STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

November 12, 2015

The Honorable Dan Johnson
Idaho State Senator
P.O. Box 2117
Lewiston, ID 83501

Re: Modifications of Urban Renewal Plans – Our File No. 15-52926

Dear Senator Johnson:

I received your request for an analysis regarding the treatment of modifications of urban renewal plans in relation to base values of the urban renewal areas. Specifically, you asked:

> Based on the definition of "base assessment roll" found in Idaho Code § 50-2903, does the base value of a Revenue Allocation Area ("RAA") reset to current market value when an urban renewal plan is modified?

The direct answer to your question is yes, applying that statute and no others, the modification of an urban renewal plan should result in the base value of any associated RAA being "reset" to the market value as of January 1 of the year of the modification. The current status of the urban renewal statutes, however, does not allow for a definitive answer of your question because other statutes also address the issue. Other Idaho code sections and Property Tax Administrative rules based upon those other code sections may be in tension with § 50-2903 or indicate a legislative departure from § 50-2903, that there is probably no administrative apparatus in place to track all the conditions that could result in a "reset" of base value, and that the common practice is *not* to reset value for changes to urban renewal plans whether revenue allocation areas are being modified or not. Set forth below is more detailed discussion of urban renewal law and the above conclusions.

DISCUSSION

Statutory Law

The statutory law controlling what is commonly known as "urban renewal" is found in two separate chapters of Title 50 of Idaho Code, Municipal Corporations. Chapter 20 is titled the "Urban Renewal Act of 1965" and Chapter 29 is titled the "Local Economic Development Act." The latter Act specifically authorizes tax increment financing in RAAs to assist in financing urban renewal plans. Idaho Code § 50-2902. A good analogy to the relationship between an urban renewal area, which is a "deteriorated area . . . appropriate for an urban renewal project" (Idaho Code § 50-

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2018(11)), and an RAA, the area within an urban renewal area in which tax increment financing is utilized to fund urban renewal projects (see generally Idaho Code § 50-2903(15)) is that of the engine and the car. The RAA (the engine) powers the urban renewal area (the car) by providing it the necessary funds for it to complete projects (to move).

Your question concerns the definition of "base assessment roll" found in Idaho Code § 50-2903(4), which is, in pertinent part:

> . . . [t]he equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision. . . .

This language remains unchanged since the enactment of the Local Economic Development Act in 1988, and requires that a modification of an urban renewal plan results in the assessed property values on January first of the year of modification becoming the base value for the RAA.[1] This would effectively result in the increment value (the difference in value between the base value of a revenue allocation area and the current market value for the same area that is used by an urban renewal agency to fund projects in an urban renewal area) realized by previous increases in property value in the RAA being reset to zero when an urban renewal plan is modified.

It is important to note that modifications of Revenue Allocation Areas are modifications of urban renewal plans due to the definitions for "urban renewal plan" under both chapters 20 and 29. The language in Idaho Code § 50-2018 is, in pertinent part:

> (12) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan:
>
> . . .
>
> (b) Shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and *any method or methods of financing such plan, which methods may include revenue allocation financing provisions.*

(Emphasis added). The Idaho State Tax Commission generally does not recognize a change in the RAA as a change in the Urban Renewal Plan, but this position may be subject to debate. The legislature may want to discuss this provision with the Tax Commission to identify whether statutory clarification is needed. Idaho Code § 50-2903 says:

> (12) "Plan" or "urban renewal plan" means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to section 50-2008, Idaho Code,

[1] January 1st does not hold a special significance in urban renewal law, but is the date generally used to set values in Idaho for property assessment for taxation purposes.

> and *any method or methods of financing such plan, which methods may include revenue allocation financing provisions.*

(Emphasis added). The term "revenue allocation financing provisions" exists throughout chapter 29 and logically seems to be the phrase used to describe the language in an urban renewal plan identifying an RAA's existence. Based on this language and the practicalities of how urban renewal plans and RAA's are established, the description and identification of an RAA have become in practice a necessary (or at least very commonplace) part of an urban renewal plan. Therefore, modifications of an RAA associated with an urban renewal plan are treated as modifications to the plan as contemplated in Idaho Code § 50-2903(4) when it requires a "reset" of the base value of the RAA.

There are other statutory provisions that seem to be in tension with this provision and, instead, indicate the intent to leave base values unchanged when plans are modified. Idaho Code § 50-2033 allows RAA boundaries to be extended only once and limits the area added to not be greater than 10 percent of the original size of the RAA. This limitation is in addition to the limitations found in Idaho Code § 50-2904, which include a 20-year duration limit on RAAs and any additions thereto.

Reading Idaho Code § 50-2033 (which was enacted in 2011, well after the provisions of Idaho Code § 50-2903) to mean that an increase in an RAA's footprint results in a reset of its base value eliminates any value the increase would have had likely dis-incentivized certain expansions. An urban renewal agency is not likely to attempt a small expansion of an RAA if it results in all the income produced by the RAA being extinguished, especially in light of the fact that the period in which to earn that income is not extended. A more logical reading is that, when enacting Idaho Code § 50-2033, the legislature dealt with the specific situation of expansion of an RAA's footprint rather than the general situation addressed by Idaho Code § 50-2903. The normal rule of statutory construction when two statutes address the same situation, is that the later, specific statute governs over the earlier, general statute. *In Re Estate of* Wiggens, 155 Idaho 116, 123, 306 P.3d 201, 208 (2013). The Tax Commission Administrative Rules mirror this reading of urban renewal law, i.e., the later, specific statute governs over the earlier, general statute. *Id.*

Administrative Rule

Idaho Property Tax Administrative Rule 804, section 4, covers tax levy certifications in situations involving modification of an urban renewal plan, and states, in pertinent part:

> **04. Modification of an Urban Renewal Plan.** When an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, the current value of property in the RAA shall be determined as if the modification had not occurred.

This rule can be construed to operate in opposite manners depending on how one interprets the phrase "current value of property." If "current value of property" means that the current value is set at the market value without regards to property that may or may not have had changes of character or taxable nature, then the rule probably conforms to the interpretation of Idaho Code § 50-2903 found above. The market value of the property as of January 1 of the modification year would set a new base for the RAA, but other possible changes during the year would be ignored, honoring the January

1 assessment date. If, however, "current value of property" means the base value will remain unchanged as if the modification did not occur, then the rule would probably conflict with the earlier statutory requirement, outside any argument like the one made about Idaho Code § 50-2033 above, because a new base would not be set upon the modification.

Staff of the Tax Commission indicate that the second interpretation based upon the more recent, more specific statute is currently applied to base values of RAAs in urban renewal areas with modified plans, and that procedure has been used in the state for as long as the institutional memory of the agency. In addition to a possible conflict between rule and the earlier statute, Tax Commission staff has also identified another possible problem with the treatment of modifications to urban renewal plans. That issue is that an urban renewal plan may be modified but not result in a modification of an associated RAA. Although Idaho Code § 50-2907 requires a transmission of ordinances and RAA maps to the Tax Commission, that requirement has been interpreted by the Tax Commission and Urban Renewal Agencies to only involve the mapping of RAAs to ensure proper apportionment of operating property taxes and levy setting. Modifications of plans not involving an RAA boundary change, which are still subject to the requirements of Idaho Code § 50-2903 as interpreted above, are not forwarded to or expected by the Tax Commission, because the Tax Commission has no statutorily mandated authority over urban renewal, other than tracking boundaries in order to properly set levies. These practices result in base values remaining as set *during the initial formation of the RAA regardless of subsequent modifications to the plan that* should "reset" those values to current market values.

CONCLUSION

Idaho Code § 50-2903 requires the modification of an urban renewal plan result in the base value of any associated RAA being "reset" to the market value. However, there are reasonable arguments that Idaho Code § 50-2903 was modified by the later enactment of § 50-2033 not to reset a base value on every change to an urban renewal plan, and that interpretation of urban renewal law has resulted in administrative rulemaking and policies that reconcile the statutes in this manner. Based upon the analysis in this letter and the current operation of the Urban Renewal under these statutes, this office recommends working closely with the Idaho Tax Commission to ensure the intent of the legislature through statutory amendments is fulfilled through the practical application of those statutory amendments to Idaho's tax system.

I hope you find this analysis helpful.

Sincerely,

BRIAN KANE
Assistant Chief Deputy

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