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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO POWER COMPANY, an Idaho corporation; and AVISTA CORPORATION, a Washington corporation, Plaintiffs-Respondents- Cross-Appellants, vs. IDAHO STATE TAX COMMISSION, in its capacity as the STATE BOARD OF EQUALIZATION, Defendant-Appellant- Cross-Respondent.	Supreme Court Docket No.: 49126-2021 Ada County No: CV01-20-14896

CROSS-APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho
In and For the County of Ada

Honorable Patrick Miller, District Judge, Presiding

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I. INTRODUCTION

The Tax Commission's Reply Brief covers two separate but related rulings by the district court that are the subject of the appeal and cross-appeal, and responds to different arguments included in the opening brief of the Plaintiffs/Respondents/Cross-Appellants Idaho Power Company and Avista Corporation (the "Companies").

One ruling was the district court's order denying the Tax Commission's Motion for Partial Summary Judgment. That Motion concerned the Companies' claim that Idaho's guarantee of uniformity in taxation was violated by failure of the Tax Commission (acting in its capacity as the State Board of Equalization) to adjust their assessed values to assure uniformity in taxation with locally assessed taxpayers in the counties in which they operate. That duty arises from Article VII, Section 2 of Idaho's Constitution, providing that property taxes must be assessed in a way that is "in the proportion to the value" of the property, and Article VII, Section 5, providing that "All taxes shall be uniform upon the same <u>class</u> of subjects within the territorial limits, of the authority levying the tax . . . ." (Emphasis added.) A long line of this Court's cases supports that conclusion that these provisions require uniformity in the assessment of property, subject to certain conditions that require interpretation in this appeal.[1]

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[1] *See* the Companies' Opening Brief, pp. 12-14: *McGoldrick Lumber Co. v. Benewah Cnty.,* 54 Idaho 704, 714, 35 P.2d 659, 664 (1934) ("the court should have determined whether reductions or increases should have been made on the appellant's lands to bring them in line with the other assessments in the county and found and concluded accordingly"); *Anderson's Red & White Store v. Kootenai Cnty.*, 70 Idaho 260, 265, 215 P.2d 815, 818 (1950) (Court remanded case to consider uniformity claim where the taxpayer contended that its inventory was valued at 20% of market value, while the inventory of other taxpayers was valued at 10%; "[t]he law does not require exactitude, but it does require uniformity"); *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952) (relief authorized where the taxpayer's merchandise, machinery and furniture and fixtures were valued at 30% of full cash value and all other taxable property in

The district court held that the Companies do have a remedy for violation of the uniformity guarantee and that there were genuine issues of fact concerning whether the Companies were entitled to that relief. The Tax Commission appealed that ruling and filed its opening brief, and its Reply Brief responded to the arguments the Companies presented in their opening brief. The Commission asserts that there are no genuine issues of fact – that the legal standard for general uniformity claims is proof of systematic discrimination, which it claims can "never be proved" with data from the ratio studies the Commission prepares. (Reply Brief, p. 14.) Without citing expert opinion or legal authority, the Tax Commission's Reply Brief claims that such studies will only show "individual irregularities and errors in judgment that are corrected when they go too far astray." *Id.* These assertions fly in the face of the Tax Commission's reliance on such studies for the adjustments for railroad assessments and for other purposes. The ratio studies include hundreds of transactions, and the Commission obviously feels confident in being able to extrapolate from that population to make judgments in

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the county was assessed at 23%); *Farmer v. State Tax Comm'n*, 80 Idaho 72, 325 P.2d 278 (1958) (Court accepted the testimony of the taxpayer's expert that other property in Bannock County was assessed at 13% of its fair market value, and granted equalization relief); *Boise Cmty. Hotel, Inc. v. Bd. of Equalization,* 87 Idaho 152, 163, 391 P.2d 840, 846 (1964) (Court remanded the case to make findings of fact as to the market value of the taxpayer's properties and to find what ratio of market value other property in Ada County was assessed for the tax year 1958); *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967) (Tax Commission conceded that Article VII, sections 2 and 5, require uniformity within a class of property, but argued unsuccessfully that it is not required between classes); *Ada Cnty. v. Red Steer Drive-Ins of Nevada*, 101 Idaho 94, 99, 609 P.2d 161, 166 (1980) (Court approved equalization remedy that reduced the assessed value of the subject property).

monitoring county assessors. In short, the Tax Commission's brief falls well short of showing there are no genuine issues of fact.[2]

The second ruling by the district court – and the focus of the cross-appeal and of this brief -- is its order dismissing the Companies' claim that they were denied uniformity in taxation by comparison with other members of their class of operating property taxpayers. That class is the group of utilities, railroads, and other taxpayers that are "centrally assessed" by the Tax Commission rather than by county assessors pursuant Title 63, Chapter 4 of the Idaho Code. The Tax Commission allows adjustments to the assessments of railroads in order to comply with the federal "4-R Act," which prohibits the assessment of railroads at more than a 5% differential to market value than other commercial and industrial taxpayers.[3] The Companies have pointed out that there is nothing to prevent the Tax Commission from complying with the federal mandate to

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[2] The focus of this brief, and the remaining argument herein, is a response to the Tax Commission's arguments as they relate to the uniformity adjustments the Commission makes for railroads. That is the principal issue in the cross-appeal to which this Reply Brief relates. However, it is important to observe in general that the Companies vigorously challenge the Tax Commission's position with respect to the broader uniformity claim that "systematic discrimination" is the test for determining violations of the uniformity guarantee and/or that this term has a clear meaning in the cases in which it has been used. The Companies' opening brief demonstrates that the best interpretation of that term, and the best way to reconcile cases that use that term and those that do not, is to understand that systematic discrimination is the complement/opposite of "individual irregularities," errors of judgment, and the failure to attain "exactitude." *Anderson's Red & White Store v. Kootenai Cnty.*, 70 Idaho 260, 265, 215 P.2d 815, 818 (1950). (*See* Opening Brief, pp. 36-41.) In other words, if differences in valuations are not the result of individual irregularities, errors of judgment or inexactitude, they are systematic. The Tax Commission's processes in making adjustments for the railroads, and for other purposes under its Rule 131, take account of the possibility of such imprecision by providing margins of error (5% or 10% accepted variances from the goal of assessing at 100% of market value).

[3] Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501 *et seq.*

prohibit discrimination in taxation, while also providing uniformity to the other members of this class of operating property taxpayers who suffer the same discrimination.

The district court, relying on the doctrine of preemption, held that the 4-R Act effectively preempted the Tax Commission's ability to provide uniformity among this class of taxpayers. "Likewise, the equalization standards contained in federal law cannot be used to interfere with the State's performance of its equalization function as required by state law as to any property not preempted." (Order, p. 15, R., p. 605.)

The Companies appealed the district court's order dismissing this claim. The Tax Commission's Reply Brief includes a response to the Companies' arguments in their opening brief concerning this claim, and this brief is a reply to that response.

In summary, the Tax Commission focuses on the mantra that where federal law conflicts with state law, preemption is required only "to the extent of the conflict." (Order, p. 14, R., p. 633, citing *Christian v. Mason*, 148 Idaho 149, 219 P.2d 473, 476 (2009)). The Tax Commission has not offered persuasive analysis to counter the logic of the Companies' position that when applied correctly, this principle means that federal law has not preempted Idaho's uniformity provisions. That is because there is no "conflict" between allowing the lower assessment ratio for railroads while also lowering the assessments of the other taxpayers in this operating property class in order to maintain uniformity. Nor has the Tax Commission offered any principled argument for not allowing adjustments for the Companies or for other centrally assessed taxpayers, which suffer from the same discriminatory assessments as the railroads that receive equalization adjustments to their assessed values.

II. PREEMPTION APPLIES "ONLY TO THE EXTENT OF THE CONFLICT"

The parties agree on the contours of the preemption doctrine. As noted above, state law is preempted when state law is in conflict with federal law, but "only to the extent of the conflict." The Tax Commission then endorses the district court's reasoning that the 4-R Act cannot be used "to interfere with the State's performance of its equalization function as required by state law as to any property [other than railroads]." (Reply Brief, p. 8, quoting Order, p. 15, R., p. 605.)

However, the 4-R Act is not "interfering" with the Tax Commission's performance of its equalization function. Rather, it is the Idaho Constitution that imposes the requirements of proportional and fair taxation, through the uniformity guarantees in Article VII, Sections 2 and 5. It is worth noting that the Tax Commission does not have an effective "equalization function" at all for centrally assessed property under its jurisdiction. Except for railroads, the Tax Commission has not in the past provided equalization relief, unlike county boards of equalization, which have that function.

More to the point, the extension of uniform treatment within the centrally assessed class of taxpayers would not interfere with the State's taxing authority or tax policy, but would be consistent with it and would promote uniformity, not defeat it. The 4-R Act prohibits discrimination in tax assessments; so does Idaho's Constitution.

The only meaningful difference between the 4-R Act mandate and Idaho's constitutional guarantee is that the 4-R Act sets specific standards – the 5% ceiling on permissible discrimination. But even here, there is no conflict with state law. As pointed out in the Companies' opening brief, Idaho has adopted in its Property Tax Rule 006 the *Standard on Ratio*

Studies, a publication of the International Association of Assessing Officers. Section 9.1 of the publication sets a standard that there should be no more than a 5% variation in the assessment levels among classes. IDAHO TAX COMM'N PROPERTY TAX ADMIN. R. 006, IDAPA 35.01.03.006 (Richards Decl. ¶ 7, R., pp. 439-40.) *See* International Association of Assessing Officers, *Standard on Ratio Studies*, § 9.1 (2013). That is the same percentage variation permitted by the 4-R Act. Requiring the same standard for members of this operating property class would not be interfering with the State's policies of uniformity, or even its accepted standards for defining discrimination between classes, but would promote those policies and would be consistent with those standards.

In contrast to the consistency of the 4-R Act with the uniformity policies and standards applicable in Idaho, the Tax Commission suggests a "sky is falling" scenario: "The 4-R Act clearly intends only to remove rail transportation properties from the uniformity equation – not to disrupt the state[']s property tax system entirely." (Reply Brief, p. 9.) It must be pointed out, first, that the 4-R Act was <u>not</u> intended to remove railroads from uniformity requirements; it was obviously intended to do the <u>opposite</u> – to require uniformity. Second, the specter of an "entire" disruption of the State's property tax system is obviously unfounded.

The district court concluded, in applying preemption principles, that it was "required to interpret any federal intervention into an area otherwise thoroughly regulated by the states (i.e., taxation of real and personal property tax) in a manner which <u>minimally interferes</u> with the State's operation of that area." (Order, p. 14, R., p. 604, quoted at Reply Brief, pp. 7-8 (emphasis added).) However, the Tax Commission's interpretation of preemption would <u>directly interfere</u> with Idaho's uniformity guarantee by allowing disparate taxation of members of the

same class of taxpayers, in contravention of the explicit direction of Article VII, Section 5 of the Idaho Constitution that property taxes "shall be uniform upon the same class of subjects." The Companies' more logical application of the preemption doctrine recognizes that it does not deal with the uniformity requirement at all, and that there would be no interference with state policy for proportional and uniform taxation by granting adjustments to other members of this class that are independently justified by the lower assessment ratios at which locally assessed taxpayers are taxed. Indeed, it would promote that policy.

III. OTHER TAX COMMISSION ARGUMENTS ARE UNAVAILING

The remaining Tax Commission arguments are related to this overarching issue of federal "interference" with state law, as discussed above, but they deserve separate treatment here.

In their opening brief, the Companies asked the rhetorical question – is there any reason why the Tax Commission cannot follow the federal mandate while also providing for uniformity within the class of operating taxpayers? The Tax Commission responds with two arguments. One is that "the Idaho legislature has not seen fit to adopt such a policy in Idaho." (Reply Brief, p. 8.) However, the legislature did not need to adopt such a policy; it was and is a part of Idaho's Constitution. Indeed, when the legislature tried once to vary from that policy with a statute to assess utilities at higher assessment ratios, this Court struck down the statute. *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967).

The second argument is this: "granting the Companies' request for special treatment would shift property tax burden[s] onto residential and other property types." (Reply Brief, p. 10.) This argument is flawed from the start because of the premise that the Companies are requesting "special treatment." They are only requesting the same adjustment many railroads are

receiving in order to avoid discriminatory treatment, after comparison to locally assessed taxpayers. They are not asking for special treatment; instead, they are asking to be treated like everyone else, which is what the uniformity guarantee is all about.

In addition to having a flawed premise, this argument fails in its execution. There already has been a shift of the property tax burden to the Companies and probably other centrally assessed taxpayers who are assessed every year at least at 100% of market value. Consider the facts in the record concerning comparison of the Companies with other taxpayers:

- In 2019, the weighted mean of the ratios of assessment to market value for comparable commercial taxpayers in counties in which the Companies operate was 87.40%, 84.41% and 87.03% for Avista Electric, Avista Gas and Idaho Power, respectively. (Smith Decl., Ex. C, R., p. 96.)
- In the next year, the weighted mean ratio of assessed values to sales prices for improved commercial property – most comparable to the Companies – declined from 87.55% in the 2019 study to 84.39% in the 2020 study. (2020: Second Smith Decl. Ex. 9, R., pp. 388, 389; 2019: Smith Decl. Ex. C, R., pp. 105, 106.)

Clearly, if other taxpayers are being assessed at less than 90% of value when the Companies are being assessed at 100%, as this data shows, then there has already been a shift of the property tax burden to the Companies and away from other taxpayers. A shift back in the other direction merely corrects for past mistakes.

The Tax Commission's concerns for residential and other taxpayers are understandable, but those are concerns for the Legislature to address. Indeed, the Legislature often has taken steps to reduce the tax burden of the residential taxpayer, including the 2021 increase in the

homeowners' exemption in I.C. § 63-602G. If there were a modest shift in the tax burden back to residential taxpayers as a result of this case in order to provide uniformity in assessments, the Legislature could take further action. However, it would not be consistent with the constitutional requirements of uniformity for the courts to sanction non-uniform tax assessments as a way of protecting residential homeowners. This is the key goal of Article VII, Section 2 of the Idaho Constitution – that taxes must be assessed "in proportion to value." When a group of properties is under-assessed, it is not bearing its share of the tax burden in proportion to the value of those properties. *See Chastain, supra,* 72 Idaho at 348, 241 P.2d at 169 ("Uniformity in taxing implies equality in the burden of taxation and this equality of burden cannot exist without uniformity in the mode of assessment as well as sin the rate of tax").

Finally, the Tax Commission repeats the district court's observation that cases from other states are not directly on point but show that "courts appear to be reluctant to allow federal mandates that protect railroads to disrupt state tax commissions' administration of property assessment and equalization consistent with state law." (Reply Brief, p. 10, quoting Order, p. 13, R., p. 603.) As noted above, there is no "disruption" of state law policies from providing adjustments where discrimination has been shown and where the result is consistent with state policy of uniform taxation. And it is not accurate to conclude from the cases in other states that there is a consistent reluctance to allow the federal mandate to create differences of assessment for properties within a certain class. As discussed in the Companies' opening brief, the cases that reach that conclusion either apply constitutions that permit the creation of separate classes with different assessment ratios, or, in the Tennessee case, hold that preemption excuses uniformity with no analysis. More relevant is the Nebraska case of *N. Natural Gas Co. v. State*

Bd. of Equalization & Assessment, 443 N.W.2d 249 (Neb. 1989), *rev'd on other grounds, Vandenberg v. Butler Cnty. Bd. of Equalization*, 796 N.W.2d 580 (Neb. 2011). The court not only applied a uniformity clause similar to Idaho's – that "[t]axes shall be levied by valuation uniformly and proportionately upon all tangible property. . . ." – it also applied logic to the question of whether there was preemption:

> It would seem that no question exists that if the Board arbitrarily undervalues a particular class of property so as to make another class of property disproportionately higher, or achieves the same result because of legislative action, this court must correct that constitutional inequity by lowering the complaining taxpayer's valuation to such an extent so as to equalize it with other property in the state. See *Kearney Convention Center v. Board of Equal.*, 216 Neb. 292, 344 N.W.2d 620 (1984); *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987). This being the case, no logical reason exists why the same requirement of valuation reduction should not be imposed when the disproportionality is brought out by a final judgment of the federal court exempting the personal property of the railroads and car companies from the imposition of a state tax.

443 N.W.2d at 255-56 (emphasis).

A proper analysis of the cases from other states supports the Companies' position in this case, after considering the unique features of Idaho's Constitution and our tradition of requiring uniformity in property tax assessments.

IV. CONCLUSION

For all of the foregoing reasons and for the reasons set forth in the Companies' opening brief, it is respectfully submitted that the Court should reverse the district court's decision to grant the Tax Commission's motion for judgment on the pleadings (with respect to the claim of uniformity with the railroads) and affirm the district court's decision to deny the Tax

Commission's motion for summary judgment on the "alternative" claim involving uniformity with locally assessed taxpayers.

DATED THIS 26th day of July, 2022.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By ______________________________
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2022, I caused to be served a true copy of the foregoing **CROSS-APPELLANTS' REPLY BRIEF** by the method indicated below, and addressed to each of the following:

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