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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 (RULE 0).**

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 (RULE 1).**

**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 (RULE 2).**

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

**003. ADMINISTRATIVE APPEALS (RULE 3).**

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. (RESERVED).**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).**

The principal office of the Board shall be at Boise, Idaho, and shall be open each day for the transaction of business and filing of documents between the hours of 8:00 a.m. and 5:00 p.m., 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. (2-18-05)

**006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).**

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. (2-18-05)

**007. -- 009. (RESERVED).**

**010. DEFINITIONS (RULE 10).**

As used in this chapter: (2-18-05)

**01. Answer.** Response to allegations, requests or claims of an appeal. (2-18-05)

**02. Appellant.** A party, person, natural or otherwise, or governmental subdivision or agency appealing to the Idaho Board of Tax Appeals. (2-18-05)

**03. Board.** Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (2-18-05)

**04. Case File.** 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. (2-18-05)

- 05. Comparable Sales.** Recently sold properties that are similar in important respects to the property being appraised. (2-18-05)
- 06. De Novo.** The Board will decide questions of fact and of law based on the evidence and legal arguments presented in the proceedings before the Board. (2-18-05)
- 07. Findings of Fact and Conclusions of Law.** 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. (2-18-05)
- 08. Intervenor.** Any party voluntarily intervening in an appeal who meets the qualifications and requirements for intervention under Section 085. (2-18-05)
- 09. Parcel.** Each separate property ownership as represented by the county assessment rolls. (2-18-05)
- 10. Party.** A person, natural or otherwise, or governmental subdivision or agency authorized to appear before the Board in any proceedings of the Board. (2-18-05)
- 11. Presiding Officer or Hearing Officer.** A 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 Rule 106. (2-18-05)
- 12. Respondent.** A party answering or otherwise responding to an appeal. (2-18-05)
- 13. Subject Property.** The property under discussion. (2-18-05)
- 14. 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 matters dealt with by the Board. (2-18-05)

**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 shall serve as the administrative officer. (2-18-05)

- 01. 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. (2-18-05)
- 02. 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. (2-18-05)

**013. -- 019. (RESERVED).**

**020. PROCEDURE GOVERNED (RULE 20).**

- 01. Procedure.** These rules shall govern all practice and procedure before the Board of Tax Appeals, hereinafter referred to in these rules as 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". (2-18-05)

**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 (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. CITATION (RULE 22).**

The official citation of this chapter is IDAPA 36.01.01, et seq. For example, this section's citation is IDAPA 36.01.01.022. In documents submitted to the Board or issued by the Board, these rules may be cited as BTA (Board of Tax Appeals) and rule number less leading zeroes. For example, this rule may be cited as BTA Rule 22. (2-18-05)

**023. -- 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. INITIAL PLEADING BY PARTY - LISTING OF REPRESENTATIVES (RULE 31).**

The initial pleading of each party at the formal stage of a contested case must name the party's representative(s) for service of documents and shall state the representative's(s') address(es) for the purpose of receipt of all documents. Unless authorized by order of the Board, no more than two (2) representatives for service of documents may be listed. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the first person signing the pleading will be considered the party's representative. The representative shall provide proof of authorization when representing another person, a corporation, partnership, joint venture, trust or governmental agency. (2-18-05)

**032. SUBSTITUTION OR WITHDRAWAL OF REPRESENTATIVE (RULE 32).**

A party's representative may be changed and a new representative substituted by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at hearing. Representatives who wish to withdraw, must immediately file a written notice of withdrawal. (2-18-05)

**033. TAKING OF APPEARANCES -- PARTICIPATION BY TAXING AUTHORITY STAFF (RULE 33).**

In all proceedings in which the 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 any party, or upon the board's motion, a representative of the taxing authority shall appear at any hearing and be available for cross-examination and shall further participate in the hearing in the same manner as a party. (2-18-05)

**034. (RESERVED).**

**035. CONDUCT (RULE 35).**

A party to an appeal, or representative, shall conduct themselves in all proceedings before the Board in an ethical, respectful, and courteous manner. (2-18-05)

**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, discovery order, discovery procedure abuses, and any other matter regarding conduct of the appeal. In imposing sanctions, the Board shall be allowed to use its discretion and 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. (2-18-05)

**037. EX PARTE COMMUNICATIONS (RULE 37).**

Unless required for the fair disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. When a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (2-18-05)

**038. -- 039. (RESERVED).**

**040. PARTIES (RULE 40).**

A party 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". A party intervening in an appeal shall be known as "Intervenor". (2-18-05)

**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 (RULE 46).**

**01. Separate Notice.** The party filing the appeal shall complete an Appeal Form approved by the Board, or a separate notice of appeal. A separate Appeal Form will be completed for each parcel/assessment of property appealed. Blank Appeal Forms shall be provided by the Board to each county auditor annually by May 1. (2-18-05)

**02. Contents BOE Appeals.** In the case of appeals brought under Section 63-511, Idaho Code, the notice of appeal shall contain: (2-18-05)

- a.** A legal description of the property on which the appellant is appealing the valuation; (4-5-00)
- b.** A copy of the final decision of the county board of equalization; (2-18-05)
- c.** 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; (2-18-05)
- d.** A copy of the county's final tax assessment notice for the year in question on the property that is the subject of the appeal; and (2-18-05)
- 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, or the signature of their attorney or representative. (2-18-05)

**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, must be filed 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 Rule 46 shall be dismissed. (2-18-05)

**047. NOTICE OF APPEAL -- STC APPEALS (RULE 47).**

**01. Contents STC Appeals.** In appeals brought under Section 63-3049, Idaho Code, the notice of appeal shall include: (2-18-05)

- a.** A copy of the redetermination or final decision by the State Tax Commission appealed from; (2-18-05)
- b.** The objections of the appellant to the redetermination or final decision; (2-18-05)
- c.** The basis for said objections; (2-18-05)
- d.** A statement of the amount in dispute shall be included with the notice of appeal if the amount in

dispute is different from the redetermination or deficiency determination decision; and (2-18-05)

**e.** Proof of compliance with the mandatory deposit requirements as provided in Section 63-3049, Idaho Code, in the form of a receipt from the State Tax Commission. (2-18-05)

**02. Perfected Appeal - Filing Time.** 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. (2-18-05)

**048. NOTICE OF APPEAL -- DEFECTIVE APPEALS (RULE 48).**

**01. 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. Failure to perfect the appeal may result in dismissal of the appeal without further notice. (2-18-05)

**02. Jurisdiction.** 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. (2-18-05)

**049. NOTICE OF APPEAL -- ACKNOWLEDGMENT LETTER (RULE 49).**

The Board will acknowledge receipt of a notice of appeal within fourteen (14) days of receipt of appeal in the Board's office. (2-18-05)

**050. NOTICE OF APPEAL -- RESPONSE (RULE 50).**

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 STC APPEALS (RULE 51).**

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. (2-18-05)

**052. NOTICE OF APPEAL -- FILING BOE APPEALS (RULE 52).**

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. (2-18-05)

**01. 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 to the Board: (2-18-05)

**a.** The notice of appeal including the filing date; (2-18-05)

**b.** Any available exhibits or other evidence considered by the BOE; (2-18-05)

**c.** A copy of the written appeal to the BOE; (2-18-05)

**d.** A copy of any decision made or action taken by the BOE; and (2-18-05)

**e.** A copy of the minutes of the meeting(s) of the BOE dealing with said appeal. (2-18-05)

**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(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)

**053. -- 054. (RESERVED).**

**055. CONSOLIDATION -- HEARINGS AND DECISIONS (RULE 55).**

**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. FORM OF PLEADINGS (RULE 60).**

**01. Form.** All pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record must: (2-18-05)

**a.** Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only and be legibly written; (2-18-05)

**b.** State the title of the pleading and the appeal number, if assigned, at the top of the cover page; (2-18-05)

**c.** Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; (2-18-05)

**d.** Have at least one inch (1") left and top margins; (2-18-05)

**e.** The Board may require a response from the opposing party in order to clarify the issues raised on appeal. Parties may also file a response whenever they feel such is necessary to clarify the issues raised on appeal, whether required by the Board or not; and (2-18-05)

**f.** Must be signed by the appropriate authorized party or any representative of record submitting the same. (2-18-05)

**02. Example.** Documents complying with this rule will be in the following form: (2-18-05)

Name of Representative  
Mailing Address of Representative  
Street Address of Representative (if different)  
Telephone Number of Representative  
FAX Number of Representative (if there is one)

Attorney/Representative for (Name of Party)

BEFORE THE BOARD OF TAX APPEALS

(Title of Proceeding) APPEAL NO.

( ) (TITLE OF DOCUMENT)

(2-18-05)

**061. SERVICE OF DOCUMENTS (RULE 61).**

**01. Service.** 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. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (2-18-05)

**02. Proof of Service.** Every document filed with and intended to be part of the Board record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of \_\_, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid or facsimile or hand delivery to: (list names)).

(Signature)

(2-18-05)

**062. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 62).**

Defective, insufficient or late pleadings may be returned or dismissed.

(2-18-05)

**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 a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective ten (10) days after filing. (2-18-05)

**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, 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. (2-18-05)

**066. FILING OF DOCUMENTS (RULE 66).**

**01. Filing Place.** All documents filed with the Board shall be filed with the clerk of the Board at the Board's mailing address or street address. (2-18-05)

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

(2-18-05)

**067. -- 069. (RESERVED).**

**070. PREHEARING CONFERENCES (RULE 70).**

**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. 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 prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard the Board's obligations under the American with Disabilities Act. (2-18-05)

**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 that party's appeal or the granting of said appeal as the case may be. (2-18-05)

**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. Such order shall supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (2-18-05)

**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 vacate the hearing previously set and determine the appeal upon such evidence and stipulations. (2-18-05)

**071. (RESERVED).**

**072. MOTIONS (RULE 72).**

- 01. Form and Contents.** A motion shall: (2-18-05)
- 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 – Time for Filing.** If the moving party desires oral argument or hearing on the motion it must state so in the motion. Any motion to dismiss, strike or limit an appeal must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within ten (10) days after filing of the answer. Other motions may be filed at any time upon compliance with Subsection 72.03. (2-18-05)

**03. Prehearing Motions.** All prehearing motions must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. (2-18-05)

**073. ANSWERS (RULE 73).**

**01. Answers to Pleadings Other Than Motions.** Answers to pleadings, or appeals must be filed and served on all parties of record within ten (10) days after filing of the pleading being answered, unless order or notice modifies the time within which answer may be made. When an answer is not timely filed under this rule the presiding officer may issue a notice of default. Answers to appeals must admit or deny each material allegation of the appeal. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (2-18-05)

**02. Answers to Motions.** Answers to motions may be filed by persons or parties involved in the appeal. In no event is any party entitled to more than fourteen (14) days to respond to a motion or move for additional time to respond to a motion. (2-18-05)

**074. BRIEFS (RULE 74).**

The Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. (2-18-05)

**075. DISCOVERY (RULE 75).**

**01. Discovery -- Written Permission.** Parties to a pending appeal may engage in discovery if they obtain prior written permission from the presiding officer. The following procedures shall govern discovery: (2-18-05)

**a.** The motion for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Only one (1) discovery motion may be filed by a party. (2-18-05)

**b.** The motion shall contain a short plain statement of the reason the discovery is useful to the preparation of the appeal. (2-18-05)

**c.** The motion shall be accompanied by the complete discovery request. The presiding officer shall deny discovery motions which do not include the complete discovery request. (2-18-05)

**d.** Discovery shall be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the presiding officer. (2-18-05)

**e.** Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. (2-18-05)

**f.** Discovery responses shall be served simultaneously to all other parties and the Board.

Supplementation of responses shall be in accordance with the Idaho Rules of Civil Procedure. (2-18-05)

**g.** The order compelling discovery may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. (2-18-05)

**h.** The motion shall be signed by an authorized representative or a party to the appeal. (2-18-05)

**02. Scope of Discovery -- BOE Appeals.** Production requests and written interrogatories may be submitted in accordance with the rule or order of the Board. Only the following may be subject to discovery unless otherwise ordered by the presiding officer: (2-18-05)

**a.** Information or records concerning appraisal and assessment of the subject property and comparable properties, financial statements and related schedules with respect to the subject property and comparable properties, sale agreements or contracts with respect to the subject property, comparable sales documents and lease agreements with respect to the subject property, completed studies or reports with respect to the subject property and comparable properties. For an exemption appeal, information or documents relating to the exemption. (2-18-05)

**b.** The request for production of documents or written interrogatories concerning the matters set forth above are limited to the last three (3) years proceeding the assessment. (2-18-05)

**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)

**03. Scope of Discovery -- STC Appeals.** (2-18-05)

**a.** Production requests, requests for admissions and written interrogatories may be submitted in accordance with the rule or order of the Board. (2-18-05)

**b.** Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the Board. (2-18-05)

**04. 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 appeal(s). (2-18-05)

**076. -- 079. (RESERVED).**

**080. DISCOVERY WITHOUT BOARD AUTHORIZATION (RULE 80).**

Parties may agree among themselves to provide for discovery without reference to the Board's statutes, rules of procedure, or orders. (2-18-05)

**081. -- 084. (RESERVED).**

**085. INTERVENTION (RULE 85).**

**01. Intervention of Right.** Upon timely application made in writing no later than fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: (2-18-05)

**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 fifteen (15) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: (2-18-05)

**a.** The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (2-18-05)

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

**c.** 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)

**d.** 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. PUBLIC WITNESSES (RULE 86).**

Persons not parties and not called by a party who testify at hearing are called "public witnesses". Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 106 and 107, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits. (2-18-05)

**087. -- 089. (RESERVED).**

**090. CONSENT AGREEMENT -- DEFINED -- FORM AND CONTENTS (RULE 90).**

**01. Consent Agreement Defined.** Agreements between the taxing authority and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called "consent agreements". Consent agreements are intended to require compliance with existing law. (2-18-05)

**02. Requirements.** A consent agreement must: (2-18-05)

**a.** Recite the parties to the agreement; (2-18-05)

**b.** Fully state the conduct proscribed or prescribed by the consent agreement. (2-18-05)

**03. Additional.** In addition, a consent agreement may: (2-18-05)

**a.** Recite the consequences of failure to abide by the agreement; (2-18-05)

**b.** Provide for payment of civil or administrative penalties authorized by law; (2-18-05)

**c.** Provide for loss of rights, licenses, awards or authority; (2-18-05)

**d.** Provide for other consequences as agreed to by the parties; and (2-18-05)

**e.** Provide that the parties waive all further procedural rights (including hearing, consultation with

counsel, etc.) with regard to enforcement of the consent agreement. (2-18-05)

**091. -- 099. (RESERVED).**

**100. FAIR HEARING (RULE 100).**

**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 of the issues involved in the appeal. (2-18-05)

**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 -- Contents.** The notice of hearing shall include: (2-18-05)

**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)

**07. Conference at Hearing.** The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. (2-18-05)

**101. FAILURE TO APPEAR -- DEFAULT OR DISMISSAL -- SETTING ASIDE -- APPEARANCES (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. Setting Aside.** Within ten (10) days after service of a default or dismissal order, 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. (2-18-05)

**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 presentation of evidence. (2-18-05)

**102. WITHDRAWAL OF PARTIES (RULE 102).**

Any party may withdraw from the appeal in writing or on the record at hearing. (2-18-05)

**103. (RESERVED).**

**104. ALTERNATIVE DISPUTE RESOLUTION (RULE 104).**

**01. Alternative Resolution of Contested Cases.** The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact-finding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. The Board may use ADR for the resolution of issues in controversy in a contested case if the Board finds that such a proceeding is appropriate. The Board may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (2-18-05)

**02. Neutrals.** When ADR is used for all or a portion of a contested case, the Board may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the Board or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (2-18-05)

**03. Confidentiality.** Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or rule to be made public. (2-18-05)

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

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. (2-18-05)

**01. Formalizing Agreements.** Agreements by the parties may be put on the record or may be reduced to writing and filed with the Board. (2-18-05)

**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 in a contested case are not part of the record. (2-18-05)

**03. Settlement Inquiry.** Through notice or order on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (2-18-05)

**04. Consideration of Settlements.** Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer 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. (2-18-05)

**05. Burden of Proof.** Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record



in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (2-18-05)

**06. Settlement Not Binding.** The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (2-18-05)

**106. PRESIDING OFFICER (RULE 106).**

Any member(s) of the Board or assigned hearing officer(s) may preside at the hearing and shall have power to: (2-18-05)

**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. Official Record.** Develop a full and accurate record and certify the record of said appeal on behalf of the Board. (2-18-05)

**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. 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. (2-18-05)

**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 (RULE 110).**

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. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation of the parties. (2-18-05)

**111. CONTINUANCE -- EXTENSIONS OF TIME (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 to the appeal. For a scheduled hearing, timely shall mean at least fifteen (15) days prior to hearing. The request/motion shall clearly and convincingly show good cause and contain the specific time extension requested. (2-18-05)

**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 (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, 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 information sought to be noticed. (2-18-05)

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

**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 (RULE 117).**

**01. Evidence, Admissibility and Evaluation.** Evidence should be taken by the Board to assist the parties' development of the record, not excluded to frustrate that development. 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 any evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. The Board shall give effect to rules of privilege recognized by law. 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 interests of the parties will not be substantially

prejudiced, any part of the evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in evaluation of the evidence. (2-18-05)

**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. Depositions.** A deposition may be offered into evidence. (2-18-05)

**04. 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)

**05. 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)

**06. 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 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. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. (2-18-05)

**07. 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)

**08. 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 witnesses's control. (2-18-05)

## **118. EXHIBITS (RULE 118).**

**01. Custody.** The Board shall keep all original exhibits in its care and custody unless otherwise provided by law. (2-18-05)

**02. Marking Exhibits.** Exhibits will be marked by the presiding officer indicating the sponsoring and offering party. (2-18-05)

**03. Form.** Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of medium customarily used for them. (2-18-05)

**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. Objections.** Exhibits identified at hearing are subject to appropriate and timely objection before the close of the hearing. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. (2-18-05)

## **119. -- 124. (RESERVED).**

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

The decisions and record in appeals before the Board are public records unless otherwise provided by Title 9, Chapter

3, Idaho Code, or in the event 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 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 under this rule must also contain a statement or sworn affidavit as to the truthfulness of the contents. The party 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. The motion for protective order must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgement letter. (2-18-05)

**126. -- 134. (RESERVED).**

**135. SCOPE OF APPEAL IN AD VALOREM APPEALS (RULE 135).**

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 when one (1) 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. (2-18-05)

**136. -- 139. (RESERVED).**

**140. DECISIONS AND ORDERS (RULE 140).**

**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. (2-18-05)

**03. Proposed Orders.** Prior to a final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party. (2-18-05)

**04. Decisions.** Board decisions are binding pursuant to Section 63-3813, Idaho Code. 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. (2-18-05)

**05. 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)

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

**07. Decision of Board.** A decision of the Board will be based on the official record for the case. When no dispute of fact 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. (2-18-05)

**141. -- 144. (RESERVED).**

**145. RECONSIDERATIONS -- REHEARINGS (RULE 145).**

**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. The petitioner 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 sought or anticipated, 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 Rules 60 and 61. 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. (2-18-05)

**02. Consideration.** Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board 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. (2-18-05)

**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 of 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. OFFICIAL RECORD (RULE 151).**

- 01. Content.** The record for a contested case shall include: (2-18-05)
- a.** All notices of proceedings; (2-18-05)
  - b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (2-18-05)
  - c.** All intermediate or interlocutory rulings; (2-18-05)
  - d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (2-18-05)
  - e.** All offers of proof, however made; (2-18-05)
  - f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (2-18-05)
  - 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 recommended orders, preliminary orders, final orders, and orders on reconsideration; (2-18-05)
  - k.** Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings; and (2-18-05)
  - l.** The transcript defined in Subsection 151.02. (2-18-05)

**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 at least fifteen (15) 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 to be the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (2-18-05)

**03. Cost of Transcript.** Uncertified copies of the transcript tape(s) will be provided at the cost of ten dollars (\$10) per tape. (2-18-05)

**152. -- 154. (RESERVED).**

**155. SUBPOENAS (RULE 155).**

**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. -- 164. (RESERVED).**

**165. REQUEST FOR WRITTEN TRANSCRIPT (RULE 165).**

Upon request of a written transcript, the Board may provide a list of court reporting and transcribing services to the requesting party. Arrangements for preparation of transcript and payment of the fee will be made between the party requesting the transcript and the transcriber. The original tape recorded hearing transcript will remain with the Board until requested by the transcriber, or included in the official record transmitted to the district court. (2-18-05)

**166. -- 999. (RESERVED).**

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