loss. For example, a residential property located next to an airport (economic obsolescence) can command less rent than a comparable property located in a more favorable area. The loss from economic obsolescence can be measured by determining the difference between the two rents and applying the appropriate gross rent multiplier to that difference. (For improved properties, the loss must be allocated between land and improvements--usually based on the land-to-improvement ratio.)

The Income Approach

The income approach is the third method of estimating value. The price paid for a property represents the current value of the future benefits of owning the property. The benefit of owning an income-producing property is the future income stream that property will generate. The income approach is simply a method of measuring the present value of the future income from a property. There are two basic methods of applying the income approach: capitalization and rent multipliers. Normally, capitalization deals with net income and rent multipliers deal with gross income.

Gross Income:

The income approach deals with rent, since rent is the income directly generated by the property, itself. In other words, the certified property tax appraiser valuing a

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factory which produces baby bottles is directly interested in the factory's economic rent and only indirectly interested in the value of the bottles the factory can produce. (A factory that can produce more bottles would command a greater rent.)

The certified property tax appraiser is interested in the rent which a particular property would typically command, called "economic" or "market" rent. Just as the actual selling price of a particular property may not reflect market value, the actual rent paid for a property (contract rent) may not be market rent. The certified property tax appraiser must analyze a number of contract rents to determine economic rent.

The certified property tax appraiser is concerned with two types of gross income. The first is "potential gross income". Potential gross income is the amount of rent a property would generate under conditions of economic rent and 100% occupancy for a year. If economic rent for a six-unit apartment were \$500 per unit per month, the potential gross income of the apartment is \$36,000 ($\$500/\text{unit} \times 6 \text{ units} \times 12 \text{ months}$).

The second type is "effective gross income" (EGI). Properties typically are not rented at 100% occupancy for extended periods. For example, an apartment building normally experiences tenant turnover during a year. When a tenant leaves, a period of time is necessary before the apartment can be rented again, resulting in an income loss. Moreover, some rents normally remain uncollected, resulting in an additional loss. In a given area, with a given type of property, there will be a typical income loss due to these uncollected or uncollectible rents and from vacancy. EGI is the typical vacancy and collection loss subtracted from the potential gross income, plus any miscellaneous or service income. The potential gross income of a six-unit apartment building is \$36,000. A vacancy rate of 5%, \$1,800, is typical for the area. The apartment's pop machine grosses \$700 annually. The effective gross income of the apartment is \$34,900 ($\$36,000 - \$1,800 + \700).

Net Income:

Net Income is the money remaining after a property's operating expenses and reserves for replacement are satisfied. Only operating expenses attributable to the property are to be considered. Therefore, expenses such as personal income taxes would not be deducted. Operating expenses should be annualized. Some expenses occur only occasionally; a building may require a new roof once every ten years. This expense should be set up as a reserve for replacement by prorating the life of the roof. If a new roof costing \$10,000 is required every ten years, the annual expense for the roof would be \$1,000, or \$10,000 divided by 10 years.

The term net income is used in several ways. Each use is described by a slightly different name and depends on the expenses which have been extracted from the effective gross income.

Net Income: This vague term does not indicate which expenses have been extracted from potential gross income.

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Net Income before Recapture and Taxes (NIBR&T): This term refers to a net income from which all operating expenses, except for recapture and property taxes have been extracted. (This will be explained later in the chapter.) See page 10.

Net Income before Taxes: This term refers to a Net Income from which operating expenses and recapture, but not property taxes, have been extracted.

Net Income after Recapture and Taxes -- This term refers to a net income from which operating expenses, recapture, and property taxes have been extracted. This is the amount of money the owner can keep.

Gross rent multipliers are normally regarded as a function of the sales comparison approach. The use of the gross rent multiplier (normally monthly gross rent multipliers) to appraise residential property is sometimes used to represent the income approach. The gross rent multiplier has been discussed under the comparative sales approach to value.

Capitalization

Capitalization is a process in which a rate of return is applied to net income to estimate property value. There are a number of capitalization methods, including direct capitalization, straight-line capitalization, yield capitalization, and mortgage-equity capitalization. Although there are differences between these methods, (insofar as net income is determined and the capitalization rates which are used) the basic steps in the capitalization process are as follows:

1. Estimate potential gross income.
2. Deduct for vacancy and collection loss.
3. Add miscellaneous income or service income.
4. Arrive at effective gross income.
5. Deduct operating expenses and reserves for replacement.
6. Arrive at net income (before discount, recapture and taxes).
7. Select proper capitalization rate.
8. Capitalize net income into estimated property value.

Capitalization Rates: A capitalization rate is a number, which when divided into net income, produces an estimate of property value. For example, if net income were \$10,000 and the capitalization rate were .10 (10%), the indicated value would be \$100,000.

$$\$10,000 \text{ (Net Income)} / .10 \text{ (Capitalization Rate)} = \$100,000 \text{ (Property Value)}$$

A capitalization rate may contain components for discount, recapture, and property taxes.

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Discount Rate: Discount is the return on an investment. (PAV, pg. 230)

Recapture Rate: Recapture is the return of an investment. (PAV, pg. 230)

Recapture is applied only to wasting assets. Land is not a wasting asset, so recapture is applied only to improvements. In a real estate transaction, a portion of the sale price is attributable to land and a portion is attributable to improvements. The owner must recapture the price he paid for the improvements over the economic life of the improvements. The rate at which he does this is called the recapture rate.

With the straight-line method, the recapture rate is the reciprocal of the remaining economic life (REL) of the improvement. For example, a building with a remaining economic life of 33 years would require a recapture rate of .03 (3%).

$$1/33 \text{ (REL)} = .03$$

Tax Rate: Property taxes are levied against a property as a percentage of the property's value, called the effective tax rate. For example, if the taxes due on a property worth \$100,000 were \$1,000, the effective tax rate would be .01 (1%).

$$\$1,000/\$100,000 \text{ (Property Value)} = .01 \text{ (Effective Tax Rate)}$$

Developing Capitalization Rates:

Capitalization rates can be developed in several ways. They can be taken directly from the market, developed through the band of investment, abstracted, or "built up".

Capitalization Rates Taken Directly from the Market: The simplest and most accurate way to develop a capitalization rate is directly from the market. In this process, a property's sale price is divided by its net income. The result of is an overall rate (OAR). The OAR is a weighted average of land and building capitalization rates and contains components for discount, recapture, and taxes.

A number of similar properties must be examined to determine this rate. Adjustments must be made for different effective tax rates between the properties. Sales used to develop rates must be of comparable properties: income-to-expense ratios, land-to-building ratios, ages of improvements, locations, and the physical condition of the improvements must be similar.

Let's assume that four properties, comparable in all respects, including effective tax rate, have recently sold. Property "A" sold for \$100,000 and has a net income before recapture and taxes of \$12,000. Property "B" sold for \$120,000 and its NIBR&T is \$13,300. Property "C" sold for \$90,000 and its NIBR&T is \$11,600. Property "D" sold for \$120,000 and its NIBR&T is \$14,400. The typical overall rate for these properties would be determined from the market as follows:

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Property "A": $\$12,000/\$100,000 = 12.0\%$

Property "B": $\$13,300/\$120,000 = 11.1\%$

Property "C": $\$11,600/\$90,000 = 12.9\%$

Property "D": $\$14,400/\$120,000 = 12.0\%$

The indicated Overall Rate, then, would be 12.0%.

A rate developed from market sales should normally be used with Direct or Straight-line Capitalization.

Capitalization Rates Developed through the Band of Investment: The band of investment is used to produce a discount rate. This discount rate is a weighted average of the cost of the money necessary to purchase the property, plus the prevailing rate of return on equity. To this discount rate is then added the effective tax rate and a component for the recapture of improvements.

For example, let's assume that, for a particular type of property, 70% of the necessary money is available under a first mortgage at 10%, 15% is available under a junior mortgage at 12%, and that the equity position requires a return of 16%. The effective tax rate in the area is 1.4% and the improvements have an economic life of 33 years. The appropriate rates would be developed through the band of investment as follows:

<u>Band of Investment</u>			
1 st Mortgage	(70% @ 10%)	.70 x .10	= .070
2 nd Mortgage	(15% @ 12%)	.15 x .12	= .018
Equity	(15% @ 16%)	.15 x .16	= .024
DISCOUNT RATE			= .112 (11.2%)

<u>Land Capitalization Rate</u>		<u>Building Capitalization Rate</u>	
Discount Rate	11.2%	Discount Rate	11.2%
Effective Tax Rate	01.4%	Effective Tax Rate	01.4%
CAP RATE	12.6%	Recapture Rate	03.0%
		CAP RATE	15.6%

A rate developed in this manner, through the band of investment, should be used only with yield capitalization. If a rate developed through the band of investment is to be used with direct or straight-line capitalization, an adjustment for income taxes must be made to the debt component of the discount rate. This is done by multiplying the debt portion of the rate by one minus the income tax rate.

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For example, assume that the typical buyer of the property had an income tax rate of 30%. The debt portion of the discount rate should be multiplied by 70%, or 1 - 30% the discount rate would be computed as follows:

<u>Band of Investment</u>			
1 st Mortgage	(70% @ 10%)	.70 x .10 x .70	= .0490
2 nd Mortgage	(15% @ 12%)	.15 x .12 x .70	= .0126
Equity	(15% @ 16%)	.15 x .16	= .0240
DISCOUNT RATE			= .0856 (8.56%)

Capitalization Rates derived from the "Built-Up" Method: The built-up method is not generally recommended. This method is simply an adding together of theoretical rates and, therefore, cannot be proved in the market.

Capitalization Methods

As was mentioned, there are several different methods of capitalization. The differences between these methods involve different capitalization rates, and, often, differences in the way in which net incomes are measured. The two methods most commonly used for mass appraisal purposes are direct capitalization and straight-line capitalization.

Direct Capitalization -- Direct capitalization is a method by which only one capitalization rate, called the "overall rate" (OAR), is used to convert typical current net income into an estimate of market value. The overall rate is a weighted average of the building capitalization rate (which includes recapture) and the land capitalization rate (which does not include recapture). Direct capitalization is only appropriate under the same circumstances which allow for the use of gross rent multipliers. That is to say: the properties from which the overall rate is developed must have comparable locations; similar land-to-building ratios; similar income-to-expense ratios; and improvements of the same age, type and physical condition.

Straight-line Capitalization -- Straight-line capitalization is a method by which two different capitalization rates are used to convert typical current net income into an estimate of market value. Straight-line capitalization utilizes separate capitalization rates for land (which does not include a rate for recapture) and for improvements (which does include a rate for recapture).

Straight-line capitalization is frequently used in a capitalization technique called a "residual," to determine the value of property when the value of either the land or the building is known. If the value of the land is known, the process is called a "building residual;" if the value of the improvements is known, the process is called a "land residual."

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Yield Capitalization -- This method is less frequently used in mass appraisal because it requires more time and a greater degree of judgment than either direct or straight-line capitalization, since future income must be projected and discounted to reflect current value.

Mortgage-Equity Capitalization -- This method is rarely used in mass appraisal because it requires more time and expertise than either direct or straight-line capitalization. This method is primarily used in finance disciplines and will not be discussed at length in this chapter.

APPENDIX D

List of Property Tax Exemptions

PROPERTY TAX EXEMPTIONS

Chapter 6, Title 63, Idaho Code

Code Section	Description
	For more information, see the referenced code section or Chapter 8, Section II, of this manual.
§63-601	All non-exempt property subject to taxation
§63-602A	Government property
§63-602B	Certain Property of Religious Corporations or Societies
§63-602C	Certain Property of Fraternal, Benevolent, or Charitable Corporations or Societies
§63-602D	Certain Hospital's Property
§63-602E	Property Used for School or Educational Purposes
§63-602F	Possessory Rights to Public Lands, Unpatented Mining Claims, Public Cemeteries
§63-602G	Partial Value of Residential Improvements (Homeowner's Exemption)
§63-602H	Partial Value of Residential Property in Certain Zoned Areas
§63-602I	Household Goods, Wearing Apparel, Personal Effects
§63-602J	Properly Registered Motor Vehicles
§63-602K	Partial Value of Land Actively Devoted to Agriculture
§63-602L	Certain Intangible Personal Property
§63-602M	Certain Secured Dues and Credits
§63-602N	Irrigation Water and Certain Structures
§63-602O	Property used to Generate and Deliver Electrical Power or Natural Gas Energy for Irrigation or Drainage
§63-602P	Certain Facilities Used for Air and Water Pollution Control
§63-602Q	Certain Cooperative Telephone Lines
§63-602R	Agricultural Crops
§63-602S	Fruits and Vegetable Held for Consumption and Seeds Shipped out of State
§63-602T	Certain Personal Property Sold or Shipped out of State
§63-602U	Certain Personal Property in Transit
§63-602V	Certain Personal Property in Original Package in Storage
§63-602W	Business Inventory Including Certain Dwellings
§63-602X	Property that has Experienced Casualty Loss
§63-602Y	Property that has Changed Status
§63-602Z	Property Tax Exemptions Apply to Occupancy Tax
§63-602AA	Property of People with Exceptional Situations
§63-602BB	Partial Exemption for Remediated Land
§63-602CC	Qualified Equipment Utilizing Postconsumer or Postindustrial Waste
§63-602DD	Certain Manufactured Homes with a Dealer's Plate or Used as Sheep or Cow Camps
§63-602EE	Certain Tangible Personal Property Used Exclusively in Agriculture
§63-602GG	Low Income Housing Owned by Nonprofit Organizations
§63-602HH	Property in One County in Excess of \$800,000,000
§63-602II	Unused Infrastructure (Optional)

§63-602JJ	Certain Operating Property of Producer of Electricity by Means of Wind Energy or By Means of Geothermal Energy
§63-602KK	Certain Personal Property that has and acquisition price of \$3000 or less
§63-602NN	Partial Value of Defined Project Based on Investment in New Plant and Building Facilities in Certain Business Properties
§63-602OO	Wells Drilled for the Production of Oil, Gas or Hydrocarbon Condensate.
§63-603	Reduction in Assessment or Credit Relating to Exemption under §63-602O
§63-604	Definition of Land Actively Devoted to Agricultural for Exemption under §63-602K
§63-605	Certain Land Used to Protect Wildlife and Wildlife Habitat
§63-606A	Property Eligible for ITC with Certain Employment & Investment (Optional)
Exemptions Not in Chapter 6, Title 63, Idaho Code	
§63-2431	Gasoline, Aircraft Engine Fuel, or Special Fuels
§63-3029B	Qualifying Taxpayers May Elect to Exempt Investments from Property Taxes for Two Years in Lieu of Taking Investment Tax Credit on Income Taxes
§63-3502	Cooperative Electric Association Exempt from all Taxes Except Gross Receipts Tax
§63-3502A	Cooperative Natural Gas Association Exempt from all Taxes Except Gross Receipts Tax
§21-114(b)(1)	Properly Registered Aircraft
§22-2722	All Property Owned or Used by Soil Conservation District
§25-2402	Operating or Personal Property Exempt from Taxation by Herd District
§26-2138	Personal Property Owned by Credit Union
§26-2186	Personal Property Owned by Idaho Corporate Credit Union
§31-1422	Operating Property Exempt from Taxation by Fire District Unless by Agreement
§31-1422	Certain Unimproved Real Property May be Granted Exemption from Taxation by Fire District
§31-3908A	Certain Personal Property and Unimproved Real Property May be Granted Exemption from Taxation by Ambulance District
§31-4117	Certain Real Property May be Exempt from Taxation by Translator District
§31-4208	All Property Owned by County Housing Authority Except by Agreement
§33-2133	All Property Owned by a Dormitory Housing Commission
§39-1452	All Property Owned by Idaho Health Facility Authority
§41-405	Personal Property Owned by Insurers, Agents, or Representatives
§42-3115	Personal and Operating Property Exempt from Taxation by Flood Control District
§42-3708	Personal and Operating Property Exempt from Taxation by Watershed Improvement District with Exceptions
§42-4115	Property Owned by Water and Sewer District
§42-4416	Personal and Operating Exempt from Taxation by Levee District
§50-1908	Property Owned by Housing Authority Except by Agreement
§50-2014	Property Owned by Urban Renewal Agency

§67-6208

Real Property Owned by Idaho Housing Agency Except by Agreement

APPENDIX E

Sample Applications For Exemption

- Ada County Property Tax Exemption Information
- Sample Ada County Property Tax Exemption (Long Form)
- Sample Ada County Property Tax Exemption (Short Form)

APPENDIX F

Sample Assessor Packet

APPENDIX G

Idaho Statutes

G

REVENUE AND TAXATION
CHAPTER 1
DEPARTMENT OF REVENUE AND TAXATION

63-105. POWERS AND DUTIES -- GENERAL. In addition to all other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the state tax commission.

(2) To make, adopt and publish such rules as it may deem necessary and desirable to carry out the powers and duties imposed upon it by law, provided however, that all rules adopted by the state tax commission prior to the effective date of this 1996 amendatory act shall remain in full force and effect until such time as they may be rescinded or revised by the commission.

(3) To maintain a tax research section to observe and investigate the effectiveness and adequacy of the revenue laws of this state and to assist the executive and legislative departments in estimation of revenue, analysis of tax measures and determination of the administrative feasibility of proposed tax legislation.

(4) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section [63-219](#), Idaho Code.

(5) To ensure that statutory penalties are enforced, and proper complaint is made against persons derelict in duty under any law relating to assessment or equalization of taxes.

(6) To sue and be sued in the name of the state tax commission.

(7) To summon witnesses to appear before it or its agents to testify and/or produce for examination such books, papers, records or other data relating to any matter within its jurisdiction. However, no person shall be required to testify outside the county wherein he resides or the principal place of his business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witnesses issued from the district court and shall be served without fee or mileage charge by the sheriff of the county, and return of service shall be made by the sheriff to the commission. Persons appearing before the commission or its agents in obedience to such a summons, shall, in the discretion of the commission, receive the same compensation as witnesses in the district court, to be paid upon claims presented against the state from any appropriation made for the administration of the provisions of this title, in the same manner as other claims against the state are presented and paid.

(8) To administer oaths and take affirmations of witnesses appearing before it. The power to administer oaths and take affirmations is vested in each member of the state tax commission, and its duly constituted agents. In case any witness shall fail or refuse to appear and testify before the state tax commission or its agents upon being summoned to appear as herein provided, the clerk of the district court of the county shall, upon demand of the state tax commission, any member thereof, or agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and

place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(9) To report to the governor from time to time, and to furnish to the governor such assistance and information as may be required.

(10) To recommend to the governor in a report at least sixty (60) days before and to the legislature ten (10) days prior to the meeting of any regular session of the legislature such amendments, changes and modifications of the various tax laws necessary to remedy injustice and irregularities in taxation and to facilitate assessment and collection of taxes in the most economical and efficient manner.

History:

[63-105 added 1996, ch. 98, sec. 2, p. 311.]

63-105A. POWERS AND DUTIES -- PROPERTY TAX. The state tax commission shall be the state board of equalization. In addition to other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To supervise and coordinate the work of the several county boards of equalization.

(2) To secure, tabulate and keep records of valuations of all classes of property throughout the state, and for that purpose, to have access to all records and files of state offices and departments and county and municipal offices, and to require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of public utilities for rate-making purposes, to file reports with the state tax commission, giving such information as to valuation and the source thereof. The nature and kind of the tabulations, records of valuations and requirements from public officers as stated herein, shall be in such form and cover such valuations as the state tax commission may prescribe.

(3) To coordinate and direct a system of property taxation throughout the state.

(4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.

(5) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section [63-219](#), Idaho Code.

(6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.

(7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of [chapter 5, title 63](#), Idaho Code, for equalization purposes and for correction of errors. The county board of equalization, when so reconvened, shall have no power to transact any business except that for which it is specially reconvened, or such as may be brought before it by the state tax commission.

(8) To require prosecuting attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of law in connection with the assessment and taxation of property. It shall be the duty of such officers to comply promptly with the requirements of the state tax commission in that relation.

(9) To require individuals, partnerships, companies, associations and corporations to furnish such information as the state tax commission may require concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to enable the state tax commission to ascertain the value and the

relative tax burden borne by all kinds of property in the state, and to require from all state and local officers such information as may be necessary to the proper discharge of the duties of the state tax commission.

(10) To visit, as a state tax commission or by individual members or agents thereof, whenever the state tax commission shall deem it necessary, each county of the state, for the investigation and direction of the work and methods of assessment and equalization, and to ascertain whether or not the provisions of law requiring the assessment of all property, not exempt from taxation, and just equalization of the same have been or are being properly administered and enforced.

(11) To carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(12) To correct its own errors in property assessment at any time before the first Monday in November, and report such correction to the county auditor and county tax collector, who shall thereupon enter the correction upon the operating property roll.

(13) To apportion annually to the state and the respective counties any moneys received by the state from the United States or any agency thereof, as payments in lieu of property taxes; provided, that said moneys shall be apportioned in the same amounts, and to the same governmental divisions as the property taxes, in lieu of which payments are made, would be apportioned, if they were levied. The state treasurer and the state controller shall be bound, in making distribution of moneys so received, by the apportionment ordered by the state tax commission.

(14) To make administrative construction of property tax law whenever necessary or requested by any officer acting under such laws and until judicially overruled, such administrative construction shall be binding upon the inquiring officer and all others acting under such laws.

(15) To require the attendance of any assessor in the state at such time and place as may be designated by the commission, and the actual and necessary expenses of any assessor in attending any such meeting shall be a legal claim against his county.

(16) To analyze the work of county assessors at any time and to have and possess all rights and powers of such assessors for the examination of persons and property, and for the discovery of property subject to taxation; and if it shall ascertain that any taxable property is omitted from the property rolls or is not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the state tax commission to place such property on the property rolls, or correct such incorrect assessment or valuation, the tax commission shall have the power to prepare a supplemental roll, which supplemental roll shall include all property required by the tax commission to be placed on the property roll and all corrections to be made. Such supplement shall be filed with the assessor's property roll, and shall thereafter

constitute an integral part thereof to the exclusion of all portions of the original property rolls inconsistent therewith, and shall be submitted therewith to the county board of equalization.

(17) To provide a program of education and an annual appraisal school for its employees, for county commissioners and for the assessors of the various counties of this state. Additionally, the state tax commission shall provide for the establishment of a property tax appraiser and cadastral certification program. Such program shall include, as a minimum, a written examination prepared, administered and graded under the supervision and control of an examination committee; such committee is to be composed as the state tax commission may provide by rule. The state tax commission's rules shall include, but need not be limited to, the following:

(a) The composition of the examination committee, provided however, that the committee shall include a representative of the counties, an agent of the state tax commission and a representative of a professional appraisal association within this state. The representative of the counties together with the representatives of such professional appraisal association shall constitute a majority of the committee.

(b) The frequency with which the examination shall be given.

(c) A reasonable review procedure by which examinees having complaints may seek review of the examination committee.

(d) The establishment of a reasonable period of time within which a county appraiser must meet the certification requirements as a condition to continued employment by the county as a certified property tax appraiser.

(18) To report at least quarterly to the revenue and taxation committee of the house of representatives and to the joint senate finance-house appropriations committee on its program to assist the counties with the property tax assessments.

(19) To transmit to the governor and to the legislature, an annual report, with the state tax commission's recommendations as to such legislation as will correct or eliminate defects in the operations of the property tax laws and will equalize taxation within the state. Said annual report shall include a comprehensive study of the property tax laws and detailed statistical information concerning the operation of the property tax laws of this state. Said report shall be submitted prior to the meeting of any regular session of the legislature.

(20) To maintain a forest land and forest product tax section to perform the functions and duties of the state tax commission under the provisions of [chapter 17, title 63](#), Idaho Code.

History:

[63-105A, added 1996, ch. 98, sec. 2, p. 313; am. 1998, ch. 200, sec. 1, p. 714; am. 2008, ch. 52, sec. 1, p. 128.]

TITLE 63
REVENUE AND TAXATION
CHAPTER 2
DEFINITIONS -- GENERAL PROVISIONS

63-208. RULES PERTAINING TO MARKET VALUE -- DUTY OF ASSESSORS. (1) It shall be the duty of the state tax commission to prepare and distribute to each county assessor and the county commissioners within the state of Idaho, rules prescribing and directing the manner in which market value for assessment purposes is to be determined for the purpose of taxation. The rules promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property, except that expressly exempt under [chapter 6, title 63](#), Idaho Code, within his county according to recognized appraisal methods and techniques as set forth by the state tax commission; provided, that the actual and functional use shall be a major consideration when determining market value for assessment purposes.

(2) To maximize uniformity and equity in assessment of different categories of property, such rules shall, to the extent practical, require the use of reproduction or replacement cost less depreciation as opposed to historic cost less depreciation whenever cost is considered as a single or one (1) of several factors in establishing the market value of depreciable property. The state tax commission shall also prepare and distribute amendments and changes to the rules as shall be necessary in order to carry out the intent and purposes of this title. The rules shall be in the form as the commission shall direct, and shall be made available upon request to other public officers and the general public in reasonable quantities without charge. In ascertaining the market value for assessment purposes of any item of property, the assessor of each county shall, and is required to, abide by, adhere to and conform with rules promulgated by the state tax commission.

History:

[63-208 added 1996, ch. 98, sec. 3, p. 322.]

TITLE 63
REVENUE AND TAXATION
CHAPTER 3
ASSESSMENT OF REAL AND PERSONAL PROPERTY

63-301. TIME OF ASSESSMENT -- PROPERTY ROLL, SUBSEQUENT PROPERTY ROLL AND MISSED PROPERTY ROLL. (1) The assessor shall complete an assessment of all real and personal property in his county which is subject to assessment by him on or before the fourth Monday of June. In making such assessment, the assessor shall determine, according to recognized appraisal methods and techniques, the market value for assessment purposes of real and personal property. Said assessments shall be entered on the property roll. After the aforesaid date, any property which has been omitted from the property roll shall be entered on the subsequent property roll and submitted to the county commissioners meeting as a board of equalization, from the fourth Monday of November through the first Monday of December of the current year, or entered on the missed property roll and submitted during the county board of equalization's monthly meeting in January of the following year.

(2) The market value for assessment purposes of each parcel of property subject to assessment shall be listed on the appropriate roll, as defined in subsection (1) of this section, by category of property established and defined pursuant to section [63-109](#), Idaho Code.

History:

[63-301 added 1996, ch. 98, sec. 4, p. 327.]

63-308. VALUATION ASSESSMENT NOTICE TO BE FURNISHED TAXPAYER. (1) At the taxpayer's request, on a form provided by the assessor, the valuation assessment notice may be transmitted electronically to the taxpayer.

(2) The valuation assessment notice required under the provisions of this chapter shall be delivered or may be transmitted electronically, as that term is defined in section [63-115](#), Idaho Code, if electronic transmission is requested by the taxpayer, to the taxpayer, or to his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address no later than the first Monday in June. The original valuation assessment notice so mailed or transmitted electronically must contain notices of all meetings of the board of equalization prescribed by this title for the purposes of equalizing assessments of property, and for granting exemptions from taxation. The notice shall, in clear terms, inform the taxpayer of the assessed market value for assessment purposes of his property for the current year, and his right to appeal to the county board of equalization. The state tax commission may require that other data or information be shown on the form.

(3) In case any changes or corrections are made by the assessor from the original valuation assessment notice, the assessor shall immediately transmit electronically or mail a corrected valuation assessment notice to the taxpayer, or his agent or representative.

(4) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall transmit electronically or mail to the equitable titleholder a true copy of the valuation assessment notice on or before the second Monday in June.

(5) For property entered and assessed on the subsequent property roll pursuant to section [63-311](#), Idaho Code, the valuation assessment notice shall be transmitted electronically to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the fourth Monday in November.

(6) For property entered and assessed on the missed property roll pursuant to section [63-311](#), Idaho Code, the valuation assessment notice shall be transmitted electronically to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the first Monday of January of the following year.

History:

[63-308 added 1996, ch. 98, sec. 4, p. 330; am. 2013, ch. 191, sec. 1, p. 472.]

63-310. COMPLETION AND DELIVERY OF PROPERTY ROLL. The assessor must certify the completion of the property roll on or before the fourth Monday of June in each year, and must, on or before that date, deliver the completed property roll, together with all claims for exemptions from assessment or taxation to the clerk of the board. The property roll and claims for exemptions must remain in the office of the clerk until the second Monday of July for the inspection of all persons interested.

History:

[63-310 added 1996, ch. 98, sec. 4, p. 331.]

63-311. COMPLETION AND DELIVERY OF SUBSEQUENT AND MISSED PROPERTY ROLLS. (1) The assessor shall assess all personal property and all improvements to real property except as otherwise provided in section [63-317](#), Idaho Code, which have been completed or discovered between the fourth Monday of June and the fourth Monday of November and which were not included on the property roll delivered on the fourth Monday of June, and shall enter such assessments on the subsequent property roll to be delivered to the clerk of the board on the fourth Monday of November of the current year.

(2) If other real or personal property is discovered and assessed between the fourth Monday of November and December 31st, it shall be assessed and entered on the missed property roll to be delivered to the clerk of the board on the first Monday of January of the following year.

(3) Personal property coming into the state from without the state after the first day of January shall be assessed as of the date of its entry into the state as follows; if before the first day of April, for its full market value for assessment purposes; if on the first day of April and before the first day of July, for three-fourths (3/4) of its full market value for assessment purposes; if on the first day of July and before the first day of October, for one-half (1/2) of its full market value for assessment purposes; and if on the first day of October and on or before the thirty-first day of December, for one-fourth (1/4) of its full market value for assessment purposes, and the taxes so levied thereupon shall be a first and prior lien on such property from the date of its entry into the state so assessed, and upon all other personal or real property, belonging to the same owner, and no personal property of any kind shall be exempt from such lien.

History:

[63-311 added 1996, ch. 98, sec. 4, p. 331.]

TITLE 63
REVENUE AND TAXATION
CHAPTER 5
EQUALIZATION OF ASSESSMENTS

63-501. MEETING OF COMMISSIONERS AS A BOARD OF EQUALIZATION. (1) The county commissioners of each county shall convene as a board of equalization at least once in every month of the year up to the fourth Monday of June for the purpose of equalizing the assessments of property on the property roll and shall meet on the aforesaid date in each year:

(a) To complete the equalization of assessments on all property which has not yet been equalized; and

(b) To hear appeals of assessment or exemption of property which are received on or before the end of each county's normal business hours on the fourth Monday of June.

Upon meeting to complete the equalization of assessments, the board of equalization shall continue in session from day to day until equalization of the assessments of such property has been completed and shall also hear and determine complaints upon allowing or disallowing exemptions under [chapter 6, title 63](#), Idaho Code. The board of equalization must complete such business and adjourn as a board of equalization on the second Monday of July, provided that the board of equalization may adjourn any time prior to the aforesaid date when they have completed all of the business as a board of equalization.

The county assessor or his designee shall attend all meetings of the county commissioners in session as a board of equalization and he may make any statements or introduce testimony and examine witnesses on questions before the board of equalization relating to the assessments.

(2) The county commissioners of each county in this state shall meet as a board of equalization on the fourth Monday of November in each year for the purpose of:

(a) Equalizing the assessments of all property entered upon the subsequent property roll;

(b) Determining complaints and hearing appeals in regard to the assessment of such property;

(c) Allowing or disallowing exemptions and cancellations claimed under the provisions of this title affecting the assessment or taxation of property entered upon the rolls, and having a settlement with the assessor and tax collector.

The board of equalization shall complete its business and adjourn on or before the first Monday of December in each year, but if other personal or real property is discovered and assessed after the subsequent board of equalization has adjourned, and is entered on the missed property roll, the taxpayer may appeal that assessment to the county commissioners meeting as a board of equalization, for the purposes stated in subsection (2)(a), (b) and (c) of this section, during its monthly meeting in January of the following year, provided however, that said meeting must be no sooner than the first Monday in January.

History:

[63-501 added 1996, ch. 98, sec. 6, p. 343; am. 2012, ch. 4, sec. 1, p. 6.]

63-501A. TAXPAYER'S RIGHT TO APPEAL. (1) Taxpayers may file an appeal of an assessment or exemption decision with the county board of equalization. An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. An appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. An appeal of an assessment listed on the missed property roll must be filed on or before the board of equalization adjourns on the day of its January meeting. The board of equalization may consider an appeal only if it is timely filed.

(2) Appeals from the county board of equalization shall be made pursuant to section [63-511](#), Idaho Code.

History:

[63-501A, added 1996, ch. 98, sec. 6, p. 343; am. 1997, ch. 117, sec. 18, p. 319; am. 2012, ch. 4, sec. 2, p. 7.]

63-502. FUNCTION OF BOARD OF EQUALIZATION ON ASSESSMENTS. The function of the board of equalization shall be confined strictly to assuring that the market value for assessment purposes of property has been found by the assessor, and to the functions provided for in [chapter 6, title 63](#), Idaho Code, relating to exemptions from taxation. It is hereby made the duty of the board of equalization to enforce and compel a proper classification and assessment of all property required under the provisions of this title to be entered on the property rolls, and in so doing, the board of equalization shall examine the rolls and shall raise or cause to be raised, or lower or cause to be lowered, the assessment of any property which in the judgment of the board has not been properly assessed. The board of equalization must examine and act upon all complaints filed with the board in regard to the assessed value of any property entered on the property rolls and must correct any assessment improperly made. The taxpayer shall have the burden of proof in seeking affirmative relief to establish that the determination of the assessor is erroneous, including any determination of assessed value. A preponderance of the evidence shall suffice to sustain the burden of proof.

History:

[63-502 added 1996, ch. 98, sec. 6, p. 344; am. 2003, ch. 266, sec. 2, p. 704.]

63-505. PRODUCTION OF EVIDENCE BY COUNTY OFFICIALS AND OTHERS. The board of equalization may require the attendance of any county officer or deputy, who must furnish the board with any information which may be had from the records in his office and which the board may deem necessary in equalizing the assessments, and may also subpoena witnesses and hear evidence in all matters relating to the assessment of property, and may arbitrarily assess the property of any person refusing to appear or testify, and any assessment so made shall be conclusive on all questions of assessment in any court or proceeding.

History:

[63-505 added 1996, ch. 98, sec. 6, p. 345.]

63-506. NOTICE TO TAXPAYER OF NEW ASSESSMENTS AND CHANGES. The board of equalization must, before taking final action in equalizing the assessed value of the property of any person refusing to appear and testify, or in increasing the assessed value of any property, notify the owner thereof, or his agent or representative, of its intention to do so, and require such person to appear forthwith before the board and make objection, if he has any. The board may direct the notice to be served personally upon the owner, or his agent or representative; or, it may direct the clerk to serve the notice by mail, addressed to such owner, or his agent or representative, at his last known post office address. In the case of service by mail, the board of equalization shall not take final action until ten (10) working days after the mailing of such notice, unless the owner, or his agent, or representative, shall sooner appear. If the owner is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the owner shall, within ten (10) days, deliver to the equitable titleholder a true copy of the notice from the board of equalization.

History:

[63-506 added 1996, ch. 98, sec. 6, p. 345; am. 2007, ch. 15, sec. 1, p. 27.]

63-507. RECORD OF PROCEEDINGS. The clerk of the board must record in the official minutes all proceedings of the county commissioners relating to the equalization of assessments, the allowance of exemptions, and all changes, corrections and orders made by the board of equalization, and the names of all persons who have appeared before the board of equalization and who have been heard upon matters affecting the assessment of property.

History:

[63-507 added 1996, ch. 98, sec. 6, p. 345.]

63-509. DELIVERY OF ROLLS TO COUNTY AUDITOR -- ABSTRACTS OF ROLLS. (1) On or before the second Monday of July the board of equalization must deliver the property rolls, with all changes, corrections and additions and exemptions from taxation entered therein, to the county auditor. It shall be the duty of the county auditor to cause to be prepared the roll for delivery to the county tax collector on or before the first Monday of November. It shall be the duty of the county auditor to cause to be prepared a total of the amount and value of each category of property and prepare an abstract of all the property entered upon the roll in the manner and form required by the state tax commission. Such forms must show, but need not be limited to, the market value for assessment purposes of all property by categories, and the exemptions from taxation allowed by categories. Any abstracts needed by and prepared for the state tax commission must be delivered by certified mail to the state tax commission by the fourth Monday of July. The abstracts will show the increment value as defined in section [50-2903](#), Idaho Code, in any revenue allocation area established pursuant to chapters 20 and 29, [title 50](#), Idaho Code, and the value of exemptions granted pursuant to sections [63-602G](#), [63-602K](#), [63-602P](#), [63-602X](#), [63-602AA](#), [63-602BB](#) and [63-602CC](#), Idaho Code, as well as the net taxable value for each of the categories. The abstracts shall be prepared and duly verified and must show a correct classification of all the property in accordance with the classification of such property upon the property roll, and all matters and things required to be shown upon the abstracts must be entered.

(2) The subsequent property roll shall be delivered to the county auditor as soon as possible after the first Monday in December. The county auditor shall deliver the subsequent property roll to the county tax collector without delay.

(3) The missed property roll shall be delivered to the county auditor as soon as possible, but no later than the first Monday in March of the succeeding year. The county auditor shall deliver the missed property roll to the county tax collector without delay.

(4) The county auditor must cause to be prepared abstracts of the combined subsequent and missed property rolls as prescribed in subsection (1) and submit the abstracts by certified mail to the state tax commission on or before the first Monday in March of the

succeeding year.

History:

[63-509, added 1996, ch. 98, sec. 6, p. 346; am. 1997, ch. 117, sec. 19, p. 319; am. 2013, ch. 21, sec. 3, p. 36.]

63-511. APPEALS FROM COUNTY BOARD OF EQUALIZATION. (1) Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

(2) Notice of such appeal stating the grounds therefor shall be filed with the county auditor, who shall forthwith transmit to the board of tax appeals a copy of said notice, together with a certified copy of the minutes of the proceedings of the board of equalization resulting in such act, order or proceeding, or a certificate to be furnished by the clerk of the board that said board of equalization has failed to act in the time required by law on any complaint, protest, objection, application or petition in regard to assessment of the complainant's property, or a petition of the state tax commission. The county auditor shall also forthwith transmit all evidence taken in connection with the matter appealed. The county auditor shall submit all such appeals to the board of tax appeals within thirty (30) days of being notified of the appeal. The board of tax appeals may receive further evidence and will hear the appeal as provided in [chapter 38, title 63](#), Idaho Code.

(3) Any appeal that may be taken to the board of tax appeals may, during the same time period, be taken to the district court for the county in which the property is located.

(4) In any appeal taken to the board of tax appeals or the district court pursuant to this section, the burden of proof shall fall upon the party seeking affirmative relief to establish that the valuation from which the appeal is taken is erroneous, or that the board of equalization erred in its decision regarding a claim that certain property is exempt from taxation, the value thereof, or any other relief sought before the board of equalization. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The board of tax appeals or the district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The board of tax appeals or the court may affirm, reverse, modify or remand any order of the board of equalization, and shall

grant other relief, invoke such other remedies, and issue such orders in accordance with its decision, as appropriate.

History:

[63-511 added 1996, ch. 98, sec. 6, p. 347; am. 1999, ch. 107, sec. 1, p. 335; am. 2003, ch. 266, sec. 3, p. 704; am. 2013, ch. 24, sec. 1, p. 45.]

TITLE 63
REVENUE AND TAXATION
CHAPTER 6
EXEMPTIONS FROM TAXATION

63-602. PROPERTY EXEMPT FROM TAXATION. (1) Property shall be exempt from taxation as provided in titles 21, 22, 25, 26, 31, 33, 39, 41, 42, 49, 50, 67 and 70, Idaho Code, and in chapters 6, 24, 30, 35 and 45, [title 63](#), Idaho Code; provided, that no deduction shall be made in assessment of shares of capital stock of any corporation or association for exemptions claimed under this section, and provided further, that the term "full cash value" wherever used in this act shall mean the actual assessed value of the property as to which an exemption is claimed.

(2) The use of the words "exclusive" or "exclusively" in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections [63-602A](#) through [63-602NN](#), Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

(3) All exemptions from property taxation claimed shall be approved annually by the board of county commissioners or unless otherwise provided:

(a) Exemptions pursuant to sections [63-602A](#), [63-602F](#), [63-602I](#), [63-602J](#), [63-602K](#) for land of more than five (5) contiguous acres, [63-602L](#)(1), [63-602M](#), [63-602R](#), [63-602S](#), [63-602U](#), [63-602V](#), [63-602W](#), [63-602Z](#), [63-602DD](#)(1), [63-602EE](#), [63-2431](#), [63-3502](#), [63-3502A](#) and [63-3502B](#), Idaho Code, do not require application or approval by the board of county commissioners. For all other exemptions in [title 63](#), Idaho Code, the process of applying is as specified in the exemption statutes or, if no process is specified and application is necessary to identify the property eligible for the exemption, annual application is required. Exemptions in other titles require no application.

(b) For exemptions that require an application, provided such exemptions are for property otherwise subject to assessment by the county assessor, the application must be made to the county commissioners by April 15 and the taxpayer and county assessor must be notified of any decision by May 15, unless otherwise provided by law. The decision of the county commissioners and any subsequent assessment notices sent to the taxpayer may be appealed to the county board of equalization pursuant to sections [63-501](#) and [63-501A](#), Idaho Code.

(c) For exemptions that require an application, provided such exemptions are for property otherwise subject to assessment by the state tax commission, application for exemption shall be included with the annual operator's statement as required pursuant to section [63-404](#), Idaho Code. Notice of the decision and its effect on the assessment will be provided in accordance with procedures specified in [chapter 4, title 63](#), Idaho Code. Appeals shall be to the state tax commission in accordance with section [63-407](#), Idaho Code.

History:

[63-602 added 1996, ch. 98, sec. 7, p. 348; am. 2010, ch. 133, sec. 1, p. 283; am. 2012, ch. 4, sec. 3, p. 7.]

TITLE 63
REVENUE AND TAXATION
CHAPTER 38
BOARD OF TAX APPEALS

63-3813. CONCLUSIVE DECISION. In all cases which are not appealed to the district court within the prescribed time, the decision of the board of tax appeals shall be conclusive and all records shall be corrected to comply with the decision of the board. A final decision or order of the board of tax appeals directing a market value change for taxable property that is not further appealed shall be fixed for the current year appealed and there shall be no increase in value for the subsequent assessment year when no physical change occurs to the property; provided however, that annual trending or equalization applied to all properties of a property class or category within the county or a clearly defined area shall still apply. If the order requires repayment or refund of taxes these shall be repaid or refunded by the proper authorities and, if the order affirms or establishes a liability for the payment of taxes, the usual procedure for collection of such taxes shall continue or commence.

History:

[63-3813, added 1969, ch. 453, sec. 13, p. 1195; am. 2002, ch. 332, sec. 1, p. 938.]

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 23
MISCELLANEOUS PROVISIONS

67-2342. GOVERNING BODIES -- REQUIREMENT FOR OPEN PUBLIC MEETINGS. (1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in [chapter 38, title 63](#), Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under [chapter 43, title 41](#), Idaho Code, the Idaho insurance guaranty association established under [chapter 36, title 41](#), Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under [chapter 12, title 41](#), Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section [67-2343](#), Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

History:

[67-2342, added 1974, ch. 187, sec. 3, p. 1492; am. 1977, ch. 173, sec. 1, p. 445; am. 1992, ch. 155, sec. 2, p. 507; am. 1998, ch. 305, sec. 1, p. 1006; am. 2002, ch. 290, sec. 1, p. 839; am. 2004, ch. 101, sec. 1, p. 357.]

APPENDIX H

Glossary