



Legislative Services Office

Idaho State Legislature

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Jeff Youtz
Director

August 14, 2008

Mr. Alan Dornfest
Idaho State Tax Commission
PO Box 36
Boise, ID 83712

Dear Mr. Dornfest:

The germane subcommittees for administrative rules review of the Senate Local Government and Taxation Committee and the House of Representatives Revenue and Taxation Committee held a meeting on July 17, 2008 to review the Idaho State Tax Commission's proposed property tax administrative rules contained in Docket No. 35-0103-0801. The germane subcommittees voted unanimously to object to the proposed rules. The reasons for the objection were:

- Tax Commission needs to clarify portability (or movability) as a basis for separating personal property from real property and separate those systems that are built in place versus those that are movable.
- The statute controlling the separation between real and personal property should be restated in the rule.
- The three-factor test that was in last year's "version A" of the rule should be included. The three-factor test included:
 1. A determination is made as to the annexation of real property. If an item has been annexed in such a way that removing it would cause material injury or damage to the real property, then that fixture improvement may be classified as real property.
 2. Adoption or application - If use of the purpose of that item is integral to the use of the real property which is connected, then that fixture improvement may be classified as real property, if it meets that test.
 3. Intention - If a reasonable person would intend to make the fixture improvement a permanent addition to the real property, then that fixture or improvement would be classified as real property.
- The subcommittees believe that the State Tax Commission and staff need to take the public's comments fully into account in revising this rule.

Sincerely,

Mike Nugent
Division Manager

MPN/ca

cc: Germane subcommittee members
Representative Bill Killen

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

CORRECTED MINUTES

Administrative Rule Meeting
IDAPA 35.01.03 - Idaho Property Tax Administrative Rules
(Docket #35-0103-0801)
July 17, 2008
Capitol Annex, Room 117, Boise, ID

In attendance were Germane Joint Subcommittee members from Senate Local Government and Taxation Subcommittee: Chairman Senator Brent Hill (participating via telephone conference call), Senator Tim Corder, and Senator David Langhorst. House Revenue and Taxation Subcommittee members in attendance were: Chairman Representative Dennis Lake, Representative Gary Collins, and Representative Bill Killen, who was representing Representative George Saylor. Legislative Services Office staff present were Mike Nugent, Manager, Research and Legislation, and Charmi Arregui.

Others in attendance were: Terry Accordino and Mike Reynoldson, Micron Technology, Inc.; Dan John, Alan Dornfest, Rick Anderson, Gregory Cade, and Tom Katsilometes, Idaho State Tax Commission; Bill von Tagen, Division Chief, Intergovernmental Law Division, Office of the Attorney General; Erick Shaner, Deputy Attorney General; Randy Nelson, Associated Taxpayers of Idaho; Rich Hahn and Katrina Basye, Idaho Power; McKinsey Miller, Gallatin Public Affairs; John Watts, Veritas Advisors, representing Idaho Chambers of Commerce and Watco Railroads; Bill Roden, Qwest Communications; Jayson Ronk and Alex LaBeau, Idaho Association of Commerce and Industry (IACI); Rick Smith, Hawley Troxell; and Valencia Bilyeu, an interested taxpayer.

The meeting was called to order at 10:00 a.m. by **Representative Lake** who stated that the purpose of this informal meeting was to review a proposed rule by the Tax Commission, IDAPA 35.01.03 (Docket #35-0103-0801) dealing with the separation of assets into personal or real property. He said there was some concern about this separation and that it was a fairly substantial departure from the separation they thought had been negotiated about a year ago. He said the Tax Commission had used House Bill 599aa,aaS,aaS for the basis of promulgating this rule.

Senator Hill asked (via telephone) who was present at the meeting, so introductions were made as reflected in the attendees above.

Mr. Alan Dornfest passed out a handout with four attachments that included a memo in which he reviewed the issues at hand and the process they went through, pointing out this was a staff position and not the decision of the State Tax Commission, who had not yet made their decision. He said the staff's position had come from research in other states. The decision about whether certain items are personal or real property is not a simple one, admitting he had no special expertise in making that decision. He said the legal specialists had more expertise, but that other

states have grappled with this issue, giving New York and California as examples. He also referred to a voluminous compilation of statutes and guidelines from those two states regarding what is real and what is personal. **Mr. Dornfest** clarified that the Notice of Rulemaking for this rule indicates that written comments regarding this proposed rulemaking must be delivered on or before July 23, 2008, which is absolutely wrong. The Department of Administration's website, the rule publishing body, shows a date of August 27, 2008, which is the corrected date, providing an extended comment period with a publication date of July 2, 2008, in the Administrative Bulletin. **Mr. Dornfest** apologized for this confusion, encouraging comments.

Mr. Dornfest said that meetings had been held from June, 2007 through mid-October, 2007 and recommendations had been made, pointing out there was never total agreement among staff at the Tax Commission on this issue of what should be considered personal or real property; nevertheless, the subcommittee made recommendations and submitted a proposed rule to the Commission. The Commission, being the decision-making body on rules, had a hearing on November 21, 2007, and on November 28, 2007, decided the rule was premature and rejected it. This information was provided to the germane legislative subcommittees and one concern expressed to **Mr. Dornfest** was that there was no authorizing legislation, therefore making it difficult to promulgate a rule at that time.

Representative Lake asked how different that rejected rule was from the rule before them today. **Mr. Dornfest** answered that it differed considerably; many of the items in the list prepared were considered to be personal property that are now real property. He said there is a default position and a "but couldn't it be the other," adding that, of course, it could be, depending on many factors. He said the default position on many items changed, subsequent to that rule being prepared for several reasons: (1) Staff had never entirely agreed with what was in that particular list and, (2) There were significant changes in language in the law as a result of House Bill 599aa,aaS,aaS compared to prior law, some dealing with fixtures, improvements, and general personal and real property. With those changes, particularly with regard to the fact that fixtures are now included as improvements and improvements are defined in statute as real property, including fences as well. In reviewing all that, and additional research having been done, they felt that they really needed to rethink what they had come up with the year before as a proposal. The Commission staff, then recognizing they had accepted a great amount of input in the prior version, felt that it would be more beneficial to expand the process into a broader arena than the subcommittee, that decision made subsequent to the final passage of House Bill 599aa,aaS,aaS, signed into law on April 11, 2008, effective January 1, 2009. The Commission wanted more public debate, thus redrafting rules along lines consistent with staff and legal advisor's recommendations, after researching data from other states, publishing that rule, and having an extended comment period through August 27, 2008. **Mr. Dornfest** said that all comments will be considered, and he fully expects a request for a hearing before the Tax Commission as there was last year, and then the Commission will have to make a decision.

Senator Corder asked the question: "If House Bill 599aa,aaS,aaS, even though signed, does not become effective until it meets that trigger of 5%, how is it that there can be a rule change that

would actually make a change that is really not enacted until that trigger date.” **Mr. Dornfest** said that he disagreed about HB 599aa,aaS,aaS not going into effect until that trigger is met; he agreed that one section within HB 599aa,aaS,aaS, the actual exemption, does not go into effect until the trigger is met. He said he reads the rest of that statute as being effective January 1, 2009, and that includes the definitions. He did not read the definitions as being contingent on the trigger. He said he presumed that exemption trigger will not be in effect, and will not have been met this year, so that the actual exemption up to \$100,000 in personal property will not be in effect; he said there are definition issues that assessors must use to assign property, believing it to be advantageous to get clarifications made since the rule would not be in conformity with that statute, all being done in the definition section. **Senator Corder** said it still seemed to him that if the exemption section is not in effect until the trigger is met, but the exemption section is based on how we view the definitions, how can something be exempted that has not been properly defined. **Mr. Dornfest** said he believed that to be the goal, and that within the framework of that statute to try to get that fence built around what that exemption applies to when the trigger is met. He said that without those definitions and clarity, in rule and statute, there won’t be uniformity. If there are serious issues and disagreements on what does finally come forth from the Tax Commission, there is then the opportunity for legislation to clarify those things.

Representative Lake referred to the memorandum from the Tax Commission, quoting from HB 599aa,aaS,aaS, saying “fixtures do **not** include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of the articles.” He said that a substantial amount of the items listed as real property, in his opinion, fall into that classification, having to be affixed in order to use them.

Mr. Alex LaBeau said that he represented over three hundred employers with the Idaho Association of Commerce and Industry, stating there are concerns about guidelines regarding personal and real property currently before them for consideration. From their perspective, there are many items on the current document being classified as operating property or personal property that arbitrarily, in some people’s opinions, are being moved to real property. He said this is causing concern, particularly given the context in which they worked with the Tax Commission last year, even though there was a lack of agreement. The end product that had been ultimately considered by the Commission was something that IACI was very comfortable with, that he considered to be appropriate statements on what is real property and what is personal property. He noted that the people who drafted and redrafted the definitions of fixtures and improvements were here in this room today. He said that one thing in the existing rule process that he wanted to make a statement about (also carried through in the current draft being considered) is this blending of guidelines in rules that is causing concern from a business standpoint because guidelines are not rules. Rules are rules, and guidelines are meant to comply with rules, in his opinion. He suggested that guidelines be a separate document, stating that generally, this is what is meant or these are possibilities that can be considered, but guidelines should not be considered rules by definition.

Representative Lake asked if **Mr. LaBeau** considered the items listed as real and personal in

this proposed rule to be a rule or a guideline. **Mr. LaBeau** said that was a very good question; technically, he said they are a rule. **Representative Lake** said that is how he also interpreted it. **Mr. LaBeau** said that led him to the following definition of the following terms being extremely vague and open to interpretation. He said that, in essence, items have largely been reversed from personal to real in an effort to change the current method, and what is real is determined to be negotiated, so one essentially has to negotiate one's way back, everything being real and negotiating back to personal, including a number of fairly vague items such as asphalt mixing plants. What is a plant; it is a site or facility, such as Micron. What is a built-in storage system; a system includes both personal and real such as coal-handling systems, concrete plants, electric power plants, including but not limited to (which causes concern), leaving that final determination to those considered to be right, unless the preponderance of evidence dictates otherwise, which means that burden of proof falls to the taxpayer to prove why the "including but not limited to" is not appropriate. He pointed out that telecommunications was another very broad term being reclassified as real property; does this include cell phones, computers, PDAs, being very unclear based on the way these rules were drafted. Even though being considered guidelines, he believed them to be considered rules. He mentioned wire and cable; are they real or personal, depending on whether that wire is going through conduit, buried, removed, what is the intent of the owner, pointing out various factors associated with wire being determined as real or personal. He emphasized that they had worked very well together with the Tax Commission, but there are concerns about these rules, offering a solution.

Mr. LaBeau asked, with regard to the way the statute works, if this group would file a report indicating what the germane subcommittee members' recommendation might be to the Tax Commission about the direction the Tax Commission should, perhaps, pursue, recommending that they scrap the current rule and look back to the work completed last summer, version A. He believed that was a sincere, well thought-out negotiated effort, based on a well litigated set of definitions agreed upon by a majority of the business community. He said that version A required a three-part test to determine what is real and what is personal, emphasizing this to be a critical omission in the current rule being considered. The three-factor test in the version A rule last year included: (1) A determination is made as to the annexation of real property. If an item has been annexed in such a way that removing it would cause material injury or damage to the real property, then that fixture improvement may be classified as real property. He pointed out these are well thought-out standards used nationwide, according to his personal experience in the real estate industry, believing them to be critical in any kind of all-encompassing rule in trying to make determinations with clarity. (2) Adoption or application: if use of the purpose of that item is integral to the use of the real property which is connected, then that fixture improvement may be classified as real property, if it meets that test. (3) Intention: if a reasonable person would intend to make the fixture improvement a permanent addition to the real property, then that fixture or improvement may be classified as real property.

Mr. LaBeau emphasized that he believes that the three-factor test must be applied in order to have fairness in negotiations about having property assessed. He asked these members to consider this three-factor test to be considered in legislation; he said this would also solve many

problems using vague terms such as systems or plants. **Mr. LaBeau** said that IACI does not believe these rules satisfy the needs of the legislation as passed by the Legislature to exempt personal property tax, or a portion thereof, but they believe that version A will. IACI members, therefore, recommend that a report be filed requesting the Tax Commission work with interested parties to develop rules, largely dependent on the rules completed last year in version A, that being submitted to the State Tax Commission for ultimate adoption for implementation of HB 599aa,aaS,aaS.

Senator Hill asked about the statute and the definition of 63-201 dealing with personal property, saying that **Mr. LaBeau** had stated in his comments that if considered real property, it becomes the burden of the taxpayer to show that it is personal. He said that the statute is certainly different than that, quoting that personal property is everything that is subject to ownership, unless included in the term real property, so it is presumed personal unless defined as real. He asked what **Mr. LaBeau** finds in these proposed rules that switches that around from statute itself, or does he? **Mr. LaBeau** answered that in part 05, 06 and 07 of the rules it states “generally considered real property” and the guidelines in part 06 are used for determining if real property or personal property . . . plants and systems . . . and he said that without the three-factor test, you have this presumption that they are generally considered real property and that creates a problem for the employer to say that a particular part of a system is not real property. **Senator Hill** said that he was not sure he agreed with that, but he did agree with the three-factor test.

Mr. Dornfest clarified that the Tax Commission does not have any disagreement with the three-factor test, but he said that it was in statute, with regard to fixtures. He read the actual statute from the rules. He said that one of their goals in rulemaking, even though a fine line in drafting, is to not repeat statute. If it is necessary for clarity to repeat statute, they would entertain doing that, if it helps, but in principle they prefer not to repeat statute.

Mr. Rick Smith, Hawley-Troxell attorney, said that he represented a number of taxpayers in connection with the promulgation of the proposed rules last year at the Tax Commission level and he also testified on House Bill 599aa,aaS,aaS when being considered by the Senate. He addressed the process by which this proposed rule had come about compared to the process used last year, as well as the substance of this proposed rule that he thinks differs significantly from the substance of the rule being talked about last year in a more open process. He said he was fascinated by **Mr. Dornfest**’s comment about opening up the dialogue, stating that it seemed to him that last year in May, 2007, there could not have been a more open process. He applauded the Tax Commission staff for the way that was handled, forming a special subcommittee especially for this purpose to establish definitions of personal property and real property in anticipation of potential legislation where that distinction would be more important. He understood that subcommittee was formed at the recommendation of legislators who wanted clarity on the process of defining real property versus personal property, adding that it took the rest of 2007 and many meetings, gathering much research.

Mr. Smith said there were areas of disagreement, many relating to the issue of operating

property. He said that there was a provision in the rule (subsection 05 in this rule) applying to operating property; if operating property is held to be within the personal property exemption, then this rule would provide guidance with respect to operating property. The other way they dealt with this was to have two versions of the rule, version A eventually deferred to the debate on operating property, having the three-factor test that is still in statute (HB 599aa,aaS,aaS) but it did not make any effort to identify the portions of operating property that would be considered real or personal. He said the version B represented the subcommittee's view if a person were to consider operating property, what types would be considered real or personal. He said he favored version B, believing it to give better guidance to the Legislature. He said both versions were submitted to the Commission after a deliberation process with many attendees at meetings; the Tax Commission did not adopt either version, feeling it was premature until seeing what the legislation actually looked like, bringing everyone to this point in time.

Mr. Smith pointed out that in version A last November, after a lengthy deliberation process, there were 58 types of property (i.e. cranes, above-ground irrigation pipe) presumed to be considered as personal property, and yet only 27 types of property were considered to be real property. In contrast, in the version that is now part of the rule, he said that only 7 types of property are being considered as personal property and 53 types of property are being classified as real property, emphasizing the confusion in this flip-flop in the way this has been looked at, further raising questions about the process which included much input. He was aware that the public input process on this rule is just beginning and that comments will be submitted. He thought he heard **Mr. Dornfest** say that the drastic changes may be due to the legislation being different than the Commission had anticipated, but there is a definition of fixtures, and they are considered to be real property, questioning if that justifies the Commission's approach of classifying more property as real property.

Mr. Smith said that the discussion here today does disprove that premise because as **Mr. Dornfest** acknowledged, the legislation has the three-factor test that was part of the rule that was being negotiated last year; in both versions, asking how property is attached to the land, adapted to the use for which the property is put, and how it is integrated with the property used. He said sprinklers were a classic example, underground, being adapted to the use of farmland, that fixture being real property. He did not accept the explanation that the statute is a little different, thus justifying a change in the orientation of real property versus personal property. He ended by reinforcing that a category like telecommunications, operating property under statute, doesn't qualify for the exemption, which he believes is an issue that needs to be further discussed, pointing out that the Tax Commission's proposed rule puts telecommunications in their rule anyway and arbitrarily as real property.

Mr. Smith said that if telecommunications does not qualify under the statute, he asked why have it in the rule at all; if it is in the rule, he said the Commission should get it right. He pointed out that a lot of telecommunications property is personal property, such as a switch in a central office that slides into a rack, costing about \$10 million, saying there is no better example of personal property and yet it's classified as real property in this version of the rule, emphasizing that he

believes this rule needs a lot of work. He expressed concern over this year's process and the lack of participation compared to last year.

Senator Corder said that it seemed to him that the amendments to HB 599aa,aaS,aaS were to counteract what the Legislature viewed as tipping the scales too much one way, especially with regard to operating costs. He appreciated the process that took place last year, expressing that the process this year will allow more people to participate, being fully supportive of this current process allowing expression of concerns so the Commission can see if the balance is centered. He admitted that the Legislature gave a different signal in HB599aa,aaS,aaS believing this rule to be an effort to try to move it back in accordance with what the Legislature passed.

Mr. Smith reiterated his appreciation for the process this year inviting some public participation, his point being that the process last year involved the same level of public participation. The difference, he pointed out, was that last year the process included people other than operating property attorneys; industry worked with the staff, in advance of that public process worked through issues to reach a consensus.

Representative Lake quoted Section 67-454 Idaho Code, creating this germane subcommittee as to the process the members will follow going forward from this meeting. He said the report will send a message to the Tax Commission that this rule authority is either not going forward or will be found acceptable.

Senator Langhorst asked where **Mr. Smith** read that telecommunication switching equipment would be considered real property. **Mr. Smith** answered he thought it was in the proposed rule Section 205, subsection 07 (page 77 of rule) and paragraph "uu" (page 79 of rule). **Senator Langhorst** said that he did not specifically see switches mentioned there, asking for clarification from **Mr. Dornfest**. **Mr. Dornfest** replied that with regard to telecommunications, the Tax Commission did not specify switches per se, but he believed the real issue to be that when an item is considered to be real property, but turns out to be portable (which can lead to more questions), some states use the term "movable" answering that they clearly would fall into the personal property camp, if portable. He said the Commission did not mean to imply that a very small pump house has to be considered real property but, in general, a pump house would be larger and considered to be real property. He agreed that perhaps there needs to be further clarification. **Senator Langhorst** added that he doesn't see switching equipment any different than a computer server, believing that would not be considered real property either. He was comfortable with the explanation, questioning if the rule language is clear. **Representative Lake** pointed out that the risk with the rule, as written, could cause great confusion with county assessors who might read the rule line by line and assess properties accordingly, causing problems perhaps.

Representative Killen stated that he attended most of the subcommittee rules meetings in 2007 and he said he had not heard anything at this meeting that he disagreed with. He was struck at the time that there is no simple answer to any of this, short of a five-hundred page booklet, or a more broad interpretation of the rule, open to interpretation, all being part of the process. He

believes there is no optimum solution.

Mr. Dornfest said that in his discussions with various people in past weeks, he is thinking very strongly of making his own recommendation to the Tax Commission that somehow the word “portable” (or another word for it) be moved further up in the rule since it may be too deep into the rule to emphasize that issue. He said that the goal of the rule is to largely create uniformity; he said they would be amenable to what might give clarity to the rule, of course taking into consideration the findings of this germane subcommittee’s recommendations.

Representative Lake asked about operating property being considered to be real property, referring to desk, chairs, and tables that companies own, asking for confirmation that these items would be considered real property. **Mr. Dornfest** deferred to **Mr. Rick Anderson** who said that falls into the portable category and clearly would be personal property. **Representative Lake** questioned operating property as real property and **Mr. Anderson** answered: “the first assumption is yes.” He said that as far as statute is concerned, there has been clarity that operating property is now separate and does include real and personal property. **Mr. Dornfest** referred back to subsection 05 of the rule which he then read, adding that operating property now, by statute, consists of either real or personal property, even though the exemption doesn’t apply.

Mr. Smith said that, with regard to portability, he encouraged the Commission to clarify their proposed rule, but cautioned that statute defines fixtures as “fixtures does not include machinery, equipment or other articles that are affixed to the real property to enable the proper utilization of such property.” He reiterated that if an item of equipment is fixed to the real property, and thus not portable, it still wouldn’t be considered real property, encouraging other ways to clarify the rule, being unsure if changing the word “portable” as the way to do that.

Senator Langhorst asked about the logic that HB599aa,aaS,aaS changed the playing field and that leading to the change of more items being classified as real property in this rule compared to last year’s rule, inquiring if there were other reasons. **Representative Lake** asked about the definition of fixtures with regard to HB599aa,aaS,aaS, asking if that is why there is a substantially different rule. **Mr. Dornfest** answered that he thinks that has a lot to do with it, but also it was a perspective of having had an opportunity to continue their research, deferring to the Commission’s legal staff. **Mr. Erick Shaner** said that South Carolina legislation identified railroads as real property and a list they provided; he said that version A and B took that list of 100 items, and about half were reinterpreted more broadly as personal property as opposed to real property. He stated his disagreement with this at meetings and to the Commission that they were going too far, and he believes that with regard to HB599aa,aaS,aaS, as well as his view all along, there is a pendulum swinging both ways and you either have to determine with a broad brush or refer to a five-hundred page document to clarify. So, he said they “took a broad brush and said real, but of course it could be personal.” He said that fixtures does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles. He said he found that the wording at the beginning of subsection 06 still controls that sentence. He believes that wording still modifies that last sentence, that if it is going to

materially injure it or change the integral nature of the property, you would essentially have nothing left, referring to removing a cooling tower from a structure. He said that a court in New Jersey addressed this issue and that they referred to the justice system as stepping into a legal minefield, pointing out how difficult it is to identify every single piece of property.

Representative Lake and **Senator Hill** agreed to go down the list of property in the rule to allow the Tax Commission to get a feel as to what the legislators are thinking. **Representative Lake** questioned “c” on page 77, asphalt mixing plants simply because not all are created equal, some being stationary, some moved from site to site, so this needs further clarification. **Senator Hill** said that he’d done some research on asphalt mixing plants, agreeing that he keeps coming back to the preface of each item, asking for comments, adding that the rule states that they are “generally considered real property” and stated that all but one mixing plant found on the internet was real property. He said that there are two qualifiers, one being “generally” and the other being “erected, affixed, or attached.” If those are prerequisites, then if these things below subsection 07 fit that qualification, then it generally be considered real property, asking for comments.

Mr. Dornfest said that if it is not a fixture by law, or “erected, affixed, or attached” only for the purpose of operating, then it would automatically be excluded. He said that the goal of the list in the rule was to provide clarity to assessors and taxpayers who would be making these decisions, and they could not be definitive in all cases, thus the word “generally.”

Representative Lake reiterated that is precisely the problem, that the list will be noticed and not the word “generally” above the list. **Senator Hill** said he agrees that is part of the problem and that a trained reader may pick out the subtleties but some assessors may see the item and miss the other determining factors; his criticism is not so much with the list, but he believes the preface under subsection 07 on page 77 could be much more clearly worded, bringing to the attention of the assessors and taxpayers that these are general guidelines, emphasizing that it still must meet the rules of being a fixture.

Mr. Erick Shaner said that subsection 07 could be ended with the words “generally considered real property,” and then add words with regard to portability to make sure it’s clear that these could be either real or personal property. He said the remaining words in that sentence come from subsection 08 in statute to emphasize that the item could be real property, even though it is not owned by the person owning the land under the item. **Senator Hill** agreed that was the point trying to be made, pointing out that it could be more clearly worded.

Representative Lake moved down the list to subsection 07 d and he said that crushers around the state are sometimes mobile, wondering how that could possibly be considered as real property. **Senator Corder** said the same comments apply to many of the items on the list, adding that they may be difficult to move, but they are all movable, every single one of them, the same as asphalt mixing plants. He thinks that assessors need to review each case individually to see how mobile they are. **Representative Lake** thinks that the issue of portability needs to be emphasized as criteria for determining whether real or personal property. They discussed other

items on the list, and **Representative Lake** said he thought conveyors should be red-flagged since some are very portable and some very stationary.

Senator Corder thought that conveyors would generally be considered in relation to concrete plants, crushers and other facilities, asking why it was standing alone on the list. **Mr. Shaner** said that the true, simple answer is that it was on the South Carolina list, listed as personal property. **Mr. Dornfest** said that the issue of portability has become paramount, and they can make changes that would be beneficial. **Senator Corder** referred to an asphalt plant determined to be real property, that could have conveyors cut off that had wheels, wondering if it could then become personal property, ending up in confusion with very complex determinations. **Senator Hill** agreed that the issue of portability is paramount.

Mr. Smith said that with regard to portability, he cautioned the subcommittee to be sensitive to the difference between portability and movability because portability, in his mind, did not mean that it was sitting on wheels and could be moved from one location to another. He doesn't believe that to be the criterion which should be used to determine real from personal property. He said there is much machinery and equipment bolted down into a factory that could be moved by unbolting and moved to a different location, but that type of equipment should be considered personal, even though it may not be considered portable. He added that if it damages real property, like a building, by removing or relocating equipment, then it is part of the real property. Even though articles may be fixed, they are not considered fixtures and are not real property simply because they are bolted into the ground.

Senator Langhorst asked about the definition of fixtures and the debate about that definition, asking where else in the rule it talks about whether a fixture is real or personal property. **Mr. Shaner** said that it goes into the analysis like California and Colorado, saying that real property consists of land, improvements, structures on land and fixtures attached to those improvements, then referring to statute. **Senator Langhorst** asked if all fixtures were real property and **Mr. Shaner** replied "yes."

Representative Lake reiterated that the question becomes: "What are fixtures?" **Senator Hill** clarified that this was confusing, agreeing that fixtures are defined in statute. **Representative Lake** asked about milking systems and waste systems, asking if everything inside a dairy barn is real property. **Mr. Dornfest** said that it was his understanding that some of these systems are built-in and, therefore would constitute real property, depending on whether they are built in, deferring to **Mr. Anderson** who agreed, saying that systems are hard to dismantle.

Mr. Shaner said that milking systems can be old and new, the newer ones being built into concrete with roofs overhead, draining into a septic system and pond, adding that he believed an Idaho court case on irrigation systems is good to discuss at this point. The court said that the irrigation system plus pump, irrigation pipes that come from the ground, plus pivots were all part of one system, thus being real property, it was annexed, adapted to that land, with intent for it to stay there. He assumed that a similar analysis could be compared with milking systems, adding

that the Commission would be open to discussion on this.

Representative Lake thought that movable pivots would be personal property, the pump and underground piping being real property. **Senator Langhorst** asked about the three-factor criteria for fixtures, referring to the list of items, asking if those factors applied to this list and, if so, where does that appear in the rule? **Mr. Dornfest** answered “yes, because it is in statute and the rule is meant to be adjunctive to statute so it wasn’t repeated verbatim in the rule.” **Senator Langhorst** said that clarification helped. **Mr. Dornfest** admitted there was much confusion on this issue, so the Commission obviously needs to do something to clarify this point.

Representative Lake referred to electric power plants (including, but not limited to, generators, lines, towers, and poles); he asked what else is included. **Mr. Shaner** responded it would be limited to those things that are portable, using a broad brush. **Representative Lake** asked if generators, lines, towers, and poles were fixtures, therefore real property. **Mr. Shaner** affirmed that, adding that there is great debate on this around the country, but that is where the Commission has chosen to go.

Representative Lake said he thought that gravel plants, like asphalt plants need more clarification, as well as irrigation systems and what parts are which. He then referred to ovens used for processing on the list, i.e. ovens in a pizza parlor would be personal property, and that was affirmed to be correct. **Mr. Mike Reynoldson**, Micron, said that in terms of ovens, they use ovens in their manufacturing process, a proprietary item, huge and expensive, but they are here today because they have been defining personal and real property in the last thirty years and some items such as air handlers, boilers, cooling towers, air filtration equipment, ovens, etc., their concern being changing what they have done in the past thirty years in defining those items, ovens being a red flag for Micron. **Representative Lake** asked for more information about these ovens and **Mr. Reynoldson** described them as metal, in the clean-room, secure environment, very expensive, but they are movable, part of the semiconductor manufacturing process. He admitted that when the state of Idaho started taxing personal property, they probably didn’t contemplate semiconductor manufacturing when this came about. He said Micron had been able to navigate the process defining real or personal property, with the help of Ada County and existing Idaho Code.

Mr. Smith pointed out that this was another example of an item that in version A, this item being agreed upon by everyone on that subcommittee to be personal property and now it’s on the Commission’s list as real property. He said there has been a switch on the focus on this issue, seeing no reason for the shift, since the three-factor test which was being used as the basis for formulating version A is in statute.

Representative Lake referred to railroads and **Mr. John Watts**, Veritas Advisors, said he was speaking on behalf of railroads. He said that there have been many discussions about this item, and that although they specifically call out rails and ties, in the railroad process the lines and the track items need to be carefully looked at in definition due to a number of things said in this

meeting today, with regard to portability and movability. He said that ties lie upon the top of the ground, they can be picked up, they can be turned into real property by using them to build a corral or fence, but these ties are constantly being replaced, the old ones being used for docks and other items, but as they lie there upon the ground, they are movable, the same with the rail that lies on top of the ties. He said that, similar to a crusher, they cannot operate a railroad without a rail, cautioning everyone to be careful in looking at this, encouraging the Commission to revisit that as they go forward.

Mr. Dornfest said that states such as New York and South Carolina looked at this issue and specifically concluded that basically all aspects of railroad structures were real property, taking guidance there, being open to differences that might arise. **Mr. Watts** said that maybe New York does that, but Idaho does not do that; he said that locomotives and cars are not considered to be real property. **Mr. Dornfest** clarified that he did not mean to imply that the cars would be included. **Mr. Watts** referred back to multi-million dollar telecommunication switchers, integral to the operational systems, saying the switchers on a railroad track by this definition may be considered real property, being replaced frequently. He believes there is argument to be made that “a switch is a switch is a switch.”

Representative Lake referred to silos and storage units and bins, asking about the fact that in personal property, cranes, silos and bins are listed, asking for an explanation. **Mr. Dornfest** said that there was a size variation in items such as storage bins, so when portable, they wanted to make that distinction. **Representative Lake** asked them to be more explicit with regard to those items on the list.

Representative Lake referred to sprinkler systems, asking if all items were being classified as real property. **Mr. Anderson** answered “for a starting point.” **Representative Lake** said they may want to weigh in more on this item.

Representative Lake asked about tanks and **Mr. Dornfest** said that included all tanks, both above and below ground, excluding portable tanks.

Representative Lake asked about utility meters. **Mr. Dornfest** deferred to **Mr. Anderson** who said that these could be a large industrial base, saying that all these items could classify as personal. **Representative Lake** asked if it was better to not talk about these items and leave it up to the three-factor test, or would it be better to define what is really meant when something is put into rule. **Mr. Anderson** said his opinion would be to leave that off the list. **Mr. Shaner** said that other than a utility meter on a house, he had no idea what that item is referring to, having been on a previous list and had been carried forth to this rule, needing perhaps more research.

Senator Corder reiterated that better clarification might well require five hundred pages, saying that arguments could be made for many things besides railroads, such as irrigation equipment.

Mr. LaBeau said that the reason they used version A was because it started with a list of personal property items on which to apply the three-factor test to determine what part of those items would be real property. He said that in the rules being dealt with here today, everything has been essentially flip-flopped. He said that these items are real property and now the test is on the taxpayer, rather than the burden of proof being on the assessor, to prove that it is personal, assuming it otherwise to be real. That is the flip-flop and why his strong recommendation is to go back to version A which had a tremendous amount of clarity and he believes to be the right path for application of HB599,aa,aaS,aaS.

Senator Hill said he was at a disadvantage, not having seen version A, as well as other subcommittee members, adding that he would prefer to see a longer, more explicit list of items that qualify as personal property that are exemptions to the real property rule. He said that he applauded the Commission for trying to provide clarity by addressing certain items, believing that this process today gives the Legislature a taste of the number of potential court cases that could result, believing that detailed clarification of the rules is probably best to avoid potential and very costly litigation, trying to remain fair. He asked for more clarification on portability, making that more pronounced in the rules so that assessors will have that for guidance. He mentioned dairy barns, suggesting “dairy barns, shelters and built-in milking systems” so everyone knows precisely what is included to prevent misunderstandings in the future. He believes that the subcommittee needs to give the Tax Commission more guidance to go back to the table with these rules.

Representative Lake said he suggested that the members would draft a letter with staff to incorporate the issues discussed in this meeting. **Senator Hill** agreed that these are the main issues, saying that he thinks that **Mr. LaBeau**'s suggestion to look at version A was a good idea, seeming to make reasonable, logical sense to people, more than version B. **Representative Killen** clarified that this rule is not version B being looked at today; he said that there were two distinct versions presented, both quite extensive, slightly different, some people preferring one or the other. **Representative Lake** asked what the difference was between the two versions. **Mr. Smith** said that version A received a consensus of the subcommittee, which went to the rules committee and then to the Commission itself, including a very long list of personal and real property items, many of which noted here are currently 180 degrees different in this proposed rule being examined today. He said that the difference between version A and B was that in version B, they took the additional step of identifying the operating property items that they tried to agree to, giving the Commission one version including specific operating property items and one version which would not. He affirmed that the current rule is neither version A nor B; in fact it is totally different than version A, which was the more conservative version discussed last year.

Representative Lake said that since HB599aa,aaS,aaS specifically exempted operating properties from participating in the exemption, it really is a moot point as far as they are concerned, asking if that were true. **Mr. Smith** said that it is rather academic, but he believes it to be bad tax policy to have a rule that says operating property is real property when we know it

is not. He said that if we realize that operating property isn't currently eligible for this exemption, then why not take operating property out of the discussion altogether, but not arbitrarily classify it as real property. **Representative Lake** agreed with him on that point, saying that they should leave it and talk about it as operating property and not try to divide it between real or personal. **Mr. Smith** said "only if we want to have a rule that anticipates the day when operating property will be exempt, then there would be some value in making that qualification at this point."

Representative Killen observed that expansion of clarification is essential, and he saw no problem with duplicating statute in the rule which might help. **Senator Langhorst** said that version A kept being mentioned and that the subcommittee members did not have copies; he said that he hesitated making a decision without looking at that, since that is part of the discussion. He said that if he had version A in front of him, he would like to apply the three-factor test to that list to start making it more specific, possibly coming up with something that might look like version A, obviously being much more specific. **Senator Corder** said that absent version A, he agrees with **Senator Hill**, but he looks forward to more public comments before further decisions are made. **Representative Lake** reiterated that the purpose of this meeting was to gather information, the goal being to hopefully avoid a fight over the rule when it comes up for rules review in January, 2009. **Representative Lake** said the Tax Commission will be hearing from these germane subcommittee members and will also be listening to public testimony; he encouraged all attendees at this meeting to submit their testimony to the Tax Commission during the comment period ending August 27, 2008. **Representative Lake** proposed that a letter be drafted, presented to the germane subcommittee members for their approval, then submitted to the State Tax Commission and **Senator Hill** agreed.

Mr. Rick Smith said it would be very helpful to get copies of versions A and B to all the germane subcommittee members.

Mr. Watts asked a procedural question, if they were contemplating a report, asking if the public comment deadline would be kept in place or will there be something new which would require comments on a different document, wondering the optimum time to respond, before August 27, 2008 or after a potential new rule is drafted. **Mr. Dornfest** said that the proposed rule has been published, going through the normal process, and the Commission can do many things after that comment period such as withdrawing the rule, rewriting it, all comments being considered. He said that the next phase for rulemaking would be a pending rule, so if after August 27, 2008, the Commission adopts the current rule, makes changes, whatever, action is bumped up on behalf of the Commission, taking some action at that point. A hearing could be set up, as was done last year, to help the Commission make those decisions. Subsequent to August 27, 2008, he said the Commission must take action on this proposed rule; it was clarified that the proposed rule between now and August 27, 2008 cannot be changed. **Mr. Dornfest** said they had the published proposed rule, comments will be submitted, a hearing could be set up after August 27, 2008 to make sure all comments are considered, then the Commission would have the current rule on the table at a possible hearing, additional comments submitted, comments from staff with

recommendations, as extensive as they wish, and then the Commission would have all that to consider. He hoped that would clarify the process.

Representative Lake stated that this meeting was the one chance for legislative members to be involved in the rulemaking process, adding that they will make their comments to the Tax Commission, and the rule will be examined carefully prior to rules review in January, 2009.

Senator Corder moved that the germane subcommittee members object to the proposed rule as written, seconded by Representative Collins, and the motion passed by a unanimous voice vote.

Representative Killen moved that the chair draft a letter to the State Tax Commission, seconded by Senator Langhorst, and the motion passed by a unanimous voice vote.

Senator Hill thanked **Representative Lake** for calling the meeting on this rule and for the participation of all attendees and representatives of the State Tax Commission and the Office of the Attorney General; he emphasized that any criticism was not of them, but of the rule itself, expressing confidence that progress will be made as a result of this meeting.

The meeting was adjourned at 12:08 p.m.

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rules 205 and 210 are being stricken and replaced with a new Rule 205 to clarify definitions as set forth by House Bill 599A in order to give assessors guidance in distinguishing between real and personal property.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge imposed or increased.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive public discussions were conducted in 2007.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 27, 2008.

DATED this 30th day of May, 2008.

Alan Dornfest
Idaho State Tax Commission
800 Park Blvd. Plaza IV
PO Box 36
Boise, ID 83712
(208) 334-7742 Phone
(208) 334-7844 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0801

205. **PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).**

~~Sections 63-201, 63-302, and 63-309, Idaho Code. Personal property can be moved without marring or defacing real property to which it may be attached. Personal property includes the following. Sections 39-4105, 39-4301, 63-201, 63-602KK, 63-1703, 63-2801, Idaho Code.~~ (4-5-00)()

~~01. **Equities in State Land.** Land purchased from the state under contract is personal property. Tax can be paid in two (2) installments. **Real Property.** Real property is defined in Section 63-201(19), Idaho Code.~~ (7-1-93)()

~~02. **Reservations and Easements.** Reservations include reserved mineral rights and divided ownership of property rights. Easements convey use but not ownership. **Personal Property.** Personal property is defined in Section 63-201(15), Idaho Code.~~ (4-5-00)()

~~03. **Machinery, Tools, and Equipment.** Mechanical apparatuses, instruments, or implements not permanently integrated with real property, held as tenant improvements, or held for rent or lease are personal property. **Improvements.** Improvements are defined in Section 63-201(8), Idaho Code.~~ (7-1-93)()

~~04. **Furniture, Fixtures, Libraries, Art, and Coin Collections.** Trade articles used commercially for convenience, decoration, service, or storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease are personal property. **Fixtures.** Fixtures are defined in Section 63-201(6), Idaho Code. Fixtures does not include machinery, equipment or other articles that are affixed to real property to enable the proper utilization of such articles, however, if removal of a fixture from the real property would cause material injury or damage to the real property then the fixture is presumably real property.~~ (7-1-93)()

~~05. **Recreational Vehicles.** Unlicensed recreational vehicles are personal property. **Operating Property.** Operating Property is defined in Section 63-201(12), Idaho Code. For any purpose for which the distinction between personal property and real property is relevant or necessary for operating property, operating property will be characterized as personal or real based upon the criteria stated in this guideline and the rules of the State Tax Commission. See also Section 63-602KK(1), Idaho Code.~~ (7-1-93)()

~~06. **Boats.** Unlicensed watercraft are personal property. **Guidelines.** The guidelines found in Section 205, are to be used for determining whether property is real or personal. The decision of the assessing authority as to whether property is real or personal property shall be presumed correct. The burden for overcoming the assessing authority's decision is by a preponderance of the evidence. These guidelines are not intended to be all inclusive.~~ (7-1-93)()

~~07. **Net Profit of Mines.** That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses as defined in Section 63-2802, Idaho Code, or by State Tax Commission rule is personal property. **Items and Components Considered Real Property.** The following items and their associated components are generally considered real property whether or not owned separately from the ownership of the real property upon or to which the same may be erected, affixed, or attached. See also Section 63-201(19), Idaho Code.~~ (4-5-00)()

~~a. Air handling, heating ventilation air conditioning (HVAC) equipment, and humidifiers including refrigeration equipment. ()~~

~~b. Ash handling systems, pits, and superstructures. ()~~

~~c. Asphalt mixing plants. ()~~

~~d. Beneficiation equipment, foundations and all machinery required to process ore including crushers, grinders and floatation equipment. ()~~

~~e. Boilers, stacks and superstructures. ()~~

~~f. Bridges, roads, and tunnels. ()~~

- g.** Bucket elevators whether open or enclosed. ()
- h.** Buildings and structures. ()
- i.** Built-in cold storage systems. ()
- j.** Bulkheads and retaining walls. ()
- k.** Coal handling systems. ()
- l.** Concrete plants. ()
- m.** Conveyors. ()
- n.** Cooling towers. ()
- o.** Crane runways and systems including supporting columns or structures, whether inside or outside of buildings. ()
- p.** Dairy barns, milking systems, shelters, and waste systems. ()
- q.** Dock levelers. ()
- r.** Drying rooms. ()
- s.** Dust catchers and filtration systems. ()
- t.** Electric power plants (including, but not limited to, generators, lines, towers, and poles). ()
- u.** Electrical substations. ()
- v.** Fencing. ()
- w.** Fire walls and fire alarms. ()
- x.** Floating homes as defined in Section 63-201(7), Idaho Code. ()
- y.** Fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock. ()
- z.** Gravel plants. ()
- aa.** Greenhouses. ()
- bb.** Indoor and outdoor lighting. ()
- cc.** Irrigation systems. ()
- dd.** Kilns. ()
- ee.** Manufactured homes, as defined in Section 39-4105(8), Idaho Code, are real property for purposes of the Section 63-602KK, Idaho Code exemption. ()
- ff.** Mobile homes as defined in Section 39-4105(9), Idaho Code, are real property for purposes of the Section 63-602KK, Idaho Code exemption. ()
- gg.** Modular buildings, as defined in Section 39-4301(7), Idaho Code, are real property for purposes of

- the Section 63-602KK, Idaho Code exemption. ()
- hh. Ovens used for processing. ()
 - ii. Pipelines (including, but not limited to, natural gas, water, and oil pipelines). ()
 - jj. Process piping including foundations and bridges whether above or below ground. ()
 - kk. Pump houses. ()
 - ll. Railroads (including, but not limited to, railroad track and lines). ()
 - mm. Sanitary or septic systems. ()
 - nn. Scale houses, scales, and pit. ()
 - oo. Signs and signboards, their bases and supports. ()
 - pp. Silos and storage units and bins. ()
 - qq. Spray Ponds and masonry reservoir systems. ()
 - rr. Sprinkler systems. ()
 - ss. Stone crushing plants. ()
 - tt. Tanks. ()
 - uu. Telecommunications (including, but not limited to, poles, towers, conduits, vaults, wire and cable). ()
 - vv. Tipple structures. ()
 - ww. Utility meters. ()
 - xx. Vault doors, drive-in windows, automatic tellers and night depositories. ()
 - yy. Water ditches constructed for mining, manufacturing or irrigation purposes. ()
 - zz. Water piping. ()
 - aaa. Well pumps. ()

08. ~~Signs and Signboards.~~ *Signs and signboards, their bases and supports are personal property.*
Items Considered Personal Property. The following items are generally considered personal property. (7-1-93)()

- a. Cranes, silos, storage bins, tanks, signs, stand alone control booths, welding booths, racks, and shelving and similar items provided they are portable. ()
- b. Furniture, libraries, art, coin collections, and trade articles used commercially for convenience, decoration, service, or storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, and all such items held for rent or lease are personal property. ()
- c. Inventory of spare parts and supplies. ()
- d. Machinery, tools and equipment unless they meet the definition of improvement or fixture to real

property, as defined in this rule. ()

e. Railroad rolling stock. ()

f. Refrigeration equipment such as walk-in coolers, grocery refrigeration units, and window air conditioning units provided they are portable. ()

g. Vehicles, including, but not limited to automobiles, recreational vehicles, watercraft, aircraft, tractors, trailers and other mobile equipment, whether licensed or not. ()

~~09. Leased Personal Property. The listing of leased personal property shall also include the name and address of the other party to the lease and the terms of the lease. (4-5-00)~~

206. -- ~~209~~16. (RESERVED).

~~210. REAL PROPERTY DEFINED (RULE 210).
Sections 63-201, 63-304, and 63-309, Idaho Code. (4-5-00)~~

~~01. Real Property. Land and whatever is permanently upon or affixed to the land, except for the provisions defined in Section 63-309, Idaho Code. (4-5-00)~~

~~02. Improvements. Improvements are valuable additions to land, except for the provisions defined in Section 63-309, Idaho Code. (4-5-00)~~

~~03. Manufactured Housing. Manufactured housing subject to the provision of Section 63-304, Idaho Code, is real property. (4-5-00)~~

~~04. Affixed Property and Other Improvements. Property affixed to the land in such a manner that it may not be removed without materially damaging the land or attached improvements is real property. Real property includes appurtenances that would normally be expected to be sold together with the land. (4-5-00)~~

~~a. Equipment attached only by plug in electrical connection is not affixed. (4-5-00)~~

~~b. Equipment permanently situated and adapted to use in one place is affixed. (4-5-00)~~

~~e. Vault doors, drive-in windows, automatic tellers, and night depositories are affixed when owned by the owner of the building. (4-5-00)~~

~~211. — 216. (RESERVED).~~

Dear Senators HILL, Corder & Langhorst, and
Representatives LAKE, Collins & Saylor:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho State Tax Commission: Proposed Rules of the State Tax Commission Concerning Personal Property Taxation (Docket #35-0103-0801) .

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 7-1-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 7-30-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate Local Government and Taxation Committee and the House of Representatives Revenue and Taxation Committee

FROM: Research and Legislation Staff, Nugent

DATE: June 10, 2008

SUBJECT: Proposed Rules of the State Tax Commission Concerning Personal Property Taxation (Docket #35-0103-0801)

In 2008, the Legislature enacted House Bill No. 599 as amended, as amended in the Senate, as amended in the Senate, which revised definitions; provided a partial exemption from taxation of personal property for the first one hundred thousand dollars of market value; provided for reimbursement to local governments of personal property tax; to provide procedures; and to provide for distribution of sales tax moneys to counties and taxing districts upon certain circumstances occurring.

The State Tax Commission is proposing to promulgate rules to implement the provisions of HB599aa,aaS,aaS. These proposed rules clarify definitions as set forth by HB599aa,aaS,aaS to give county assessors guidance in distinguishing between real and personal property. It appears that the proposed rules have been promulgated within the scope of statutory authority granted to the State Tax Commission.

cc: Idaho State Tax Commission
Alan Dornfest

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rules 205 and 210 are being stricken and replaced with a new Rule 205 to clarify definitions as set forth by House Bill 599A in order to give assessors guidance in distinguishing between real and personal property.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge imposed or increased.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 30th day of May, 2008.

Alan Dornfest
Idaho State Tax Commission
800 Park Blvd. Plaza IV
PO Box 36
Boise, ID 83712
(208) 334-7742 Phone
(208) 334-7844 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0801

205. **PERSONAL AND REAL PROPERTY -- DEFINITIONS AND GUIDELINES (RULE 205).**

~~Sections 63-201, 63-302, and 63-309, Idaho Code. Personal property can be moved without marring or defacing real property to which it may be attached. Personal property includes the following. Sections 39-4105, 39-4301, 63-201, 63-602KK, 63-1703, 63-2801, Idaho Code.~~ (4-5-00)()

~~01. **Equities in State Land.** Land purchased from the state under contract is personal property. Tax can be paid in two (2) installments. **Real Property.** Real property is defined in Section 63-201(19), Idaho Code.~~ (7-1-93)()

~~02. **Reservations and Easements.** Reservations include reserved mineral rights and divided ownership of property rights. Easements convey use but not ownership. **Personal Property.** Personal property is defined in Section 63-201(15), Idaho Code.~~ (4-5-00)()

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~~a. Air handling, heating ventilation air conditioning (HVAC) equipment, and humidifiers including refrigeration equipment. ()~~

~~b. Ash handling systems, pits, and superstructures. ()~~

~~c. Asphalt mixing plants. ()~~

~~d. Beneficiation equipment, foundations and all machinery required to process ore including crushers, grinders and floatation equipment. ()~~

~~e. Boilers, stacks and superstructures. ()~~

~~f. Bucket elevators whether open or enclosed. ()~~

- g.** Buildings and structures. ()
- h.** Bulkheads and retaining walls. ()
- i.** Built-in cold storage systems. ()
- j.** Coal handling systems. ()
- k.** Concrete plants. ()
- l.** Conveyors. ()
- m.** Cooling towers. ()
- n.** Crane runways and systems including supporting columns or structures, whether inside or outside of buildings. ()
- o.** Dairy barns, milking systems, shelters, and waste systems. ()
- p.** Dock levelers. ()
- q.** Drying rooms. ()
- r.** Dust catchers and filtration systems. ()
- s.** Electric power plants (including, but not limited to, generators, lines, towers, and poles). ()
- t.** Electrical substations. ()
- u.** Fencing. ()
- v.** Fire walls and fire alarms. ()
- w.** Floating homes as defined in Section 63-201(7), Idaho Code. ()
- x.** Fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock. ()
- y.** Gravel plants. ()
- z.** Greenhouses. ()
- aa.** Irrigation systems. ()
- bb.** Kilns. ()
- cc.** Indoor and outdoor lighting. ()
- dd.** Manufactured homes, as defined in Section 39-4105(8), Idaho Code, are real property for purposes of the Section 63-602KK, Idaho Code exemption. ()
- ee.** Mobile homes as defined in Section 39-4105(9), Idaho Code, are real property for purposes of the Section 63-602KK, Idaho Code exemption. ()
- ff.** Modular buildings, as defined in Section 39-4301(7), Idaho Code, are real property for purposes of the Section 63-602KK, Idaho Code exemption. ()

- gg. Bridges, roads, and tunnels. ()
- hh. Ovens used for processing. ()
- ii. Pipelines (including, but not limited to, natural gas, water, and oil pipelines). ()
- jj. Process piping including foundations and bridges whether above or below ground. ()
- kk. Pump houses. ()
- ll. Railroads (including, but not limited to, railroad track and lines). ()
- mm. Sanitary or septic systems. ()
- nn. Scale houses, scales, and pit. ()
- oo. Silos and storage units and bins. ()
- pp. Signs and signboards, their bases and supports. ()
- qq. Spray Ponds and masonry reservoir systems. ()
- rr. Sprinkler systems. ()
- ss. Stone crushing plants. ()
- tt. Tanks. ()
- uu. Telecommunications (including, but not limited to, poles, towers, conduits, vaults, wire and cable). ()
- vv. Tipple structures. ()
- ww. Utility meters. ()
- xx. Vault doors, drive-in windows, automatic tellers and night depositories. ()
- yy. Water piping. ()
- zz. Water ditches constructed for mining, manufacturing or irrigation purposes. ()
- aaa. Well pumps. ()

08. ~~*Signs and Signboards. Signs and signboards, their bases and supports are personal property.*~~
Items Considered Personal Property. The following items are generally considered personal property. (7-1-93)()

- a. Vehicles, including, but not limited to automobiles, recreational vehicles, watercraft, aircraft, tractors, trailers and other mobile equipment, whether licensed or not. ()
- b. Furniture, libraries, art, coin collections, and trade articles used commercially for convenience, decoration, service, or storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, and all such items held for rent or lease are personal property. ()
- c. Inventory of spare parts and supplies. ()

d. Machinery, tools and equipment unless they meet the definition of improvement or fixture to real property, as defined in this rule. ()

e. Cranes, silos, storage bins, tanks, signs, stand alone control booths, welding booths, racks, and shelving and similar items provided they are portable. ()

f. Refrigeration equipment such as walk-in coolers, grocery refrigeration units, and window air conditioning units provided they are portable. ()

g. Railroad rolling stock. ()

~~09.~~ **Leased Personal Property.** The listing of leased personal property shall also include the name and address of the other party to the lease and the terms of the lease. (4-5-00)

~~206.~~ -- ~~209~~**16.** (RESERVED).

~~210.~~ **REAL PROPERTY DEFINED (RULE 210).**
Sections 63-201, 63-304, and 63-309, Idaho Code. (4-5-00)

~~01.~~ **Real Property.** Land and whatever is permanently upon or affixed to the land, except for the provisions defined in Section 63-309, Idaho Code. (4-5-00)

~~02.~~ **Improvements.** Improvements are valuable additions to land, except for the provisions defined in Section 63-309, Idaho Code. (4-5-00)

~~03.~~ **Manufactured Housing.** Manufactured housing subject to the provision of Section 63-304, Idaho Code, is real property. (4-5-00)

~~04.~~ **Affixed Property and Other Improvements.** Property affixed to the land in such a manner that it may not be removed without materially damaging the land or attached improvements is real property. Real property includes appurtenances that would normally be expected to be sold together with the land. (4-5-00)

~~a.~~ Equipment attached only by plug in electrical connection is not affixed. (4-5-00)

~~b.~~ Equipment permanently situated and adapted to use in one place is affixed. (4-5-00)

~~e.~~ Vault doors, drive-in windows, automatic tellers, and night depositories are affixed when owned by the owner of the building. (4-5-00)

~~211.~~ -- ~~216.~~ (RESERVED).