



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
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SENT VIA ELECTRONIC MAIL TO: djohnson@senate.idaho.gov & STATEHOUSE MAIL

The Honorable Dan Johnson
Idaho State Senate
Idaho State Legislature
State Capitol
P.O. Box 83720
Boise, ID 83720-0081

RE: HB 462

Dear Senator Johnson:

Your request to Brian Kane for comment on the legality of certain aspects of current House Bill 462 was given to me for analysis and response. You ask specifically:

Can the legislature this year revert forestland productivity classifications for all parcels of land under the productivity option for taxation found in Idaho Code § 63-1705 to their classification as of January 1, 2016?

The proposed legislation at issue reads:

(4) On the effective date of this act, each forest land parcel shall remain at or revert to the productivity classification it held on January 1, 2016; however, taxes assessed prior to the effective date of this act shall be due and payable under the productivity classification in effect at the time of assessment. The CFTM shall designate a process by which county assessors may change a parcel's productivity classification. At a minimum, the process shall set forth requirements for landowner notification, inspector qualifications and document retention. The state tax commission shall promulgate rules to implement the CFTM-designated process. After legislative adoption of the rules, forest productivity classification may be subject to change pursuant to the process set forth in the rules.

(HB 462 emphasis added).

Short Answer

The italicized passage above is the clause to which your question pertains. While the intent behind that clause is probably legal, the language trying to fulfill that intent is probably not because it results in taxation of property at an amount of value other than market value, resulting in an exemption of value not specifically identified in the statute. The Idaho Constitution allows the legislature plenary power to provide for exemptions from taxation. If the legislative intent of HB 462 is that it be an exemption, the specific language of the bill should identify it as such.

MARKET VALUE AS ESTABLISHED BY LAW

Constitutional Provisions

Article VII, § 2 of the Idaho Constitution provides for levying a tax by value so that “every person or corporation shall pay a tax in proportion to the value of his, her, or its property.” Article VII § 5 provides that all taxes shall be uniform within the territorial limits of the authority levying the tax. Uniformity requires that taxable property in a taxing district must be assessed at the same level of market value and it must be taxed at the same levy rate. Idaho Telephone Company v. Baird, 91 Idaho 425 (1967). “The same level of market value” means that one taxpayer cannot pay on the full market value of his property while another only pays on a percentage of his property’s market value, not that all similar properties will have similar values. Properties’ values will vary with the various differences they naturally have. “Taxed at the same levy rate” means one rate must be applied to all taxable property.

Taken alone, the uniformity clause in Article VII § 5 would disallow any exemption, because exemptions exclude some property from taxation while leaving other property fully taxed, logically resulting in dis-uniform taxation. The power to exempt property from taxation, however, is also found in Article VII § 5, where it says, “the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, . . .” The legislature’s power to exempt property from taxation is plenary, save only as it may be limited by state or federal constitutions. Achenbach v. Kincaid, 25 Idaho 768 (1914). The legislature may, therefore, exempt property from taxation as it sees fit, so long as the exemption is necessary and just.

Statutory and Administrative Rule Provisions

Article VII § 5 also requires taxes “be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.”

Idaho Code § 63-205 is a general law that governs timing and requirements for the assessment of property and it says, in pertinent part:

(1) All real, personal and operating property subject to property taxation must be assessed annually at *market value for assessment* purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission.

(*Id.* emphasis added).

“Market Value” is defined in Idaho Code § 63-201 as:

[T]he amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

In general, the difference between “market value” and “market value for assessment purposes” is any statutory exemptions that a particular type of property enjoys. This general guidance is memorialized in Property Tax Administrative Rule 217 subsection (1)(a), (IDAPA 35.01.03.217) in its definition of market value. However many types of property have specific statutory guidance to determine market value for assessment purposes, including low income housing, rate regulated utilities and, important for the issue at hand, forestland.

Forestland Valuation

Chapter 17 of Title 63, Idaho Code, governs the valuation and taxation of forest lands and forest products. Chapter 17 allows two types of taxation on forest land, the “productivity” option established in Idaho Code § 63-1705 and the “bare land and yield” option found in Idaho Code § 63-1706. In general, Section 1706 bifurcates the value of forest land into a bare land value that is assessed yearly, as any other property, and a value of the yield, the value of the timber on the land, that is taxed at a given percentage of value when harvested.

Market value for assessment purposes for forest lands in the “productivity” option under Section 1705 is determined in that section, as identified in the definition of “forest value” in Idaho Code § 63-1701. That definition is:

(8) “Forest value” means the market value for assessment purposes as determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through the timber productivity valuation process as prescribed by section 63-1705, Idaho Code.

Idaho Code § 63-1701.

Section 1705 establishes the Committee on Forest Land Taxation Methodologies (CFTM) within the Idaho State Tax Commission. An in depth analysis of the inception and inner workings of the

CFTM is unnecessary to review the issue at hand, but some historical background is appropriate. Volatility in the timber market made accurate assessment of forestlands difficult, so the CFTM was instituted to bring counties and industry together in order to negotiate a process that could be used to most closely determine forest land value. The CFTM work in that regard culminated in an agreed upon process to determine forest land value, the "User's Guide" of 2005, identified Section 1705, Subsection 2.

The Tax Commission also provides administrative rules relating to the process in Property Tax Administrative Rule 962 (IDAPA 35.01.03.962). In conjunction with the user's guide and other statutory guidance, Rule 962 divides the state into 4 forest valuation zones, and classifies forestlands within those zones into three productivity classes, poor, fair, and good, that are assigned values based on the land's ability to produce timber.

Because of continued market volatility, in 2012 further modification of the forest land valuation process was necessary to ensure that forest values reflected an accurate market value for assessment purposes. Section 1705 was modified to include a cap on increases or decreases of forest values of more than 5% a year, or more than 30% for the subsequent 10 years.

PROPERTY ASSESSMENT AND EQUALIZATION

Idaho Code § 63-301 requires county assessors to complete assessment by finding the market value for assessment purposes of all property in the county and entering such value on the property rolls before the fourth Monday of June. Idaho Code § 63-308 requires that each property owner be mailed a valuation assessment notice by the first Monday in June, listing the market value for assessment purposes of each property and the right to appeal those values to the county board of equalization (BOE).

Idaho Code § 63-501A explains the procedure for property tax appeals to the county BOE and gives the taxpayer until the fourth Monday in June to file an appeal. Subsection (2) of Section 501A authorizes appeals of BOE decisions under Idaho Code § 63-511. Section 511 allows appeals from the BOE to be taken to the Board of Tax Appeals or directly to the District Court in the County where the property is located.

In appeals to the county BOE, under Idaho Code § 63-502, the taxpayer has the burden of proof to establish that the assessor's determination of value is erroneous. In appeals from a county BOE to the BTA or District Court under Section 511, the burden is on the movant to establish that the valuation is erroneous, either as originally established by the assessor or as corrected by the county BOE on appeal from the assessor's valuation. There is, therefore, a presumption that an assessment is valid, absent facts to the contrary.

Once, by the fourth Monday of June, an assessment is entered on the rolls, it is used to complete a county's abstract of values that is presented to the Idaho State Tax Commission, sitting as the State Board of Equalization in August. After all property is equalized by the State BOE, those values are used to set levy rates throughout the state for the tax year.

ANALYSIS OF THE ISSUE

Industry representatives propose a moratorium on any changes to forest land classifications until the CFTM can institute a system to govern how such classifications can be fairly changed. The first passage of HB 462 is an attempt to legislate such a moratorium. Because changes to forest land classifications are changes to forest land value, the moratorium as written is probably not a legal vehicle to affect such change.

Market value for assessment purposes of forest land in the productivity option under Idaho Code § 63-1705 is set by the procedure described hereinabove. In this case, there is question as to whether or not that method, as used by the counties at this time, determines the most accurate market value for assessment purposes that may be calculated. It may, therefore, be appropriate to institute a moratorium on changes to forest land classifications going forward until such time as the CFTM can determine whether changes to the method used to value those lands are appropriate. Backdating such a moratorium to January 1, 2016 however, results in values that have been determined by the current process to be accurate reflections of market value for assessment purposes being changed, resulting in a de facto exemption of certain property value.

As noted hereinabove, the legislature has plenary power to exempt property, and exemptions are included when coming to a final market value for assessment purposes. The proposed language does not indicate a legislative intent to exempt any property from taxation. The result of the legislation, however, is to reduce values of property not by modifying the method in which market value for assessment purposes is calculated, but by reducing valuations that have already passed through the valuation process and are, by operation of existing law, presumed to be accurate.

Legislative exemptions are usually identified in one of two ways. The first is specific language identifying the legislation as holding an intent to exempt property, such as "the following property is exempt" or "under these conditions, the property of X is exempt." The second is language found in a section of law that specifically concerns tax exemptions. For instance, there are dozens of property tax exemptions found in Title 63, Chapter 6, of Idaho Code, titled Property Exempt from Taxation.

Chapter 17 of Title 63 concerns forest land valuation, and Idaho Code § 63-1705 specifically identifies the method of valuing certain forest land. It sets forth the method to determine the market value for assessment purposes of that land, but does not contain any exemptions from that value. Should an exemption from that value be included in that section, explicit language of that intent should be included, in order to ensure that the resulting changes to value and accompanied shifts in tax rates are identified.

Alternatively, a moratorium that started for unassessed tax years is probably legally acceptable, because it would simply change the current valuation process and result in a market value for assessment purposes that could be considered the most accurate available at the time. Just as the legislature determined in the current statute that an accurate market value for assessment purposes for certain forest land classifications would be one that would not change more than 5%

a year, it could also determine that the most accurate value would result in lands not changing in classification at all. But a change in classifications that were legally established and are presumed correct by operation of law can only be considered an exemption in excess of current market value for assessment purposes.

CONCLUSION

The language of HB 462 may result in an illegal modification of forest land values because it will result in certain properties not being assessed at market value for assessment purposes without proper exemption language.

To ensure that legislative intent is carried out in the bill, explicit exemption language should be included for the difference in market value for assessment purposes that is determined by following the forest land valuation process and the value that would result due to the proposed moratorium. Alternatively, any included moratorium should be in relation to a perceived lack of ability to establish a proper market value for assessment purposes through the current forest land valuation process and should only look forward, not apply to already established values.

I hope this responds to your question. If you have any further questions, please contact me at the number below.

Sincerely,



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GRB/bai

cc: Brian Kane