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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. LEGAL AUTHORITY.

In accordance with Section 63-3808, Idaho Code, the Idaho Board of Tax Appeals shall promulgate rules implementing the provisions of the Idaho Statutes relating to the Board of Tax Appeals, Chapter 38, Title 63, and Chapter 52, Title 67, Idaho Code. (4-5-00)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 36.01.01, "Idaho Board of Tax Appeals Rules". (4-5-00)

02. Scope. These rules shall govern all procedures before the Idaho Board of Tax Appeals. (4-5-00)

002. WRITTEN INTERPRETATIONS.

The Board does not have written interpretations of these rules. (4-5-00)

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeal before the Board under this chapter. Board decisions are appealable to the district court as provided by law. (4-5-00)

004. PUBLIC RECORDS ACT.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. Except as provided by Section 125, all materials filed with the Board pursuant to these rules and all materials issued by the Board pursuant to these rules are public documents subject to inspection, examination and copying. (4-5-00)

005. DEFINITIONS AND ABBREVIATION.

As used in this chapter: (4-5-00)

01. Appellant. Means any party, person, natural or otherwise, or governmental subdivision or agency appealing to the Idaho Board of Tax Appeals. (4-5-00)

02. Board. Means the Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (4-5-00)

03. Case File. Means the official record maintained by the board regarding an appeal. The case file is a file folder(s) containing the documentary record including submissions from the parties, plus any recordings of hearings. (4-5-00)

04. Comparable Sales. Means recently sold properties that are similar in important respects to the property being appraised. (4-5-00)

05. De Novo. Means the board will decide questions of fact and of law based on the evidence and legal arguments presented in the proceedings before the Board. Parties will need to be prepared to present all exhibits, testimony and argument presented previously to the county board of equalization or the State Tax Commission, or in any other proceedings involving the tax dispute. New evidence and argument may also be presented. (4-5-00)

06. Findings Of fact And Conclusions Of Law. Means concise statements of the determinations made as to contested issues of fact, and statements of the applicable law as determined by the Board which are applicable to the findings of fact. (4-5-00)

- 07. Intervenor.** Means any party voluntarily intervening in an appeal who meets the qualifications and requirements for intervention under Section 085. (4-5-00)
- 08. Parcel.** Means each separate property ownership as represented by the county assessment rolls. (4-5-00)
- 09. Party.** Means any person, natural or otherwise, or governmental subdivision or agency entitled to or appearing before the Board in any proceedings of the Board. (4-5-00)
- 10. Presiding Officer Or Hearing Officer.** Means any member of the Board, or any person who is assigned to conduct a conference or hearing by the Board. The presiding officer shall have authority as provided by Section 106. (4-5-00)
- 11. Respondent.** Means any party answering or otherwise responding to an appeal. (4-5-00)
- 12. Subject Property.** Means the property being appraised. (4-5-00)
- 13. Substantive Issue.** Means an issue where a substantive right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matters dealt with by the Board. (4-5-00)
- 14. BTA.** Means Idaho Board of Tax Appeals. (4-5-00)
- 15. BOE.** Means County Board of Equalization. (4-5-00)
- 16. STC.** Means Idaho State Tax Commission. (4-5-00)

006. -- 019. (RESERVED).

020. PROCEDURE GOVERNED.

01. Procedure. 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 159 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 160 through 170. (4-5-00)

02. Purpose. The purpose for the law providing for the establishment of the Idaho Board of Tax Appeals is to provide an independent, fair, expeditious, 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. (4-5-00)

021. LIBERAL CONSTRUCTION.

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. (4-5-00)

022. -- 024. (RESERVED).

025. ORGANIZATION AND OFFICE.

01. Office. The principal office of the Board shall be at Boise, Idaho, and shall be open each day for the transaction of business, Saturdays, Sundays, and legal holidays excepted. The Board's mailing address, unless otherwise indicated, will be Idaho Board of Tax Appeals, P.O. Box 83720, Boise, Idaho, 83720-0088. The Board's street address is 3380 Americana Terrace Suite 110, Boise, Idaho, 83706. The Board's telephone number is 208-334-3354 and its FAX number is 208-334-4060. (4-5-00)

02. Chairman. The Chairman of the Board shall serve as the administrative officer. (4-5-00)

a. Election. The Chairman shall 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. (4-5-00)

b. Power. The Chairman shall oversee the issuance of acknowledgment letters, notices of hearing, notices of show cause hearings, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result. (4-5-00)

026. -- 029. (RESERVED).

030. APPEARANCE AND PRACTICE BEFORE THE BOARD.

All Proceedings. The right to appear and practice before the Board shall be limited to the following classes of persons: (4-5-00)

01. Natural Persons. Parties who are natural persons representing themselves; (4-5-00)

02. Authorized Persons. Duly authorized directors, officers or designated full-time salaried employees of corporations representing the corporations of which they are, respectively, directors, officers or employees; (4-5-00)

03. Authorized Representation. Duly authorized partners, joint venturers, designated full-time salaried employees, or trustees representing their respective partnerships, joint ventures or trusts; (4-5-00)

04. Authorized Attorneys. Attorneys duly authorized, who are qualified and entitled to practice in the courts of the state of Idaho; (4-5-00)

05. Officers Or Employees. Public officer or designated employees when representing the agency of which they are an officer or employee; (7-1-93)

06. Board Approved Power Of Attorney. A party may designate a representative in writing through a Board approved power of attorney; (4-5-00)

07. Intervention. Parties entitled to intervene under Section 085. (4-5-00)

031. -- 034. (RESERVED).

035. CONDUCT.

A party to an appeal, or representative, shall conduct themselves in all proceedings before the Board in an ethical, respectful, and courteous manner. (4-5-00)

036. ENFORCEMENT.

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 repeated delays, the failure to comply with a subpoena, discovery order, discovery procedure abuses, and any other matter regarding conduct of the appeal. In imposing sanctions, the Board shall be guided by the practices of the courts of this state in imposing sanctions for similar offences in civil proceedings. Board sanctions shall include, but not be limited to, dismissal of an appeal or the granting of default judgment. (4-5-00)

037. EX PARTE COMMUNICATIONS.

Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party or representative, except upon notice and opportunity for all parties to participate in the communication. (4-5-00)

038. -- 039. (RESERVED).

040. PARTIES.

All parties appealing to the Idaho Board of Tax Appeals shall be known as "Appellant". The party or agency answering said appeal shall be known as "Respondent". Parties intervening in an appeal shall be known as "Intervenor". (4-5-00)

041. -- 044. (RESERVED).

045. NOTICE OF APPEAL -- 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 shall allege necessary facts to establish jurisdiction of the Board to hear said appeal. (4-5-00)

01. Appeals. All appeals shall contain: (4-5-00)

a. Appellant's full name; (4-5-00)

b. Current mailing address; (4-5-00)

c. Tax year(s) being appealed; and (4-5-00)

d. The telephone number where the appellant can be reached during normal daytime business hours. (4-5-00)

02. Appeal Filed By An Attorney Or Representative. If any appeal is filed by an attorney or other representative, the pleading shall contain: (4-5-00)

a. The attorney's or representative's name, address, telephone number; and (4-5-00)

b. For attorneys, the Idaho State Bar License number. Representatives shall include a power of attorney from the appellant. (4-5-00)

03. Board Must Be Informed Of Any Changes In Address Or Phone Number. Parties and representatives must keep the Board informed of any changes in address or telephone number. (4-5-00)

046. NOTICE OF APPEAL -- BOE APPEALS.

01. Separate Notice. The party filing the appeal shall substantially complete one (1) Appeal Form approved by the Board, or a separate notice of appeal, for any parcel/assessment of property for which an appeal is brought. Blank Appeal Forms shall be provided by the Board to each county auditor annually by May 1. (4-5-00)

02. Contents BOE Appeals. In the case of appeals brought under Section 63-511, Idaho Code, the notice of appeal shall substantially contain: (4-5-00)

a. A legal description of the property on which the appellant is appealing the valuation; (4-5-00)

b. 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 and when available a copy of the final decision of the county board of equalization; (4-5-00)

c. A summary of the objections to the findings of the board of equalization and the basis of said objections by the appellant to include a clear declaration of the market value alleged by the appellant, and in the case of a property tax exemption claim, the code section(s) involved and a summary of the factual basis supporting why exempt status should be granted or denied; (4-5-00)

d. An attached copy of the county's final tax assessment notice for the year in question on the property that is the subject of the appeal. In the event such tax assessment notice is not available, the appellant should set out in his appeal the reason for his failure to provide said notice; and (4-5-00)

e. A statement that the appellant or qualified representative has read the notice of appeal and believes the contents to be true, followed by the person's signature, and the signature of their attorney or representative, if any. (4-5-00)

03. Time Limit And Filing Place. Appeals brought under Section 63-511, Idaho Code, must be filed within thirty (30) 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 in the county in which the property assessment originated. Appeals filed under Section 63-511, Idaho Code, cannot be perfected by filing them directly with the Idaho Board of Tax Appeals. Appeals not timely filed as provided by statute and Section 046 shall be dismissed. (4-5-00)

047. NOTICE OF APPEAL -- STC APPEALS.

01. Section 63-3049, Idaho Code. 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, a summary of the objections of the appellant to said redetermination, and a summary of the basis for said objections. If the amount in dispute is different from the redetermination or deficiency determination decision, then a statement of the amount in dispute shall be included with the notice of appeal. In the event that a copy of the redetermination or decision appealed from cannot be included in the appeal, the appellant should set out his reason for failing to include a copy of said redetermination or decision. Appeals brought under Section 63-3049, Idaho Code, must be filed with the Board within ninety-one (91) 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. (4-5-00)

02. Section 63-3632, Idaho Code. 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 or decision is mailed to or served upon the taxpayer. (4-5-00)

048. NOTICE OF APPEAL -- 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 not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal or require its amendment. After notice from the Board, the appellant shall have fourteen (14) days to amend and perfect such appeal. 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. (4-5-00)

049. NOTICE OF APPEAL -- ACKNOWLEDGMENT LETTER.

The Board will acknowledge receipt of a notice of appeal. When a perfected appeal has been filed, the Board shall provide the appellant with a written acknowledgment of the appeal within fourteen (14) days of receipt of appeal in BTA office. (4-5-00)

050. NOTICE OF APPEAL -- RESPONSE.

A respondent or intervenor may file with the Board a response/answer to a notice of appeal. If filed, the party filing the response shall file the original with the Board at least ten (10) business days prior to hearing and must serve a copy thereof upon all other parties in accordance with the provisions of this chapter. (4-5-00)

051. NOTICE OF APPEAL -- FILING.

01. Filing. 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 or, if mailed, such notice shall be deemed filed as of the federal post office

postmark date. Postage meters do not designate the mailing date. (4-5-00)

02. County Auditor. Upon receiving a notice of appeal to the Board under Section 63-511, 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 any available exhibits or other evidence considered by the BOE including a copy of the written appeal to the BOE and a copy of the minutes of the meeting(s) 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. The minutes shall include at a minimum: (4-5-00)

- a. The full name of persons appearing before the Board of Equalization in the appeal. (4-5-00)
- b. Clear identification of the parcel(s)/assessment(s) appealed. (4-5-00)
- c. The decision made or action taken by the BOE indicating clearly the value or exempt status decided for each parcel/assessment considered. (4-5-00)
- d. A summary of the basis for any decision made or action taken by the BOE. (4-5-00)

052. -- 054. (RESERVED).

055. CONSOLIDATION -- HEARINGS AND DECISIONS.

01. Appeals And Hearings. Whenever it shall appear to the Board or presiding officer that two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues as well as the same or similar property classes or subclasses, such as assessment categories, or where the same or similar issues exist in other tax type cases, the Board or presiding officer may issue a written or verbal order consolidating the cases for hearing. There shall be no consolidation of cases where the rights of any party would be prejudiced by such procedure. Two (2) or more parties to appeals may also request in writing that cases be consolidated under the same criteria listed above. The Board or presiding officer in issuing a consolidation order in ad valorem appeals shall consider: whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in determining the disposition of the matter. In a consolidated hearing the presiding officer determines the order of the proceeding. (4-5-00)

02. Decisions. The Board may at its discretion issue a written decision in a consolidated format. (4-5-00)

056. -- 059. (RESERVED).

060. PLEADINGS.

Pleadings before the Idaho Board of Tax Appeals shall be styled after those provided in the Idaho Rules of Civil Procedure. All pleadings, letters, petitions, briefs, notices, and other documents shall be on white, eight and one-half inches by eleven inches (8-1/2 x 11) paper, legibly written, printed, or typewritten on one (1) side only and include the current mailing address and telephone number and be signed by the appropriate authorized party or any representative of record submitting the same. 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. (4-5-00)

061. SERVICE OF DOCUMENTS.

All notices, pleadings, exhibits, papers, orders, decisions, and all other documents of any kind submitted to the Board shall be served upon all other parties, counsel, or parties' representatives of record. Service by regular mail of such documents will be considered adequate service. If service is made by mail the papers shall be deposited in the post office properly 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 or certificate of service, or acknowledgment of service will be considered adequate proof of service. Decisions or orders of the Board shall be served upon both the party and party's counsel or representative of record, if any. (4-5-00)

062. -- 064. (RESERVED).

065. 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 in the count unless it is a holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. (4-5-00)

066. FILING OF DOCUMENTS.

All documents filed with the Board shall be filed with the clerk of the Board and filed at its Boise office address. Unless otherwise indicated by the Board, one (1) copy shall be filed. (4-5-00)

067. -- 069. (RESERVED).

070. PREHEARING CONFERENCES.

01. Subject Of Conferences. The Board may direct the appellant, respondent, and any intervenor to appear before it to consider: (4-5-00)

- 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. Failure To Appear. Failure of either party to appear at the time and place appointed by the Board under Section 070 may result in a dismissal of that party's appeal or the granting of said appeal as the case may be. (4-5-00)

03. 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. Such order shall supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice. (4-5-00)

04. Determination Upon Results Of Conference. If, after the prehearing conference provided for in Section 070, 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. (4-5-00)

071. -- 074. (RESERVED).

075. MEMORANDUMS, BRIEFS AND DISCOVERY.

01. Requests For Briefs. Regardless of whether or not a prehearing conference has been held, the Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. (4-5-00)

02. Discovery -- Written Permission. Parties to a pending appeal may engage in discovery if they obtain prior written permission from the Board. The application for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Discovery shall be completed at least ten (10) days prior to scheduled hearing. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. 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. (4-5-00)

076. -- 084. (RESERVED).

085. INTERVENTION.

01. Intervention Of Right. Upon timely application made in writing no later than ten (10) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: (4-5-00)

a. When a statute confers an unconditional right to intervene; (7-1-93)

b. When the applicant claims in writing 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. (4-5-00)

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 ten (10) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: (4-5-00)

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

b. In appeals brought under Section 63-511, Idaho Code, when an applicant can show in writing 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 (4-5-00)

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 in writing, 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. (4-5-00)

086. -- 099. (RESERVED).

100. FAIR HEARING.

01. Hearing Opportunity. In any case appealed to the Board, all parties shall be afforded an opportunity for a fair hearing after notice of hearing is provided. Opportunity shall be afforded all parties to present evidence and argument. (4-5-00)

02. Purpose Of Hearing. The Board's goal in conducting hearings shall be the acquisition of sufficient, accurate evidence to support a fair and just determination. (4-5-00)

03. Notice Of Hearing -- Mailing. Notice of place, date, and hour of all hearings shall be mailed at least twenty (20) days before the date set for hearing. (4-5-00)

04. 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. (4-5-00)

05. Telephonic Hearing. The Board may conduct telephonic hearings where each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (4-5-00)

06. Notice Of Hearing. The notice of hearing shall include: (4-5-00)

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 concerning the Board's legal authority to conduct the hearing; (4-5-00)

d. The name of the hearing officer who will conduct the hearing; (4-5-00)

e. A short and simple statement of the matters asserted or the issues involved. 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. (4-5-00)

101. FAILURE TO APPEAR -- DEFAULT OR DISMISSAL -- SETTING ASIDE -- APPEARANCES.

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. Setting Aside. Within ten (10) days after service of a default or dismissal order under Section 101, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The objection must be served on all other parties to the appeal and their representatives in accordance with the requirements of this chapter. The Board may, for good cause, set aside an entry of dismissal, default, or final order. (4-5-00)

03. Waiver Of Parties' Appearance. Upon written stipulation of both parties that no facts are at issue, an appeal may be submitted to the Board with or without oral argument. However, the Board in its discretion may require appearance for argument or the collection of evidence. (4-5-00)

102. -- 104. (RESERVED).

105. INFORMAL DISPOSITION.

Any action may be dismissed by the Board by stipulation, agreed written 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 entry, judgment, or order. (4-5-00)

106. PRESIDING OFFICER.

Any member(s) of the Board or assigned hearing officer(s) may preside at the hearing and shall have power to: (4-5-00)

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

- 03. Hearing.** Regulate the course of the hearing and maintain an orderly proceeding. (4-5-00)
- 04. Motions.** Dispose of the procedural requests, motions or similar matters. (7-1-93)
- 05. Certification By Board.** Make decisions or proposals for decisions (subject to certification by the entire Board or a majority of the Board). (4-5-00)
- 06. Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board. (4-5-00)
- 07. Other Action.** Take any other appropriate action reasonable under the circumstances. (4-5-00)
- 107. PROCEDURE AND TESTIMONY.**
- 01. 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)
- 02. 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 taken only on oath or affirmation. (4-5-00)
- 03. Order Of Procedure.** The appellant shall go forward to present his case first with the respondent and any intervenor then presenting such matters as he deems proper; provided, however, the order of presentation provided in Section 107 shall have no bearing as to the party's burden of persuasion or proof. Parties may then make closing statements as they may desire in the same order as the presentation of evidence. The presiding officer may require that the parties submit briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks shall be allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided if he deems it proper. (4-5-00)
- 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 Witnesses.** With regard to any witness who testifies, the following examination may be conducted: (4-5-00)
- a.** Direct examination conducted by the party who called the witness. (4-5-00)
 - 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 hearing officer. (4-5-00)
- 108. -- 109. (RESERVED).**
- 110. 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 hearing 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. (4-5-00)

111. CONTINUANCE -- EXTENSIONS OF TIME.

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written request/motion containing the stipulated agreement and signature of all parties to the appeal. The request/motion shall clearly and convincingly show good cause and contain the specific time extension requested. (4-5-00)

02. Consideration. Continuances shall be generally disfavored by the Board. The Board shall grant, or require on its own initiative, a 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 shall a second continuance be granted. (4-5-00)

112. -- 114. (RESERVED).

115. OFFICIAL NOTICE.

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, or by reference in preliminary reports or otherwise, of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the document. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (4-5-00)

116. OPEN HEARINGS AND DELIBERATIONS.

01. Public Hearings. All hearings conducted by the Board shall be open to the public except where confidential evidence is being taken under a protective order. (4-5-00)

02. Closed Deliberations. After hearing and the close of the record, the Board may recess to closed deliberations for the limited purpose of deciding the matter before it. (4-5-00)

117. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE.

01. 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 serious 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 and may grant exceptions to the requirements of Section 117 in the interest of justice. 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 officer or taken under advisement by the presiding officer. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. (4-5-00)

02. Objections And Exceptions. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time the evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken. (4-5-00)

03. 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 officer 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. (4-5-00)

118. EXHIBITS.

The Board shall keep all original exhibits in its care and custody unless otherwise provided by law. Exhibits will be marked by the presiding officer indicating the sponsoring and offering party. (4-5-00)

119. -- 124. (RESERVED).

125. CONFIDENTIALITY -- PROTECTIVE ORDERS.

The decisions and record in appeals before the Board are public records unless otherwise provided by Title 9, Chapter 3, Idaho Code, or a protective order, consistent with Title 9, Chapter 3, Idaho Code, is issued by the Board requiring that specified parts of the record be kept confidential. A party may file a motion for a protective order showing legal cause why specific information in the record, or likely to become part of the record through discovery or evidence obtained at hearing, should remain confidential. The motion must be in the form of a sworn affidavit. The taxpayer requesting a protective order must serve a copy of the request on all other parties and the parties' representatives in accordance with the requirements of this chapter. If any other party opposes the request for a protective order, the party must file a written opposition within ten (10) days of the date of service of the request. (4-5-00)

126. -- 134. (RESERVED).

135. SCOPE OF APPEAL IN AD VALOREM APPEALS.

In all appeals brought under Section 63-511, Idaho Code, in which the appellant appeals only the value or exempt status 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 or exempt status upon one or the other is appealed. The Board shall have the power to increase or decrease the value of property in market value appeals regardless of which party appealed. If the Board finds that a property classification is in error, it shall determine the correct classification. (4-5-00)

136. -- 139. (RESERVED).

140. 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 officer unless otherwise specifically provided. (4-5-00)

02. Post Hearing Evidence. Unless requested by the Board, no posthearing evidence will be accepted unless such evidence was in existence at the time of hearing, is new evidence rather than supportive or cumulative evidence, and could not reasonably have been anticipated or discovered prior to hearing. (4-5-00)

03. 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)

04. Decisions. Board decisions are binding only for the tax year or years at issue. In connection with any appeal the Board may sustain, reverse, or modify any decision being appealed. A recommended decision or substantive order shall become final when signed by at least two (2) board members. Any member who dissents or concurs may state their reasons. (4-5-00)

05. Evaluation Of Evidence. The Board may use its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. (4-5-00)

06. 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 and the parties' representatives of record. (4-5-00)

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

08. 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. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain separately stated

findings of fact and conclusions of law upon which the Board's determination is based. (4-5-00)

141. -- 144. (RESERVED).

145. RECONSIDERATIONS -- REHEARINGS.

01. Time For Filing. A party adversely affected by a decision of the Board may move for reconsideration or rehearing within ten (10) days of the time the decision of the Board is mailed to him. Motions for reconsideration or rehearing shall, as to form and content, conform to the requirements of Section 045. The petition must file a supporting brief making a strong showing of good cause why reconsideration or a rehearing should be granted. In a motion for rehearing where the presentation of additional evidence is planned, the motion shall include the reason why such evidence was not presented previously. Filing and service thereof shall conform to the requirements set forth in Sections 045 and 046. 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 and granted 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. (4-5-00)

02. Consideration. Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board or presiding officer has overlooked or misconceived some material fact or proposition of law; misconceived a material question in the case; applied law in the ruling that has subsequently changed; or a party is found to have been denied the opportunity for a fair hearing. (4-5-00)

03. Procedure For Reconsideration. Reconsideration is based on the record, unless the Board allows additional evidence and argument. (4-5-00)

04. 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 officer. (4-5-00)

05. Answer To Motion For Reconsideration Or Rehearing. Within ten (10) days after a motion for reconsideration or rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to said motion. A copy of the answer must be served on other parties and the representatives of record for such parties. (4-5-00)

06. Disposition. A petition for reconsideration or rehearing shall be deemed denied if, within twenty (20) days from the date the petition is received by the Board, no response is made by the Board. (4-5-00)

146. -- 150. (RESERVED).

151. RECORD.

01. Content. The record shall consist of the original documents, correspondence between the Board and parties, pleadings and papers or photocopies of the originals of said documents, correspondence, photographs, 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. (4-5-00)

02. Transcript. The official transcript of the hearing will be taken by means of electronic tape recorder. Any party desiring the taking of stenographic notes by a qualified court reporter must request such within ten (10) 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 officer the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (4-5-00)

03. Cost Of Transcript. Uncertified tapes of the transcript will be provided at the cost of ten dollars (\$10) per forty-five (45) minute tape. (4-5-00)

152. -- 154. (RESERVED).

155. SUBPOENAS.

01. Form And Purpose. Every subpoena shall be prepared by the requesting party or at the Board's own motion and 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. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing. (4-5-00)

02. Issuance To Parties. Upon written application of parties, attorneys or other representative authorized to practice before the Board for any party in a proceeding, including a showing of relevance and the reasonable scope of the testimony or evidence sought, 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. (4-5-00)

03. Service. Service shall be the responsibility of the requesting party. 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. (4-5-00)

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 acknowledgment 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 was 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)

156. -- 999. (RESERVED).

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