

Dear Senators HILL, Heinrich & Werk, and
Representatives LAKE, Collins & Saylor:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the State Tax Commission: IDAPA 35.01.03 - Property Tax Administrative Rules (Docket #35-0103-0901).

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 7-7-09. 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 8-4-09.

_____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 17, 2009

SUBJECT: Temporary State Tax Commission Rules on Low Income Housing
(Docket #35-0103-0901)

In 2009, the Legislature enacted SB1138 to provide guidance to county assessors when they value section 42 low income housing projects and to outline procedures for valuing the federal tax credits associated with these properties. In SB1138 there was the statutory requirement that certain financial information be provided by owners by May 1, 2009, for tax year 2009. These temporary rules implement the provisions of SB1138 and have that May 1 date contained in them. We assume for tax year 2010 and beyond that the Tax Commission will be promulgating proposed rules.

We have no technical, substantive or procedural problems with the temporary rules.

cc: State Tax Commission
Alan Dornfest

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0901

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2009.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 63-105A, Idaho Code, and the repeal of Section 63-602FF, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Rule 217 needs to be amended as the county assessors need to complete the assessment rolls immediately. SB 1138, effective January 1, 2009, changes the method for appraising low income housing projects. The assessors immediately need to know how the capitalization rate is to be provided so that appraisals can be completed.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

In compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increase is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: Not applicable, this rule does not result in any measurable fiscal impact beyond that resulting from the legislation.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest at (208) 334-7530.

DATED this 29th day of May, 2009.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7530

THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 35-0103-0901

217. RULES PERTAINING TO MARKET VALUE DUTY OF COUNTY ASSESSORS (RULE 217).
Sections 63-205A and 63-208, Idaho Code. ~~(3-30-07)~~(1-1-09)T

01. ~~Market Value~~ Definitions. (1-1-09)T

a. Market Value. Market value is the most probable amount of United States dollars or equivalent for

which a property would exchange hands between a knowledgeable and willing seller, under no compulsion to sell, and an informed, capable buyer, under no compulsion to buy, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment. ~~(7-1-97)~~(1-1-09)T

b. Housing Tax Credits. The “housing tax credits” are the total federal income tax credits allocated by the Idaho Housing and Finance Association to the project either in an original allocation or a new allocation. (1-1-09)T

c. The Amount of Housing Tax Credits. The “amount of housing tax credits” is the housing tax credits divided by the number of years of the term of the tax credit regulatory agreement between the original project developer and the Idaho Housing and Finance Association. (1-1-09)T

d. Existing Section 42 Project. An “existing Section 42 project” is a Section 42 low income project for which housing tax credits were entirely distributed before January 1, 2009. The amount of housing tax credits shall not be used in the appraisal of existing Section 42 projects. The amount of tax credits shall, for the duration of the tax credit regulatory agreement, be used in the income approach if considered for the appraisal of Section 42 projects that have received or will receive an allocation of housing tax credits after January 1, 2009. (1-1-09)T

~~02.~~ Fee Simple Interest to be Used. The assessor shall value the full market value of the entire fee simple interest of property for taxation. Statutory exemptions shall be subtracted. ~~(7-1-97)~~(1-1-09)T

~~03.~~ Personal Property. Personal property shall be valued at retail level. ~~(7-1-93)~~(1-1-09)T

024. Appraisal Approaches. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are: (3-30-07)

a. The sales comparison approach; (3-30-01)

b. The cost approach; and (3-30-01)

c. The income approach. (3-30-01)

035. Appraisal Procedures. Market value for assessment purposes shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. (3-30-07)

a. The appraisal procedures, methods, and techniques using the income approach to determine the market value for assessment purposes of income producing properties, except those described in ~~Subparagraph 217.03.b.iii~~, of this rule, must use market rent, not contract rent. ~~(3-30-07)~~(1-1-09)T

b. When considering all three approaches to value in appraising Section 42 low income housing projects, the appraisal procedures, methods, and techniques, ~~using the income approach to determine the market value for assessment purposes of low income housing properties receiving tax credits under Section 42 of the Internal Revenue Service Code, must use actual rent plus the monetary benefit of any income tax credits;~~ must comply with the following special conditions: ~~(3-30-07)~~(1-1-09)T

i. When using the cost approach, an adjustment shall be made recognizing the possible market share limitation and rental rate restriction as imposed by the development’s tax credit regulatory agreement. (1-1-09)T

ii. When using the sales comparison approach, sales of Section 42 low income housing properties shall be used as comparable sales. When such sales are not available sales of non-Section 42 apartment properties may be used. (1-1-09)T

iii. When using the income approach, actual rents must be used in the calculation of net income if the financial statements described in Subsection 217.07 of this rule are provided by the owners of Section 42 properties. The amount of housing tax credits, when applicable to the appraisal, shall not be included in the net income

capitalized to value but shall be added to the capitalized net income. (1-1-09)T

iv. The exemption provided by Section 63-205(A)(2)(f) Idaho Code, applies only to the difference in value due to not adding an amount to the income approach for those Section 42 properties no longer receiving tax credits at January 1, 2009. It does not apply to the income approach that would use market expenses and income as provided for in Section 63-205(A)(2)(d) Idaho Code, applicable to those properties for which financial statements have not been made available. (1-1-09)T

06. Capitalization Rates for Section 42 Low Income Properties. If, by the time the Tax Commission provides the financial statements to the county assessor, verifiable sales data has not been made available to the Tax Commission for three (3) or more Section 42 sales, the capitalization rate shall be determined by the assessor who may consider the capitalization rates derived from non-Section 42 housing project sales in determining the capitalization rate to be used in the income approach for Section 42 projects. (1-1-09)T

07. Financial Statements to be Provided by the Owners. The owners of Section 42 properties shall, by May 1, 2009, provide to the Tax Commission the prior year's financial statements. The Tax Commission shall forward to the assessor all financial statements received from the owners of Section 42 properties. The income approach will be prepared as follow: (1-1-09)T

a. If such financial statements are provided by May 1, 2009, then the assessor shall determine any income approach value using the procedures described in Subparagraph 217.05.b.iii. of these rules. (1-1-09)T

b. If such financial statements are not provided by May 1, 2009, then the assessor shall determine any income approach value by using market rents of non-Section 42 housing complexes and expenses applicable to non-Section 42 housing complexes, but shall not add the amount of housing tax credits to the capitalized net income. (1-1-09)T

048. Cross Reference. For ~~clarification of the income justification to include when using the income approach to value~~ consider the income tax credits when valuing Section 42 low-income housing properties ~~receiving tax credits under Section 42 of the Internal Revenue Service Code~~, see Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). (~~3-30-07~~)(1-1-09)T