

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 297

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE STATE TAX COMMISSION, THE DEPARTMENT OF REVENUE AND TAXATION
2 AND THE BOARD OF TAX APPEALS; AMENDING SECTION 63-101, IDAHO CODE, TO
3 DELETE REFERENCE TO THE BOARD OF TAX APPEALS, TO PROVIDE FOR THE STATE
4 TAX COMMISSION TO APPOINT A DIRECTOR AND TO PROVIDE MEANINGS FOR THE
5 BOARD OF TAX APPEALS, THE STATE TAX COMMISSION AND THE DEPARTMENT OF
6 REVENUE AND TAXATION; AMENDING SECTION 63-102, IDAHO CODE, TO PROVIDE
7 FOR THE COMMISSION-APPOINTED DIRECTOR; AMENDING SECTION 63-103, IDAHO
8 CODE, TO PROVIDE FOR APPOINTMENT OF A DIRECTOR OF THE DEPARTMENT OF
9 REVENUE AND TAXATION AND TO PROVIDE PROCEDURES AND EMPLOYEES; AMENDING
10 SECTION 63-3801, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION
11 SHALL SERVE AS THE BOARD OF TAX APPEALS; REPEALING SECTIONS 63-3802
12 THROUGH 63-3806, IDAHO CODE, RELATING TO PROVISIONS DEALING WITH THE
13 BOARD OF TAX APPEALS; AMENDING SECTION 63-3808, IDAHO CODE, TO PRO-
14 VIDE FOR ADOPTION OF RULES AND ISSUANCE OF SUBPOENAS BY THE STATE TAX
15 COMMISSION; AMENDING SECTION 63-3809, IDAHO CODE, TO REVISE HEARING
16 PROCEDURES; REPEALING SECTION 63-3810, IDAHO CODE, RELATING TO MOTION
17 FOR REHEARING AND REHEARING BY ENTIRE BOARD OF TAX APPEALS; REPEALING
18 SECTION 63-3811, IDAHO CODE, RELATING TO APPEALS OF TAX LIABILITY; AND
19 AMENDING SECTION 63-3812, IDAHO CODE, TO PROVIDE PROCEDURES FOR APPEALS
20 FROM THE STATE TAX COMMISSION.
21

22 Be It Enacted by the Legislature of the State of Idaho:

23 SECTION 1. That Section 63-101, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 63-101. DEPARTMENT OF REVENUE AND TAXATION -- STATE TAX COMMISSION --
26 ~~BOARD OF TAX APPEALS~~. (1) There is hereby created the department of revenue
27 and taxation, which shall consist of a state tax commission ~~and a board of~~
28 ~~tax appeals~~. The department of revenue and taxation shall, for the purposes
29 of section 20, article IV, of the constitution of the state of Idaho, be an
30 executive department of state government.

31 (2) The state tax commission shall be the constitutional tax commission
32 prescribed in section 12, article VII, of the constitution of the state of
33 Idaho.

34 ~~(3) The board of tax appeals shall be as provided in chapter 38, title~~
35 ~~63, Idaho Code.~~

36 (43) The state tax commission may organize itself, or may organize such
37 administrative units under the direction and control of the state tax com-
38 mission's appointed director, as deemed necessary for proper and efficient
39 operation in order to exercise the constitutional and statutory authority
40 and functions assigned to the state tax commission by the provisions of this
41 title, or by other laws.

1 (54) The state tax commission shall consist of four (4) members, not
2 more than two (2) of whom shall belong to the same political party. The mem-
3 bers of the state tax commission shall be appointed by the governor, by and
4 with the consent of the senate; and shall be subject to removal by impeach-
5 ment as provided in chapter 40, title 19, Idaho Code.

6 (65) Appointments, except appointments to fill vacancies, shall be for
7 a term of six (6) years. Appointments to fill a vacancy shall be made by the
8 governor, and the name of the appointee shall be submitted to the senate for
9 confirmation at the next regular or extraordinary session, and upon confir-
10 mation of the appointment, the appointee shall hold office for the unexpired
11 term.

12 (76) Each member of the state tax commission shall take, subscribe and
13 file with the secretary of state an oath of office in the form, time and man-
14 ner prescribed in chapter 4, title 59, Idaho Code. Each state tax commis-
15 sioner shall be bonded to the state of Idaho in the form, time and manner pre-
16 scribed in chapter 8, title 59, Idaho Code.

17 (87) The state tax commission shall have an office in Ada county and may
18 establish temporary offices at any place within the state whenever necessary
19 for the discharge of the state tax commission's duties.

20 (98) The state tax commission shall have an official seal, of which an
21 impression and description shall be filed with the secretary of state. Ju-
22 dicial notice shall be taken of the seal of the state tax commission. Copies
23 of papers, records, proceedings and documents in the possession of the state
24 tax commission may be authenticated by affixation of the seal of the com-
25 mission and the attestation of the chairman of the commission, and when so
26 sealed and attested shall be received in evidence in all courts with the same
27 effect as the originals.

28 (9) Notwithstanding any other provision of law to the contrary, in ti-
29 tle 63, Idaho Code, and elsewhere in law where the board of tax appeals is
30 used it shall mean the state tax commission and where the state tax commis-
31 sion is used it shall mean the department of revenue and taxation unless the
32 context clearly denotes otherwise.

33 SECTION 2. That Section 63-102, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 63-102. ORGANIZATION -- CHAIRMAN -- COMPENSATION -- QUORUM -- HEAR-
36 INGS. (1) A member of the state tax commission shall be appointed by the gov-
37 ernor, to serve at his pleasure, as chairman. Each member of the state tax
38 commission shall devote full time to the performance of duties. Commencing
39 on July 1, 2014, the annual salary for members of the state tax commission
40 shall be eighty-eight thousand twenty-eight dollars (\$88,028).

41 (2) A majority of the state tax commission shall constitute a quorum for
42 the transaction of business. The state tax commission may delegate to any
43 member of the commission or to its employees, the power to make investiga-
44 tions and hold hearings at any place it may deem proper, and such other mat-
45 ters as will facilitate the operations of the commission.

46 (3) The chairman of the state tax commission shall delegate to each com-
47 missioner the responsibility for policy management and oversight of one (1)
48 or more of the taxes collected and/or activities supervised or administered

1 by the commission. The state tax commission shall perform the duties imposed
2 upon it by law and shall adopt all rules by majority decision.

3 In any case in which the state tax commission sits as an appellate body
4 upon an appeal from a tax decision from one (1) of the various administrative
5 units subject to its supervision, the state tax commissioner charged with
6 responsibility for policy management and oversight of the tax in controversy
7 shall not vote upon the appeal but may advise the remaining members of the
8 commission on the technical aspects of the problems before them.

9 (4) ~~The chairman~~ commission-appointed director shall be the chief
10 executive officer and administrative head of the state tax commission and
11 shall be responsible for, or may assign responsibility for, all personnel,
12 budgetary and/or fiscal matters of the state tax commission.

13 SECTION 3. That Section 63-103, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 63-103. EMPLOYEES -- COMPENSATION -- EXPENSES. ~~(1) The state tax com-~~
16 ~~mission may employ an officer who shall serve as secretary of the commission~~
17 ~~and shall also employ such other persons as may be necessary for the perfor-~~
18 ~~mance of its duties. Certain of its employees may be designated as deputies~~
19 ~~who shall perform such duties as prescribed by the state tax commission. The~~
20 ~~state tax commission may delegate to any of its employees the duty of assist-~~
21 ~~ing in the collection, audit, inspection and enforcement of any tax or li-~~
22 ~~cence and may authorize any of its employees to act in its place and stead.~~

23 The state tax commission may delegate any other function, responsibility or
24 duty imposed upon the commission to one (1) or more commissioners or deputy
25 commissioners; provided however, where the amount in issue relating to the
26 tax liability of any taxpayer is equal to or exceeds fifty thousand dollars
27 (\$50,000), and the commission has delegated the authority to compromise such
28 liability to an individual commissioner, the settlement or closing agree-
29 ment procedure shall be governed by the provisions of section 63-3048, Idaho
30 Code. The state tax commission shall appoint a director of the department of
31 revenue and taxation, hereinafter referred to as the director, who shall be a
32 person with knowledge of, and experience in, the requirements for assessing
33 and collecting taxes. The director shall not hold any other public office,
34 nor any office in any political party organization, and shall devote his or
35 her entire time to the service of the state in the discharge of his official
36 duties under the direction of the state tax commission.

37 ~~(2) The compensation of all state tax commission employees shall be~~
38 ~~paid upon the same basis and in the same manner as the compensation of other~~
39 ~~state employees is paid~~ The director or his designee shall serve as secretary
40 to the state tax commission.

41 ~~(3) The traveling expenses of the members of the state tax commission~~
42 ~~and its employees when traveling in performance of official duty, and other~~
43 ~~necessary expenses incurred in performance of its duties, shall be paid upon~~
44 ~~the same basis and in the same manner as the expenses of other state employees~~
45 ~~are paid~~ director's compensation will be determined by the state tax commis-
46 sion with approval of the governor. The director shall be reimbursed at the
47 rate provided by law for state employees for all actual and necessary trav-
48 eling and other expenses incurred by him in the discharge of his official du-
49 ties.

1 (4) Before entering upon the duties of his office, the director shall
 2 take and subscribe to the official oath of office, as provided by section
 3 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he
 4 holds no other public office, nor any position under any political commit-
 5 tee or party. Such oath, or affirmation, shall be signed in the office of the
 6 secretary of state. The director shall be bonded to the state of Idaho in the
 7 time, form and manner prescribed by chapter 8, title 59, Idaho Code.

8 (5) The director shall have general supervision and control of all ac-
 9 tivities, functions and employees of the department of the state tax com-
 10 mission, under the supervision and direction of the state tax commission,
 11 and shall enforce all the provisions of the laws of the state, and rules and
 12 proclamations of the state tax commission relating to Idaho Code and other
 13 laws of the state not inconsistent with this act, and shall exercise all nec-
 14 essary powers incident thereto not specifically conferred on the state tax
 15 commission.

16 (6) The director is hereby authorized to appoint as many employees as
 17 the state tax commission may deem necessary to perform administrative du-
 18 ties, to enforce the laws and to properly implement all programs relating to
 19 taxes that are within the responsibility of the state tax commission estab-
 20 lished for carrying out the purposes of the Idaho tax code.

21 (7) The appointment of such employees shall be made by the director in
 22 accordance with chapter 53, title 67, Idaho Code, and rules promulgated pur-
 23 suant thereto, and they shall be compensated as provided therein. Said em-
 24 ployees shall be bonded to the state of Idaho in the time, form and manner
 25 prescribed by chapter 8, title 59, Idaho Code.

26 (8) The director shall make an annual report to the state tax commis-
 27 sion, governor, the legislature and the secretary of state of the doings and
 28 conditions of his office.

29 SECTION 4. That Section 63-3801, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 63-3801. ESTABLISHMENT. ~~Within the department of revenue and taxa-~~
 32 ~~tion, there is hereby established a board of tax appeals as an independent~~
 33 ~~body which shall not in any way be subject to the supervision or control of~~
 34 ~~the state tax commission shall be the board of tax appeals.~~

35 SECTION 5. That Sections [63-3802](#) through [63-3806](#), Idaho Code, be, and
 36 the same are hereby repealed.

37 SECTION 6. That Section 63-3808, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 63-3808. ADOPTION OF RULES AND ISSUANCE OF SUBPOENAS. The ~~board~~ state
 40 tax commission shall adopt and publish such rules and regulations as may be
 41 necessary to carry out its duties and amplify the procedural structure set
 42 out in this act and chapter 52, title 67, Idaho Code.

43 The ~~board~~ state tax commission and each member shall have power to is-
 44 sue subpoenas requiring the attendance of witnesses and the production of
 45 documentary evidence in the like manner and to the same extent as courts of
 46 record. The process issued shall extend to all parts of the state and may be

1 served by any person authorized to serve process of courts of record. The
 2 subpoena shall state the name of the board state tax commission, the title of
 3 the action, and shall command each person to whom it is directed to attend and
 4 give testimony and produce the books, papers, documents, or tangible things
 5 designated therein at the time and place therein specified.

6 Each witness who shall appear by order of the board state tax commis-
 7 sion or a member commissioner shall receive for his attendance the same fees
 8 and mileage allowed by law to a witness in civil cases in the district court,
 9 which amount shall be paid by the party at whose request such witness was sub-
 10 poenaed. If any witness shall fail to properly respond to a subpoena, the
 11 board state tax commission may petition the district court in and for the
 12 county in which the proceeding is pending setting forth the issuance of the
 13 subpoena, its proper service and the basis upon which the board state tax
 14 commission alleges that the witness failed to respond. The court shall enter
 15 an order directing the witness to appear before the court at a time and
 16 place fixed by the court, not less than five (5) days from the service of such
 17 order on the witness, to show cause why he has not attended and testified or
 18 produced the documentary evidence before the board state tax commission. If
 19 it shall appear to the court that the subpoena was regularly issued by the
 20 board state tax commission or a member commissioner and regularly served,
 21 the court shall thereupon enter an order that the witness appear before the
 22 board state tax commission at the time and place fixed in the order to testify
 23 or produce the required documentary evidence, and upon failure to obey that
 24 order, the witness shall be dealt with for contempt of court.

25 SECTION 7. That Section 63-3809, Idaho Code, be, and the same is hereby
 26 amended to read as follows:

27 63-3809. HEARINGS -- MATTER CONSIDERED BY BOARD STATE TAX COMMISSION
 28 TO BE OF PUBLIC IMPORTANCE. Hearing assignments will be made by the chair-
 man.

29 (1) A hearing will be conducted and a recommended decision rendered by a
 30 hearing officer or by one (1) member of the board state tax commission. The
 31 recommended decision shall become final when signed by at least two (2) ~~board~~
 32 members commissioners.

33 (2) If the recommended decision fails to gain the signature of two (2)
 34 ~~members commissioners~~, the chairman shall direct that a substitute recom-
 35 mended decision be drafted for submission to ~~board members~~ the commissioners
 36 and which shall become final upon the signature of two (2) or more ~~members~~
 37 commissioners.

38 (3) Prior to a final decision being rendered, if, in the opinion of one
 39 (1) or more ~~members of the board~~ commissioners, a matter is of sufficient im-
 40 portance to the public, it may be certified for consideration by the entire
 41 board state tax commission either at a hearing or upon a transcript of a hear-
 42 ing held by one (1) of its ~~members~~ commissioners and recorded in any suitable
 43 manner.

44 (4) Following the filing of a timely notice of appeal to the ~~board of~~
 45 tax appeals state tax commission for a property tax appeal hearing, a hearing
 46 will be set, conducted and a decision shall be rendered no later than May 1.
 47 An appeal hearing may be delayed or continued upon written agreement of all
 48 parties.

1 SECTION 8. That Section 63-3810, Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 9. That Section 63-3811, Idaho Code, be, and the same is hereby
4 repealed.

5 SECTION 10. That Section 63-3812, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 63-3812. APPEAL FROM ~~BOARD~~ STATE TAX COMMISSION -- PAYMENT OF TAXES
8 WHILE ON APPEAL. Whenever any taxpayer, assessor, ~~the state tax commission~~
9 or any other party appearing before the ~~board of tax appeals~~ state tax com-
10 mission is aggrieved by a decision of the ~~board of tax appeals~~ state tax com-
11 mission or a decision on a motion for rehearing, an appeal may be taken to the
12 district court located in the county of residence of the affected taxpayer,
13 or to the district court in and for the county in which property affected by
14 an assessment is located.

15 (a) The appeal shall be taken and perfected in accordance with rule 84
16 of the Idaho rules of civil procedure.

17 (b) Any record made in such matter together with the record of all pro-
18 ceedings shall be filed by the clerk with the district court of the proper
19 county.

20 (c) Appeals may be based upon any issue presented by the appellant to
21 the ~~board of tax appeals~~ state tax commission and shall be heard and deter-
22 mined by the court without a jury in a trial de novo on the issues in the same
23 manner as though it were an original proceeding in that court. The burden of
24 proof shall fall upon the party seeking affirmative relief to establish that
25 the decision made by the ~~board of tax appeals~~ state tax commission is erro-
26 neous. A preponderance of the evidence shall suffice to sustain the burden
27 of proof. The burden of proof shall fall upon the party seeking affirmative
28 relief and the burden of going forward with the evidence shall shift as in
29 other civil litigation. The court shall render its decision in writing, in-
30 cluding therein a concise statement of the facts found by the court and con-
31 clusions of law reached by the court. The court may affirm, reverse or modify
32 the order, direct the tax collector of the county or the director of the state
33 tax commission to refund any taxes found in such appeal to be erroneously or
34 illegally assessed or collected or may direct the collection of additional
35 taxes in proper cases.

36 (d) Nothing in this section shall be construed to suspend the payment
37 of taxes pending any appeal, except that any privileges as to bonds or other
38 rights extended by the provisions of chapters 30 and 36, title 63, Idaho
39 Code, shall not be affected. Payment of taxes while an appeal hereunder is
40 pending shall not operate to waive the right to an appeal.

41 (e) Any final order of the district court under this section shall be
42 subject to appeal to the supreme court in the manner provided by law.