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**IDAPA 36
TITLE 01
Chapter 01**

**IDAPA 36 - IDAHO BOARD OF TAX APPEALS
36.01.01 - IDAHO BOARD OF TAX APPEALS RULES**

000. -- 009. (RESERVED).

010. PROCEDURE GOVERNED.

These rules shall govern all practice and procedure before the Board of Tax Appeals of the State of Idaho, hereinafter referred to in these rules as the Board. Regular proceedings shall be governed by Sections 001 through 027 and shall be conducted in conformity with the Administrative Procedure Act set out in Chapter 52, Title 67, of the Idaho Code. Proceedings in the small claims division of the Board shall be governed by Sections 050 through 054. (7-1-93)

011. ORGANIZATION AND OFFICE.

The principal office of the Board shall be at Boise, Idaho, and shall be open each day for the transaction of business, Saturdays and holidays excepted. The Board's address, unless otherwise indicated, will be Idaho Board of Tax Appeals, Statehouse, Boise, Idaho, 83720. The Chairman of the Board shall serve as the administrative officer. (7-1-93)

012. APPEARANCE AND PRACTICE BEFORE THE BOARD.

01. Regular Proceedings. The right to practice before the Board shall be limited to the following classes of persons: (7-1-93)

- a. Taxpayers who are natural persons representing themselves; (7-1-93)
- b. Duly authorized directors, officers or designated employees of corporations representing the corporations of which they are, respectively, directors, officers or employees; (7-1-93)
- c. Partners, joint venturers or trustees representing their respective partnerships, joint ventures or trusts; (7-1-93)
- d. Attorneys duly qualified and entitled to practice in the courts of the state of Idaho; (7-1-93)
- e. Public officer or designated employees when representing the agency of which they are an officer or employee; (7-1-93)
- f. A taxpayer who is physically or mentally incapable of representing himself may designate a representative in writing, with the approval of the Board. (7-1-93)

02. Small Claims Proceedings. The right to appear before the small claims division of the Board shall be limited to the following classes of persons: (7-1-93)

- a. All persons entitled to practice before the Board in regular proceedings. (7-1-93)
- b. Public officials in their official capacity. (7-1-93)
- c. Certified public accountants and licensed public accountants. (7-1-93)
- d. Any other person designated by a taxpayer with the approval of the Board. (7-1-93)

013. PARTIES.

All persons appealing to the Idaho Board of Tax Appeals shall be styled "Appellant". The party or agency answering said appeal shall be styled "Respondent". Parties intervening in an appeal shall be styled "Intervenor". (7-1-93)

014. NOTICE OF APPEAL.

01. Contents. All appeals shall be in writing and shall contain clear and concise statements of the matters that lay a foundation for the relief that may be granted by the Idaho Board of Tax Appeals. All appeals should allege necessary facts to establish jurisdiction of the Board to hear said appeal. (7-1-93)

a. In the case of appeals brought under Section 63-2210, Idaho Code, the notice of appeal should contain a legal description of the property of which the appellant is appealing the valuation; a summary of the findings and rulings of the county commissioners of the county in which said property is located sitting as a board of equalization; a summary of the objections to the findings of the board of equalization and the basis of said objections by the appellant. The notice of appeal should also include a copy of the county's tax assessment statement for the year in question on the property that is the subject of the appeal. In the event such tax assessment statement is not available, the appellant should set out in his appeal the reason for his failure to provide said statement. Appeals brought under Section 63-2210, Idaho Code, must be filed within thirty days after mailing of notice of a decision of the board of county commissioners sitting as a board of equalization or pronouncement of a decision if this is announced at a hearing. Notice of such appeal, stating the grounds therefor, must be filed in duplicate with the county auditor. Appeals filed under Section 63-2210, Idaho Code, cannot be perfected by filing them directly with the Idaho Board of Tax Appeals. A suggested form for notice of appeal is annexed to these rules as exhibit A. (7-1-93)

b. In appeals brought under Section 63-3049, Idaho Code, the notice of appeal should include a copy of the redetermination by the State Tax Commission appealed from and a summary of the objections of the appellant to said redetermination. In the event that a copy of the redetermination appealed from cannot be included in the appeal, the appellant should set out his reason for failing to include a copy of said redetermination. Appeals brought under Section 63-3049, Idaho Code, must be filed with the Board within thirty days after the receipt of notice of the decision of the State Tax Commission denying in whole or in part any protest of the taxpayer. (7-1-93)

c. In appeals brought under Section 63-3632, Idaho Code, the notice of appeal should include a summary of the decision by the State Tax Commission from which the appellant is appealing, a copy of said decision and a summary of the appellant's objections to said decision, together with his basis for said objections. Appeals brought under Section 63-3632, Idaho Code, must be filed with the Board within thirty (30) days of the date on which notice of redetermination is mailed to or served upon the taxpayer. (7-1-93)

02. Defective Appeals - Amendment or Dismissal. Upon the filing of any notice of appeal it will be inspected by the Board and if found to be materially defective or insufficient the Board may dismiss such appeal or require its amendment. If a notice of appeal fails to set out allegations alleging jurisdiction of the Board, or if such allegations are disputed, the Board may require a separate hearing and may hear evidence on the questions of the Board's jurisdiction, or the Board may require proof of jurisdiction at the hearing of the appeal on its merits. (7-1-93)

03. Pleadings. Pleadings before the Idaho Board of Tax Appeals shall be styled after those provided in the Idaho Rules of Civil Procedure. In any case before the Board, the Board may require responsive pleadings from the opposing party in order to clarify the issues raised on appeal. Parties may also file responsive pleadings whenever they feel such pleadings are necessary to clarify the issues raised on appeal, whether required by the Board or not. (7-1-93)

04. Filing and Publication. Notices of appeal to the Board from Idaho State Tax Commission decisions and any other papers required to be filed with the Board shall be deemed filed upon actual receipt by the clerk of the Board or, if mailed, such papers shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date. Papers, including notice of appeal, required to be filed with the county auditor shall be deemed filed upon actual receipt by the county auditor. Upon receiving a notice of appeal to the Board under Section 63-2210, Idaho Code, the county auditor in the county where the notice of appeal is filed shall forward said notice of appeal to the Board, together with a copy of the minutes of the meeting of the county board of equalization dealing with said appeal, or, in the event that no minutes are available, the auditor shall submit to the Board a certified statement to the effect that no such minutes are available. (7-1-93)

05. Service of Documents. All notices, pleadings, orders and decisions, and all other documents of any kind submitted to the Board shall be served upon all other parties or their representatives. Service by mail of such documents will be considered adequate service. If service is made by mail the papers shall be deposited in the post office addressed to the person to whom they are being served, with postage prepaid. Proof of such service must be filed with the Board. An affidavit of service will be considered adequate proof of service. (7-1-93)

06. Computation of Time. In computing any period of time prescribed or allowed by these rules or by any applicable statute, except where contrary to other applicable statutes, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a holiday, in which event the period runs until the end of the next day which is not a holiday. (7-1-93)

015. PREHEARING CONFERENCES.

01. Subject of Conferences. In cases where an appeal is taken before the Board of Tax Appeals the Board may, if in its discretion it is desirable, direct the appellant and the respondent to appear before it to consider: (7-1-93)

- a. Any and all matters that can be agreed upon. (7-1-93)
- b. Stipulations which will avoid unnecessary proof. (7-1-93)
- c. Preliminary motions to be made prior to the hearing. (7-1-93)
- d. At said conference respondent and appellant may be required to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (7-1-93)
- e. Such other matters as will aid in the disposition of the controversy. (7-1-93)

02. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under this Rule may result in a dismissal of that party's appeal or the granting of said appeal as the case may be. (7-1-93)

03. Prehearing Order. The Board or its designate may prepare or require the preparation of an order reciting the action taken at such conference. Such order may supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice. (7-1-93)

04. Determination Upon Results of Conference. If, after the prehearing conference provided for in this Rule, 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 vacate the hearing previously set and determine the appeal upon such evidence and stipulations. (7-1-93)

016. -- 019. (RESERVED).

020. MEMORANDUMS, BRIEFS AND DISCOVERY.

01. Requests for Briefs. Regardless of whether or not a prehearing conference has been held, the Board may request briefs from the parties either prior to the hearing of the evidence or after said hearing as the Board shall designate. (7-1-93)

02. Written Permission. Parties to a pending appeal may engage in discovery if they obtain prior written permission from the Board. The application for permission should contain a short plain statement of the reason discovery is useful to the preparation of the appeal and describe the intended discovery. (7-1-93)

021. INTERVENTION.

01. Intervention of Right. Upon timely application made in writing no later than five (5) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: (7-1-93)

- a. When a statute confers an unconditional right to intervene; (7-1-93)
- b. When the applicant claims an interest relating to the property or transaction which is the subject of

the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. (7-1-93)

c. In any appeal in which it is not a party the Idaho State Tax Commission may intervene as a matter of right. (7-1-93)

02. Permissive Intervention. Upon timely application made in writing no later than five (5) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: (7-1-93)

a. When a statute confers a conditional right to intervene; or (7-1-93)

b. In appeals brought under Section 63-2210, Idaho Code, when an applicant can show that he is a person aggrieved by the decision or that he is a taxpayer of the county in which said appeal was brought; or (7-1-93)

c. When an applicant's claim or defense and the main action have a question of law or fact in common. 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, upon timely application, may be permitted to intervene in the action. In exercising this discretion the Board shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (7-1-93)

022. CONSOLIDATION OF APPEALS.

The Board may consolidate two (2) or more appeals in any one (1) hearing where it appears that the issues are substantially the same and that the rights of the parties will not be prejudiced by such procedure. Where two (2) or more appeals are consolidated for hearing, the presiding officer shall determine the order in which all the parties shall introduce their evidence and which party or parties shall open and close. (7-1-93)

023. HEARING.

01. Setting of Hearing Date. In all instances where a hearing is deemed necessary by the Board, the Board will schedule a time and place each party may appear and offer evidence and arguments in support of his position. Notice of said hearing shall include: (7-1-93)

a. A statement of the time, place and nature of the hearing; (7-1-93)

b. A statement of the legal authority and jurisdiction under which the hearing is to be held; (7-1-93)

c. A reference to the particular sections of the statutes and rules involved; (7-1-93)

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. (7-1-93)

02. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under this Rule may result in a dismissal of that party's appeal or of the granting of the appellant's appeal. (7-1-93)

03. Presiding Officer. Any member of the Board may preside at the hearing and shall have power to: (7-1-93)

a. Administer oaths or affirmations, examine witnesses and receive evidence. (7-1-93)

b. Take or cause depositions to be taken. (7-1-93)

c. Regulate the course of the hearing. (7-1-93)

d. Dispose of the procedural requests, motions or similar matters. (7-1-93)

- e. Make decisions or proposals for decisions (subject to certification by the entire Board). (7-1-93)
 - f. Certify the record of said appeal on behalf of the Board. (7-1-93)
 - g. Take any other appropriate action reasonable in the premises. (7-1-93)
04. Preliminary Procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion or motions. Parties may then make opening statements as they may desire. (7-1-93)
05. Testimony. All testimony to be considered by the Board in formal hearings, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be sworn testimony. (7-1-93)
06. Order of Procedure. The appellant shall go forward to present his case first with the respondent then presenting such matters as he deems proper; provided, however, the order of presentation provided in this section shall have no bearing as to the party's burden of persuasion or proof. The presiding officer may prescribe a different procedure than herein provided if he deems it proper in the premises. (7-1-93)
07. Stipulations. With the approval of the presiding officer the parties may stipulate as to any fact at issue, either by written stipulation or introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence at the hearing. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation of the parties. (7-1-93)
08. Official Notice. The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (7-1-93)
09. Open Hearings. All hearings conducted by the Board shall be open to the public. (7-1-93)
10. Rules of Evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder, may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially any part of the evidence may be received in written form. The presiding officer shall rule on the admissibility of all evidence. Such ruling may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding member or taken under advisement by the presiding member. The presiding member may receive evidence subject to a motion to strike at the conclusion of the hearing. (7-1-93)
11. Objections and Exceptions. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. (7-1-93)
12. Offer of Proof. An Offer of Proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. In any event where the presiding member rules evidence inadmissible, the party seeking to introduce such evidence must make an Offer of Proof regarding it in order to have such evidence considered by the Board. (7-1-93)
13. Sales Data. In all appeals brought under Section 63-2210, Idaho Code, in which comparable sales are used as a basis for proving the market value of property, the Board may require the party offering evidence of comparable sales to provide the Board with a list of comparable sales relied upon by said party together with the terms of the sale, size of the property involved and the dates upon which the sales were transacted. Such compilation

shall also be served upon the opposing party and each of the matters concerning such sales shall be deemed admitted by the opposing party unless, within a period of not more than ten days after the service thereof, the opposing party files with the Board and serves upon the opposing party a sworn statement denying specifically matters regarding said sales or setting forth in detail the reasons why he cannot truthfully admit or deny the genuineness of the compilation provided by the party requesting admission of said evidence. In all appeals brought under Section 63-2210, Idaho Code, in which comparable sales are used as a basis for proving the market value of property, the Board may also require the party offering such evidence to provide the Board with a map of the immediate area surrounding the subject property noting comparable sales and their dates, and further noting whether said property is bare land or improved property. (7-1-93)

14. Scope of Appeal in Ad Valorem Appeals. In all appeals brought under Section 63-2210, Idaho Code, in which the appellant appeals only the value established by the board of equalization upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value of both the bare land and the improvements in spite of the fact that only the valuation upon one or the other is appealed. (7-1-93)

024. DECISIONS AND ORDERS.

01. Submission for a Decision. The proceeding shall stand submitted for decision by the Board after taking of evidence, the filing of briefs or the presentation of oral arguments as may have been prescribed by the Board or the presiding member unless otherwise specifically provided. Provided, however, that if less than the entire Board hears the appeal pursuant to Section 63-3809, Idaho Code, any decision may be certified for consideration by the entire Board either at a hearing or upon a transcript of the hearing held by said member or members and recorded in any suitable manner. (7-1-93)

02. Proposed Orders. When a case stands submitted for final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party. (7-1-93)

03. Service of Orders. Parties shall be notified by mail of any decision or order. Copies of the decision or order shall be served on all parties. (7-1-93)

04. Public Inspection. Decisions and orders of the Board shall be open to public inspection. (7-1-93)

05. Decision of Board. A decision of the Board will be based on the evidence and stipulations made by the parties; when no dispute of facts exists, the decision will be based on conclusions of law made by the Board. Decisions shall contain findings of fact and conclusions of law upon which the Board's determination is based. The Board may, within the limits of its powers, grant or deny the appeal in whole or in part. (7-1-93)

025. REHEARINGS.

01. Time for Filing. A party adversely affected by a decision of the Board may move for rehearing within ten days of the time the decision of the Board is mailed to him. Motions for rehearing shall as to form and content conform to the requirements of Section 014. Filing and service thereof shall conform to the requirements set forth in Subsections 014.04 and 014.05. The rehearing officer will be designated by the chairman of the Board. If the party requesting rehearing so requests, the matter may be determined by the entire Board. If a rehearing by the entire Board is requested it will be conducted at a regular meeting in Boise or a meeting convened for that purpose at Boise or such other place as may be designated by the chairman of the Board. (7-1-93)

02. Procedure at Rehearing. Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board or the presiding member. (7-1-93)

03. Answer to Motion for Rehearing. Within ten days after a motion for rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to said motion. (7-1-93)

026. RECORD.

01. Content. The record shall consist of the original documents, pleadings and papers or photocopies of the originals of said documents, pleadings and papers which have become a part of the official file and a transcript of

the hearing, if any. Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings. (7-1-93)

02. Transcript. The official transcript of the hearing will be taken by means of electronic tape recorder or stenographic notes or both as decided by the Board. Any party desiring the taking of stenographic notes by a qualified court reporter must request such within ten days before the date set for hearing and must submit to the Board or presiding officer the name of the qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's fees and if the reporter's transcript is deemed by the Board or presiding member the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (7-1-93)

03. Cost of Transcript. In the event any party desires a copy of the transcript taken at the hearing, the Board shall provide a certified copy of said transcript to the party so requesting at the cost of two dollars (\$2) per page. Uncertified tapes of the transcript will be provided at the cost of ten dollars (\$10) per forty-five (45) minute tape. (7-1-93)

027. SUBPOENAS.

01. Form. Every subpoena shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony and/or produce the books, papers, documents, or tangible things designated therein at the time and place therein specified. (7-1-93)

02. Issuance to Parties. Upon application of attorneys or other representative authorized to practice before the Board for any party in a proceeding, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. (7-1-93)

03. Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one (1) day's attendance and the mileage allowed by law to a witness in civil cases in the district court. (7-1-93)

04. Fees. Witnesses 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. (7-1-93)

05. Proof of Service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgement of service with the Board. (7-1-93)

06. Quashing. Upon motion made promptly, at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena is issued, the Board may: (7-1-93)

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 just and reasonable conditions. (7-1-93)

07. Enforcement. If any witness shall fail to properly respond to a subpoena, the Board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the Board alleges that the witness failed to respond. (7-1-93)

08. Geographical Scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Idaho at any designated place of hearing. (7-1-93)

028. -- 049. (RESERVED).

050. PROCEDURE FOR SMALL CLAIMS PROCEEDINGS.

The following rules shall govern practice and procedure before the Board in all proceedings not held pursuant to the Administrative Procedure Act as regular proceedings. (7-1-93)

051. INCORPORATION OF RULES FOR REGULAR PROCEEDINGS.

The following rules which are applicable to regular proceedings shall also apply to proceedings before the small claims division: Section 010, Procedure Governed; Section 011, Organization and Office; Section 012, Appearance and Practice Before the Board; Section 013, Parties; Section 014, Notice of Appeal; Section 020, Memorandum and Briefs; Section 022, Consolidation of Appeals; Section 026, Record; Section 027, Subpoenas. (7-1-93)

052. ELECTION.

Written notice of election to proceed in the small claims division shall be filed with the Board within twenty (20) days of the date upon which notice that the Board has received his appeal is mailed to or served upon appellant. (7-1-93)

053. SMALL CLAIMS HEARING.

Incorporation of Rules for Regular Hearings. The following rules which are applicable to regular hearings shall also apply to hearings before the small claims division: Subsection 023.01, Setting of Hearing Date; Subsection 023.02, Failure to Appeal; Subsection 023.03, Presiding Office; Subsection 023.04, Preliminary Procedure; Subsection 023.06, Order of Procedure; Subsection 023.07, Stipulations; Subsection 023.09, Open Hearings; Subsection 023.14, Scope of Appeal in Ad Valorem Appeals. (7-1-93)

054. SMALL CLAIMS DECISIONS.

01. Decision of Board. A decision will be based on the evidence and stipulations made by the parties and shall consist of a simple statement identifying the prevailing party and the relief, if any, to be granted. The Board may, within the limits of its powers, grant or deny the appeal in whole or in part. (7-1-93)

02. Service of Orders. Parties shall be notified by mail of any decision or order. Copies of the decision or order shall be served on all parties. (7-1-93)

03. Public Inspection. Decisions and orders shall be open to public inspection. (7-1-93)

055. -- 999. (RESERVED).