

MINUTES

SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Tuesday, January 15, 2013

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Rice, Senators Hill, McKenzie, Johnson, Vick, Bayer, Werk, Lacey

ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Siddoway** called the meeting to order at 3:00 p.m.

RS21617 **Chairman Siddoway** introduced RS21617 relating to Appeals from the County Board of Equalization. He explained that the main purpose of the bill is a date change. It removes the reference to a deadline of October 1, and provides that appeals be submitted within 30 days of notification.

MOTION: **Senator Werk** moved, seconded by **Senator Vick**, to print the proposed legislation. Motion carried by **voice vote**.

PASSING OF GAVEL: **Chairman Siddoway** passed the gavel to **Vice Chairman Rice** for the consideration of the pending rules.

DOCKET NO. 36-0101-1201 **Vice Chairman Rice** invited to the podium **Steve Wallace**, Director and Clerk to the Board at the Idaho Board of Tax Appeals, to outline the pending rules relating to the Idaho Board of Tax Appeals.

Before he began the description of the rule changes, **Mr. Wallace** explained how the Board of Tax Appeals operates like any court, to fairly hear and timely decide contested cases. He said that to do this fairly, they use a set of procedural rules, which are being reviewed this day. He said it may seem there are a lot of changes, but this has not been done in some time. The goal is to incorporate user-friendly language and clarify improvements, fix typos and change plurals to singular reference, as well as create internal consistency in the rules. This year's review will substantially reduce the total volume of language in the rules. He said the biggest reduction came from eliminating redundancies. **Mr. Wallace** also noted that there have not been any public comments nor concerns regarding these pending rules. He said there is nothing of controversy to create the need for negotiated rule-making.

Mr. Wallace explained that the rules for Board of Tax Appeals were modeled after the rules from the Office of the Attorney General. He said it used to be that when someone looked for a rule, they had to look in two places for it, but now it has been consolidated into one place, and today's rules review is the culmination of that combination.

Most changes being addressed today are "housekeeping in nature," said **Mr. Wallace**, but a few items are being eliminated, and he'd like to draw the Committee's attention to those.

The first is regarding Public Witness, Rule 86. He shared an example of a situation regarding the Public Witness rule that triggered discussion about its removal. He described a case in northern Idaho of a hearing between a taxpayer and the property tax assessor. He said someone wanted to come and participate as a Public Witness, and when it was his turn to speak, he turned the chair around, stood on it and started speaking to the audience on another topic unrelated to the case. The hearing officer completed the case that day and then brought the issue to the attention of the Board of Tax Appeals. **Mr. Wallace** said they sought the opinion of the Idaho Attorney General and the Board was told it is not necessary for the Board of Tax Appeals to have a Public Witness rule. **Mr. Wallace** said the Public Witness mechanism is helpful in a licensing or rate-making or similar cases in which the public's perception of fairness in the process is important to the decision making.

Mr. Wallace also pointed out that these Board of Tax Appeals procedural rules, as well as the Administrative Procedures Act, represent the minimum process or procedure that would be required in trying a case. It is permitted for a hearing officer to go beyond these minimums, and that happens on a somewhat regular basis. The purpose is to streamline the procedural rules to make them easier for participants to use, while also recognizing there are other provisions in place in other materials that allow for Public Witnesses if needed.

The next rule that is eliminated in this document is Rule 63, relating to Pleadings. He said this rule hasn't been used or even discussed in at least fourteen years. **Mr. Wallace** described that just about everything filed in the Board of Tax Appeals goes in the category of Pleadings. He said people will occasionally forget to attach a page or an exhibit and they wish to change something they've filed with the Board. This rule relates to how people would do that in a way that is not useful or beneficial to the participants or the Board's style of administrative law. Therefore, they prefer to save the space in the rules and eliminate this one. **Mr. Wallace** said people still have the opportunity to amend or withdraw a pleading, but it doesn't happen because of this rule.

Mr. Wallace directed the Committee Members to a new Rule 66.03, relating to Fax Filing. He stated that they use faxes quite a bit in the Board of Tax Appeals office as email does not work very well for them, and while they utilize fax machines, there has not been a rule or procedure in place for what is permitted for Fax Filing.

Senator Hill stated that a lot more people have access to email than they do to fax machines and asked why a person could not send a signed PDF document via email, particularly with the requirement that the original needs to be mailed the same day, instead of needing to search for a fax machine.

Mr. Wallace replied that is a very good question, and the Board does allow a little bit of communication through email; however, it does present issues on occasion, especially with Services, meaning if someone is going to file something with the court, the other party needs to be notified at the same time in the same way. He noted that 80-percent of people will have an interaction only one time with the Board and will not develop the expertise to handle these matters or ex-parte concerns. **Mr. Wallace** said sometimes typing an email and talking on cell phones will become more casual than is required for the legal work the Board does. He said their goal is to ensure impartial decisions and fairness, and make sure both sides have equal information and equal access to the judge.

Senator Hill stated he accepts **Mr. Wallace's** judgement on that and asked that digital correspondence be considered in the future, especially because the Fax Filing rule is limited to very specific documents that can be faxed.

Senator Werk said he noticed the rules are not incorporating much technology and that the agency is pretty paper heavy, and he was going make the same recommendation as **Senator Hill**, that the Board of Tax Appeals look into an online process as a possibility to make it more customer friendly. **Mr. Wallace** acknowledged his appreciation for these comments from **Senator Hill** and **Senator Werk**.

Vice Chairman Rice asked **Mr. Wallace** about Rule 117.05 that changes the timing of objections to evidence from the time evidence is offered to the time of the objection so long as it's before the start of closing arguments, and if there is some reason for allowing objections that could potentially be days after the evidence is offered.

Mr. Wallace answered by explaining the hearing process in more detail. He said the majority of the cases they hear are small, representing a small business or a home or market value appeal of the valuation of a home, or an income tax refund lower than \$500, such that in those cases, people do not retain an attorney to go through a more formal procedure. Less than 20-percent of the cases have Certified Public Accountants or other tax experts or tax attorneys involved.

He said this particular rule is what works in the hearings for the individual taxpayer. The Board is able to hear about four cases per day at an hour and a half each to help them stay within their budget and take a minimum amount of time away from Tax Commissioners, and still lets the taxpayer present their case. The procedure has them swear in everyone together at the beginning of the hearing and there is not direct or cross examination as they do all of their questions at one time. So, if there is an objection, it needs to be logged on the record before the closing arguments.

Senator Rice asked about the changes in the rules regarding Post-Hearing Evidence, and how Rule 117.09 seems to take the place of Rule 140.02. He asked about the reasoning of "no post-hearing evidence will be accepted unless allowed by the presiding officer" instead of "no post-hearing evidence will be accepted unless requested by the Board."

Mr. Wallace replied that he does not believe the purpose was to change the rule but to reorganize the same policy into a better location. The new language is what is said at the end of the hearing, where the parties are verbally instructed that this is the date, time and place for the case to be presented, and unless there are specific directions from a hearing officer to submit something post-hearing, it will not be accepted. That lets the parties know that if there is something else they need to submit, they need to disclose that to the hearing officer before the case is closed. The purpose is to prevent situations where a person goes out to the car after the hearing and says, "Darn, I forgot to give them this other document in my pocket." That doesn't work because it would mean reopening the case.

Senator Rice asked about Rule 148.06, removing the requirement that there will be findings of fact and conclusions of law in the decisions. **Mr. Wallace** replied that he would like the opportunity to research that. The Board has been operating for many years with the understanding that the conclusions of law and findings of fact are done in every single decision that is issued. He said he thinks that standard might already exist in Idaho's Administrative Procedures. He stated the Board considers the fine line of how much law they repeat in their procedural rules, and if is there a benefit to having it restated in the rules, or if it is something that does not need to be repeated.

Chairman Siddoway asked **Mr. Wallace** if the new Rule 140.02 covered the findings of fact and conclusions of law concerns. **Mr. Wallace** replied that rule is different in that some cases involving legal issues, the parties have an opportunity to write up a legal argument that can be given to the Board so they can have a really good understanding of the arguments, because in the course of the hearing it is sometimes difficult to say things in the best way.

Chairman Siddoway asked about the rule relating to the Power of the Board, Rule 12.02. He pointed to the last sentence that is stricken that says, "The chairman will not issue substantive orders in any case, except upon a roll call vote." **Chairman Siddoway** asked if that means the chairman can now make substantive decisions without the consent of the Board. **Mr. Wallace** answered that it is not permitted for a chairman to decide a case or dispose of a case. There is a two signature requirement such that at least two members concur on the final decision. **Chairman Siddoway** asked for clarification that indeed the chairman does not have single authority. **Mr. Wallace** said that yes, that is covered in the enacted statutes.

Chairman Siddoway commented that he also made the same notes as **Senator Hill** and **Senator Werk** about electronic filing provision as it seems that is the way business is done these days and he suggested the Board look into that. **Mr. Wallace** replied they most certainly will.

**PASSING OF
GAVEL:**

As there was no further participants desiring to testify, **Vice Chairman Rice** returned the gavel to **Chairman Siddoway**. **Chairman Siddoway** stated the Committee will vote on these pending rules at the meeting on January 29. He reminded the Committee of the Idaho State Tax Commission's event, "Tax 101" scheduled for Wednesday and Thursday from 3:00 p.m. to 5:00 p.m. in the West Auditorium.

Senator Hill commended **Mr. Wallace** and his staff for their efforts in preparing these rules. He said he has looked at a lot of rules in his time, and their work to make them more succinct and clear is a good example for the rest of the rules. **Chairman Siddoway** said he would echo that statement.

ADJOURNED:

There being no further business, **Chairman Siddoway** adjourned the meeting at 3:38 until Tuesday, January 22 at 3:00 p.m.

Senator Siddoway
Chairman

Christy Stansell
Secretary