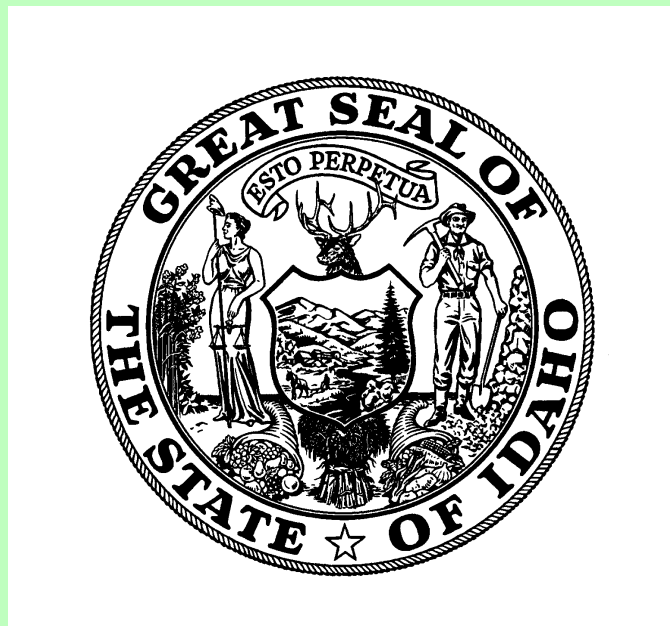


PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
House Revenue & Taxation Committee
65th Idaho Legislature
Second Regular Session – 2020



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2020

HOUSE REVENUE & TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 36 – IDAHO STATE BOARD OF TAX APPEALS

DOCKET NO. 36-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 63-3808, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change:

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 36, rules of the Idaho Board of Tax Appeals:

IDAPA 36

- 36.01.01, *Idaho Board of Tax Appeals Rules*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 5905 through 5925](#). Technical changes and housekeeping changes were pursued in order to simplify, clarify, and reduce rule language.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The Board of Tax Appeals operates with one fee rule, Board Rule 151.03. The rule provides a ten-dollar (\$10) cost for providing a certified copy of a hearing recording. This fee or charge is being imposed pursuant to Section 63-3808, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Steve Wallace at (208) 334-3354.

Dated this 5th day of September, 2019.

Steve Wallace, Director
Idaho Board of Tax Appeals
1673 W. Shoreline Drive, Suite 120, Boise, ID 83702
P.O. Box 36, Boise, ID 83720-0088
Phone: (208) 334-3354
Fax: (208) 334-4060

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-3808, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 36, rules of the Idaho Board of Tax Appeals:

IDAPA 36

- 36.01.01, *Idaho Board of Tax Appeals Rules*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Board of Tax Appeals exists to provide a fully independent, specialized, and fair tribunal to offer judicial like services for tax appeals. For the opposing parties' benefit, this justice administration requires a duly disclosed set of fairness-enhancing procedural rules, which rules can be consistently followed and enforced. The Board of Tax Appeals conducts hearings year-round requiring continuity in the procedural (administrative) rules used to hear and decide cases.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The Board of Tax Appeals operates with one fee rule, Board Rule 151.03. The existing rule, together with the temporary and proposed rule, provides a ten-dollar (\$10) cost for providing a certified copy of a hearing recording.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The only fee is a ten dollar (\$10) cost for providing a certified copy of a hearing recordings to non-parties.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Steve Wallace at (208) 334-3354.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 36-0101-1900F

36.01.01 – IDAHO BOARD OF TAX APPEALS RULES

- 000. LEGAL AUTHORITY (RULE 0).**
These rules are promulgated in accordance with Section 63-3808, Idaho Code. (3-25-13)
- 001. TITLE AND SCOPE (RULE 1).**
- 01. Title.** These rules are titled IDAPA 36.01.01, “Idaho Board of Tax Appeals Rules.” (4-5-00)
 - 02. Scope.** These rules govern procedures before the Idaho Board of Tax Appeals (hereinafter “Board”). ()
- 002. -- 009. (RESERVED)**
- 010. DEFINITIONS (RULE 10).**
As used in this chapter: (2-18-05)
- 01. Appellant.** A party filing an appeal with the Board. ()
 - 02. Board.** The Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (3-25-13)
 - 03. Case File.** The official record maintained by the Board regarding an appeal. (3-25-13)
 - 04. Comparable Sales.** Recently sold properties that are similar in locational and physical characteristics to the property being appraised. “Recently sold property” is property with a sale date prior to the effective date of valuation. (3-25-13)
 - 05. De Novo.** The Board decides questions of fact and of law based on the evidence and legal arguments presented before the Board. A de novo review means the parties must present anew any previously submitted evidence or argument they wish to have considered. New evidence and argument may also be presented. ()
 - 06. Ex Parte.** A communication on behalf of one (1) party with the Board where the other side is not present or included. (3-25-13)
 - 07. Parcel.** Each separate property ownership as represented by the county assessment rolls. (2-18-05)
 - 08. Party.** A person or governmental subdivision or agency authorized to appear before the Board. ()
 - 09. Presiding Officer or Hearing Officer.** A member of the Board or other person assigned to conduct a conference or hearing for the Board. (3-25-13)
 - 10. Respondent.** A party answering or otherwise responding to an appeal. (2-18-05)
 - 11. Subject Property.** The property under discussion. (2-18-05)
 - 12. Substantive Issue.** An issue where a right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matter. (3-25-13)
- 011. ABBREVIATIONS (RULE 11).**
- 01. BTA.** Idaho Board of Tax Appeals. (2-18-05)
 - 02. BOE.** County Board of Equalization. (2-18-05)
 - 03. STC.** Idaho State Tax Commission. (2-18-05)
- 012. ORGANIZATION (RULE 12).**
The Chairman of the Board serves as the administrative officer. (2-18-05)

01. Election. The Chairman will be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. (2-18-05)

02. Power. The Chairman will oversee the issuance of acknowledgment letters and notices, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. (3-25-13)

013. -- 019. (RESERVED)

020. PROCEDURE GOVERNED (RULE 20).

01. Procedure. These rules govern all practice and procedure before the Board. Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General". (3-25-13)

02. Purpose. The purpose for the establishment of the Idaho Board of Tax Appeals is to provide a fully independent, fair, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. ()

021. LIBERAL CONSTRUCTION (RULE 21).

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. (2-18-05)

022. -- 029. (RESERVED)

030. REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).

To the extent authorized by law the right to appear and practice before the Board is limited as follows: (3-25-13)

01. Natural Persons. A natural person may represent himself or herself or be represented by an attorney. (4-11-06)

02. Corporations. Duly authorized directors or officers of corporations representing the corporations for which they are, respectively, directors or officers; (4-11-06)

03. Limited Liability Company (LLC). A duly authorized member, or a manager of a manager-managed LLC, representing the LLC for which they are, respectively, a member or manager; (3-25-13)

04. Partnerships, Joint Ventures and Trusts. Duly authorized partners, joint venturers, or trustees representing their respective partnerships, joint ventures or trusts; (4-11-06)

05. Authorized Attorneys. Attorneys duly authorized and qualified to practice in the courts of the state of Idaho; ()

06. Public Officers. Public officers or designated representatives when representing the governmental agency; (4-11-06)

031. INITIAL PLEADING -- LISTING OF REPRESENTATIVES (RULE 31).

The initial pleading of each party must name the party's qualified representative for service of documents and include the representative's address for receiving documents. Service of documents on the named representative is valid service upon the party. If no person is explicitly named as representative, the person signing the initial pleading will be considered the representative. ()

032. SUBSTITUTION OF REPRESENTATIVE (RULE 32).

A party's representative may be changed by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of a representative at hearing. (3-25-13)

033. PARTICIPATION BY TAXING AUTHORITY (RULE 33).

In proceedings where a taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of a party or upon the Board's motion, an informed representative of the taxing authority shall appear at hearing and be available for examination. When such a representative is summoned, the taxing authority may further participate in the hearing as a party. ()

034. (RESERVED)

035. CONDUCT (RULE 35).

A party, representative or witness shall conduct themselves in all Board proceedings in an ethical, respectful, and courteous manner. (3-25-13)

036. ENFORCEMENT (RULE 36).

The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for delays, the failure to comply with a subpoena or discovery order, for discovery procedure abuses, and for any other matter regarding conduct of the appeal. Board sanctions include, but are not limited to, dismissal of an appeal or the granting of default judgment. ()

037. EX PARTE COMMUNICATIONS (RULE 37).

01. Prohibited Ex Parte. Unless permitted by law, the Board shall not communicate regarding any substantive issue with any party, except upon notice and opportunity for all parties to participate in the communication. (3-25-13)

02. Permitted Ex Parte. The Board may communicate ex parte with a party concerning a procedural or administrative matter. (3-25-13)

038. -- 044. (RESERVED)

045. NOTICE OF APPEAL: CONTENTS (RULE 45).

01. Basic Contents. An appeal must be in writing and contain clear and concise statements of the matters that lay foundation for the relief claim that may be granted by the Board. ()

02. Additional Contents. The appeal shall further contain: (3-25-13)

a. Appellant's full name, mailing address and telephone number; (3-25-13)

b. The tax year(s) associated with the appeal; and (3-25-13)

c. A signed statement by a natural person/appellant or by a qualified representative that the notice of appeal contents are correct. (3-25-13)

03. Appeal Filed by an Attorney or Representative. An appeal filed by a qualified representative shall contain: (3-25-13)

a. The representative's name, official title, mailing and street addresses, telephone number; and (3-25-13)

b. If the representative is an attorney, the Idaho State Bar License number. (3-25-13)

04. Change in Address or Phone Number. A party or representative must provide written notice to the Board and other parties of any change in contact information. (3-25-13)

046. NOTICE OF APPEAL: BOE APPEALS (RULE 46).

01. Separate Notice. Each parcel assessment appealed must use a separate Board Appeal Form or separate notice of appeal. ()

02. BOE Appeal. An appeal brought under Section 63-511, Idaho Code, the notice of appeal shall contain: (3-25-13)

a. A legal description of the property relating to the appeal; (3-25-13)

b. A copy of the county board of equalization's final decision, and when available, the decision's postmarked mailing envelope or any accompanying certificate of service; (3-25-13)

c. For a valuation appeal, a clear declaration of the alleged market value for the subject property. For a property tax exemption claim, the Idaho Code section(s) associated with the claim and a summary of the factual basis supporting why exempt status should be granted or denied; and (3-25-13)

d. A copy of the final tax assessment notice for the assessment appealed. (3-25-13)

03. Filing Place. A BOE appeal must be filed with the county auditor in the county in which the property assessment originated. ()

047. NOTICE OF APPEAL: STC APPEALS (RULE 47).
An appeal brought under Section 63-3049 or 63-707, Idaho Code, shall contain: (3-25-13)

01. Attachment. A copy of the written decision being appealed; (3-25-13)

02. Objections. A list of objections to the STC's decision and the basis for said objections; ()

03. Amount in Dispute. A statement of the amount in dispute for each applicable tax year or period; and (3-25-13)

04. Security Deposit. When applicable, proof of compliance with the deposit requirements in Section 63-3049(b), Idaho Code, in the form of a receipt or documented acknowledgment from the STC. (3-25-13)

048. ACKNOWLEDGMENT (RULE 48).

01. Acknowledgment Letter. An acknowledgment letter will be mailed within fourteen (14) days of the receipt of an appeal in the Board's office. The Board may acknowledge multiple appeals by the same party with a single letter. Such acknowledgment does not constitute a formal consolidation of the appeals. ()

02. Defective Appeal. If an appeal is found to be materially defective, untimely, or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal. ()

049. (RESERVED)

050. ANSWER TO APPEAL (RULE 50).
A respondent or intervenor may file with the Board an answer to a notice of appeal. The answer shall be filed at least fifteen (15) days prior to hearing. (3-25-13)

051. (RESERVED)

052. COUNTY AUDITOR REQUIREMENT (RULE 52).

01. Contents. Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor shall transmit to the Board: (3-25-13)

a. A copy of the notice of appeal including the date of receipt, and if received by mail, a copy of the

- mailing envelope; (3-25-13)
- b.** The exhibits or other evidence considered by the BOE; (3-25-13)
 - c.** A copy of the initial appeal to the BOE; (3-25-13)
 - d.** A copy of any decision made or action taken by the BOE together with the mailing date of the notice of decision or other proof of service; (3-25-13)
 - e.** A copy of the certified minutes for related BOE proceedings, or a verbatim record provided on its own distinct storage device; and ()
 - f.** When applicable, a certificate that the BOE failed to act on the appeal in the time required. (3-25-13)
- 02. Minutes.** The minutes should include at a minimum: (2-18-05)
- a.** The full name of persons appearing before the BOE in the appeal; (2-18-05)
 - b.** Clear identification of the parcel number associated with the assessment appealed; and (3-25-13)
 - c.** The decision made by the BOE specifying the value determined or exempt status decided for each parcel. (3-25-13)

053. -- 054. (RESERVED)

055. CONSOLIDATION (RULE 55).

Whenever two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues and the same or similar property, or where the same or similar issues exist in other tax type cases, the Board may issue a written or verbal order consolidating the cases. There shall be no consolidation of cases where the rights of any party would be prejudiced. Parties may also request a consolidation. Prior to issuing a consolidation order, the Board will consider whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in judging whether consolidation would likely be beneficial. ()

056. -- 059. (RESERVED)

060. FORM OF PLEADINGS (RULE 60).

- 01. Form.** Pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record should be double-spaced: ()
- a.** State the title of the pleading and the appeal number at the top of the cover page; (3-25-13)
 - b.** Include the name, mailing and street address, and if available, the telephone and FAX number of the person filing the document; and ()
 - c.** Be signed by a qualified representative. ()

061. SERVICE OF DOCUMENTS (RULE 61).

01. Service. A notice, motion, brief, or other document submitted to the Board will be served upon all other parties' representatives of record. Service by regular mail is adequate service. A Board notice, order, or final decision is served upon a party's representative of record. The Board may direct documents be served on persons who are not parties. ()

02. Proof of Service. Every document filed with the Board must be accompanied by a certificate of service. The following is an example:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 20XX I caused to be served a true copy of the foregoing attached document by the method indicated below and addressed to each of the following:

(representative's name)	_____	U.S. Mail, Postage Prepaid
(mailing address)	_____	Hand Delivered
	_____	Overnight Mail
	_____	Certified Mail
(Signature)	_____	
(printed name of person signing)	_____	

(3-25-13)

062. DEFECTIVE, INSUFFICIENT OR LATE PLEADING (RULE 62).

A defective, insufficient, or untimely pleading may be returned, denied, or dismissed.

()

063. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 63).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw an appeal should file a notice of withdrawal and serve all parties with a copy.

()

064. (RESERVED)

065. COMPUTATION OF TIME (RULE 65).

In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a weekend or legal holiday, in which event the period runs until the end of the next business day.

()

066. FILING (RULE 66).

01. Document Filing Place. A document filed with the Board shall be filed at the Board's mailing address or street address.

()

02. Number of Copies. Unless otherwise indicated by the Board, one (1) copy shall be filed. (2-18-05)

03. Fax Filing. A filing by facsimile (fax) transmission is permitted for a notice of withdrawal or settlement, and for a notice or motion requiring an immediate response by the Board. Except for a notice of withdrawal, an original must be mailed to the Board and served on all other parties the same day.

()

a. The transmission must be legible and received in its entirety during office hours for it to be considered filed on the transmission date.

()

b. When making a filing by fax, if another party to the case is equipped with fax facilities, the service on that party should include fax service.

()

- c. The originating party shall assume the risk in fax filing and retain proof of filing by fax. (3-25-13)

067. -- 069. (RESERVED)

070. PREHEARING CONFERENCE (RULE 70).

- 01. Subject of Conference.** The Board may direct parties to appear before it to consider: (3-25-13)
- a. Any and all matters that can be agreed upon. (7-1-93)
 - b. Formulating or simplifying the issues. (4-5-00)
 - c. Stipulations which will avoid unnecessary proof. (7-1-93)
 - d. Preliminary motions to be made prior to the hearing. (7-1-93)
 - e. Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (4-5-00)
 - f. The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. (4-5-00)
 - g. The scheduling of discovery, hearings, or other time sensitive matters. (4-5-00)
 - h. Discussing settlement. (4-5-00)
 - i. Fair hearing procedures. (4-5-00)
 - j. Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. (4-5-00)

02. Notice of Prehearing Conference. Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference contain the same information as notices of hearing regarding the Board's obligations under the American with Disabilities Act. ()

03. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under Rule 70 may result in a dismissal of the appeal or the granting of said appeal. (3-25-13)

04. Prehearing Order. The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. A prehearing order will control the course of subsequent proceedings unless modified by the Board for good cause. (3-25-13)

05. Determination Upon Results of Conference. If, after the prehearing conference provided for in Rule 70, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may determine the appeal without conducting a hearing. (3-25-13)

071. (RESERVED)

072. MOTIONS (RULE 72).

- 01. Form and Contents.** A motion should: ()
- a. Fully state the facts upon which it is based; (2-18-05)
 - b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and (2-18-05)

- c. State the relief sought. (2-18-05)
- 02. Oral Argument.** If the moving party desires oral argument on the motion it must state so in the motion. ()
- 03. Prehearing Motions.** Unless otherwise provided in these rules, a prehearing motion must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. (3-25-13)
- 04. Answer to Motion.** An answer to a motion, or a request for additional time to respond, may be filed within ten (10) days after the filing of the motion. ()
- 073. (RESERVED)**
- 074. BRIEFS (RULE 74).**
The Board may order briefs from the parties prior to the hearing of the evidence or after said hearing. (3-25-13)
- 075. DISCOVERY (RULE 75).**
- 01. Written Permission.** A party to a pending appeal may engage in discovery limited to a single discovery request upon the written order of the Board. The following procedures govern discovery: (3-25-13)
- a. The request for discovery must be filed within twenty (20) days of the mailing date of the Board's appeal acknowledgment letter. ()
- b. The request should contain a statement covering the reasons the discovery is useful to the preparation of the appeal. ()
- c. The request must include a complete copy of the discovery request. ()
- d. Discovery must be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the Board. (3-25-13)
- e. The Board may deny a discovery request that does not comply with the requirements of this chapter. ()
- f. Discovery responses shall be served simultaneously on all other parties. At the same time, the responding party shall file with the Board a notice stating when and on whom the response was served. The actual contents of discovery responses will not be filed with the Board unless the order so directs. Discovery responses shall be signed by a qualified representative, and in the instance of interrogatory answers, the response shall also be signed by the person answering. Such signatures constitute a certification that the signer has reviewed the responses or answers and attests to their completeness and accuracy. (3-25-13)
- g. The discovery order may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. ()
- 02. Scope and Method of Discovery: BOE Appeals.** The method of discovery is limited to production requests and written interrogatories. The scope of discovery must pertain to the subject property, comparable sale, or a comparable rental. ()
- a. The scope of discovery also includes: ()
- i. Information or records concerning an appraisal, assessment, financial statement or related schedule, a completed study or report, and contracts including a sale agreement; (3-25-13)
- ii. The identity of individuals who will be called to testify as witnesses and a summary of their expected testimony; and (3-25-13)

- iii. For an exemption appeal, information or documents relating to the claimed exemption. ()
- b. In a valuation case the request for production of documents or written interrogatories is limited to information from the last three (3) years preceding the assessment date unless otherwise specified by the Board. (3-25-13)
- c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure. (2-18-05)
- d. The Board may limit or expand the above scope and method of discovery when it deems such action is appropriate. ()
- 03. Scope and Method of Discovery: STC Appeals.** (3-25-13)
- a. Production requests, requests for admissions and written interrogatories are permissible methods of discovery. The Board may limit the scope and method of discovery when it deems such action appropriate. ()
- b. A deposition may be taken when allowed by the Board. ()
- 04. Supplementation of Response.** The party responding to a discovery order is under a continuing duty to promptly supplement an earlier response upon the availability of new information. (3-25-13)
- 05. Special Case.** The Board may order additional or reciprocal discovery not provided by this rule. ()
- 06. Sanctions.** Failure to substantially comply with Board ordered discovery in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeals. (3-25-13)
- 076. -- 084. (RESERVED)**
- 085. INTERVENTION (RULE 85).**
- 01. Intervention of Right.** Upon written application received fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal when: (3-25-13)
- a. The applicant demonstrates in writing an interest relating to the property or transaction which is the subject of the action that is not adequately represented by existing parties; and ()
- b. The Idaho State Tax Commission may intervene as a matter of right. (3-25-13)
- 02. Permissive Intervention.** Upon written application received at least fifteen (15) days prior to the hearing of an appeal a person may be permitted to intervene: ()
- a. In an appeal brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the BOE decision; (3-25-13)
- b. When an applicant's claim or defense and the main action have a question of law or fact in common; or (3-25-13)
- c. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency may be permitted to intervene in the action. (3-25-13)

d. The Board may deny or conditionally grant a petition to intervene for untimely filing that fails to state good cause for the late filing, to prevent disruption or undue delay, due to prejudice to existing parties or undue broadening of the issues, or for other reasons. An intervener who does not file a timely petition is bound by orders and notices earlier entered as a condition of granting the untimely petition. (3-25-13)

086. -- 099. (RESERVED)

100. FAIR HEARING (RULE 100).

01. Hearing Opportunity. All parties shall be afforded an opportunity for a fair hearing to present evidence and argument. ()

02. Purpose of Hearing. The Board's goal in conducting hearings is the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues on appeal. ()

03. Notice of Hearing -- Mailing. A notice of hearing shall be mailed at least twenty (20) days before the date set for hearing. (3-25-13)

04. Setting of Hearing. The Board will schedule a reasonably convenient time and place where each party may appear and offer evidence and argument in support of their position. ()

05. Telephonic Hearing. The Board may conduct a telephonic hearing wherein each participant has an opportunity to participate in the entire hearing. ()

06. Notice of Hearing -- Contents. The notice of hearing shall include: (2-18-05)

a. A statement of the place, date, and time of the hearing; (3-25-13)

b. A statement of the legal authority under which the hearing is to be held; (3-25-13)

c. A reference to the sections of statute or rule concerning the conduct of the hearing; ()

d. The name of the hearing officer who is scheduled to conduct the hearing; and (3-25-13)

e. A short and simple statement of the matters asserted or the issues involved. (3-25-13)

07. Conference or Recess. The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of issues, admissions of fact or identification of documents to avoid unnecessary proof, exchange of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite an orderly hearing. (3-25-13)

101. FAILURE TO APPEAR (RULE 101).

01. Default or Dismissal. Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (4-5-00)

02. Waiver of Appearance. Upon written stipulation of parties that no facts are at issue, an appeal may be submitted to the Board without oral argument. However, the Board may require appearance for argument or presentation of evidence. ()

102. WITHDRAWAL (RULE 102).

An appellant may withdraw the notice of appeal in writing, by electronic filing, or on the record at hearing. ()

103. -- 104. (RESERVED)

105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).

Any appeal may be dismissed by the Board by stipulation, agreed settlement, consent order, or default. For good

cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such order. ()

01. Formalizing Agreements. An agreement by the parties may be put on the record or may be reduced to writing and filed with the Board. (3-25-13)

02. Confidentiality. Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations are not part of the record. (3-25-13)

03. Consideration of Settlement. The Board may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. ()

04. Burden of Proof. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. (3-25-13)

106. PRESIDING OFFICER (RULE 106).

Any member of the Board or assigned hearing officer may preside at the hearing and shall have power to: (3-25-13)

01. Oath or Affirmation. Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence; (4-5-00)

02. Hearing. Regulate the course of the hearing and maintain an orderly proceeding; (4-5-00)

03. Motions. Dispose of procedural requests, motions or similar matters; ()

04. Certification by Board. Make decisions or proposals for decisions subject to certification by a majority of the Board; (3-25-13)

05. Official Record. Develop a full and accurate record and certify the record of said appeal on behalf of the Board; and (3-25-13)

06. Other Action. Take any other appropriate action reasonable under the circumstances. (4-5-00)

107. PROCEDURE AND TESTIMONY (RULE 107).

01. Preliminary Procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion. Parties may then make opening statements. (3-25-13)

02. Testimony. All testimony, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (3-25-13)

03. Order of Procedure. The appellant shall present first with the respondent and any intervenor then presenting. Parties may then make closing statements. The presiding officer may require the submission of briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks is normally allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided. ()

04. Presentation of Evidence. Evidence may be presented in the following order: (4-5-00)

a. Evidence is presented by appellant. (4-5-00)

b. Evidence is presented by any intervening or opposing party. (4-5-00)

c. Rebuttal evidence is presented by appellant. (4-5-00)

d. Surrebuttal evidence is presented by any intervening or opposing party. (4-5-00)

- 05. Examination of Witness.** Regarding any witness who testifies, the following examination may be conducted: ()
- a.** Direct examination by the party who called the witness. (3-25-13)
 - b.** Cross-examination by any intervening or opposing party. (4-5-00)
 - c.** Redirect examination by the party who called the witness. (4-5-00)
 - d.** Recross-examination by any intervening or opposing party. (4-5-00)
 - e.** Examination by the presiding officer. ()

108. -- 109. (RESERVED)

110. STIPULATIONS (RULE 110).

With the approval of the presiding officer the parties may stipulate as to any fact at issue. The stipulation may be filed, or offered through an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation. (3-25-13)

111. CONTINUANCE (RULE 111).

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written motion containing the stipulated agreement and signature of all parties. Timely means at least fifteen (15) days prior to a noticed hearing date. The motion shall show a detailed good cause and contain the specific time extension requested. ()

02. Consideration. Continuances are disfavored by the Board. The Board may grant a single continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance may a second continuance be granted. ()

112. -- 114. (RESERVED)

115. OFFICIAL NOTICE (RULE 115).

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the information sought to be noticed. (3-25-13)

116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).

01. Public Hearings. Hearings conducted by the Board are open to the public except where confidential evidence is being taken under a protective order. ()

02. Closed Deliberations. The Board may recess to closed deliberations for the limited purpose of deciding the matter before it. ()

117. RULES OF EVIDENCE (RULE 117).

01. Evidence, Admissibility and Evaluation. Evidence should be taken by the Board to assist the parties' development of the record. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates evidence. The presiding officer may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any privilege recognized in Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the parties' interests not substantially prejudiced, evidence may be received in written form. The Board's experience, technical

competence and specialized knowledge may be used in the evaluation of evidence. ()

02. Documentary Evidence. Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. (2-18-05)

03. Prepared Testimony. The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. (2-18-05)

04. Objections. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time of objection and before the start of closing statements. ()

05. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board. An evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. ()

06. Offer of Proof. An Offer of Proof for the record consists of a statement of the substance of the evidence to which objection has been sustained. Where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence makes an Offer of Proof to have such evidence considered by the Board. ()

07. Failure to Produce Evidence -- Adverse Inference. The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witness's control. (2-18-05)

08. Post-Hearing Evidence. Unless allowed by the presiding officer, no post-hearing evidence will be accepted. (3-25-13)

118. EXHIBIT (RULE 118).

01. Custody. The Board shall keep all original exhibits unless otherwise provided by law. (3-25-13)

02. Marking. Exhibits will be marked to indicate the sponsoring and offering party. (3-25-13)

03. Form. An exhibit prepared for hearing should be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except a map, chart, photograph or non-documentary exhibit may be introduced on the size or kind of medium customarily used for them. (3-25-13)

04. Copies. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (2-18-05)

05. Objection. An exhibit identified at hearing is subject to appropriate and timely objection before the start of closing statements. A presented exhibit to which no objection is made is automatically admitted into evidence without motion. (3-25-13)

119. -- 124. (RESERVED)

125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).

The decisions and official records in appeals before the Board are public records and are subject to disclosure unless otherwise provided by Title 74, Chapter 1, Idaho Code, or when a protective order, consistent with Title 74, Chapter 1, Idaho Code, is issued. A party may file a motion for a protective order showing good cause why specific information should remain confidential. The motion must include an affidavit as to the truthfulness of the contents. If another party opposes the request, that party must file a written objection within ten (10) days. ()

126. -- 138. (RESERVED)

139. SCOPE OF APPEAL IN AD VALOREM CASE (RULE 139).

In an appeal brought under Section 63-511, Idaho Code, where the appellant challenges only the value or exempt status upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status over the entire property. The Board shall have the power to increase or decrease the value of property in a market value appeal. If the Board finds that a property classification is in error, it shall determine the correct classification. (3-25-13)

140. DECISIONS AND ORDERS (RULE 140).

01. Submission for a Decision. The proceeding will stand submitted for decision after the record is closed by the presiding officer or as otherwise prescribed by the Board. ()

02. Proposed Orders. Prior to a final decision on the merits the Board may request proposed findings of fact and conclusions of law from each party. (3-25-13)

03. Notice. Parties' representatives shall be notified by mail of any final decision or order. (3-25-13)

04. Decisions. A decision of the Board will be based on the official record for the case. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain factual findings and conclusions of law upon which the Board's determination is based. ()

141. -- 144. (RESERVED)

145. RECONSIDERATION -- REHEARING (RULE 145).

01. Time for Filing and Service. A party adversely affected by a final decision may move for reconsideration or rehearing within ten (10) days of the time the decision is mailed. Service on other parties is required. The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or rehearing should be granted. Where the presentation of additional evidence is sought, the motion shall include the reason why such evidence was not presented previously. ()

02. Consideration. Reconsideration or rehearing may be granted if, in reaching the decision the Board has overlooked or misconceived some material fact or statement of law; misconceived a material question in the case; found insufficient evidence in the record; or a party is found to have been denied the opportunity for a fair hearing. ()

03. Answer. Within ten (10) days after a motion for reconsideration or rehearing is filed, another party may file a response in support of or in opposition to said motion. ()

04. Disposition. A motion for reconsideration or rehearing shall be deemed denied if, within thirty (30) days from the date the petition is received by the Board, no response is made by the Board. (3-25-13)

146. -- 150. (RESERVED)

151. OFFICIAL RECORD (RULE 151).

01. Content. The record shall include: (3-25-13)

a. All notices of proceedings; (2-18-05)

b. All appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; ()

c. All intermediate or interlocutory rulings; (2-18-05)

d. All evidence received; (3-25-13)

e. All offers of proof, however made; (2-18-05)

- f. All briefs, memoranda, proposed orders of the parties, statements of position or support, and objections, but not discovery responses; ()
- g. All evidentiary rulings on testimony, exhibits, or offers of proof; (2-18-05)
- h. All taxing authority data submitted in connection with the consideration of the proceeding; (2-18-05)
- i. A statement of matters officially noticed; (2-18-05)
- j. All preliminary orders, final orders, and orders on reconsideration or rehearing; and ()
- k. The recording or transcript specified in Rule 151.02. (3-25-13)

02. Verbatim Record. The official recording of hearings will be taken by means of a recorder. A party requesting a court reporter shall bear the expense of the reporter's fees. If the reporter's transcript is deemed by the Board to be the official transcript, the party requesting the reporter shall furnish the Board a transcript free of charge. ()

03. Cost. A certified copy of a recording will be provided at the cost of ten dollars (\$10). A party may receive one (1) copy at no charge. (3-25-13)

152. -- 154. (RESERVED)

155. SUBPOENA (RULE 155).

01. Issuance of Subpoena. Upon a motion in writing, or upon the Board's own initiative without motion, the Board may issue a subpoena requiring: (3-25-13)

- a. The attendance of a witness from any place in Idaho; (3-25-13)
- b. The production of documents from any place in Idaho; or (3-25-13)
- c. The production of any book, paper, document, or tangible thing kept within or without Idaho to any designated place of deposition or hearing for the purpose of taking testimony or examining a document before the Board. (3-25-13)

02. Motion Contents and Timing. The motion shall be in writing and include a showing of relevance and the reasonable scope of the testimony or specific items sought. The motion for subpoena shall be filed at least fifteen (15) days before the date and time set forth in the subpoena, exceptions may be granted upon a showing of good cause. (3-25-13)

03. Service. Service, and the filing of the proof of such service with the Board, shall be the responsibility of the requesting party. (3-25-13)

04. Fees. A witness summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (3-25-13)

05. Motion to Quash. The Board, upon motion to quash may: ()

- a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-93)
- b. Condition denial of the motion upon reasonable conditions. (3-25-13)

156. REQUEST FOR TRANSCRIPT (RULE 156). The party requesting a written transcript shall make the arrangements for preparation of transcript and payment of the fee directly with the transcriber. ()

157. -- 999. (RESERVED)