

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO POWER COMPANY, an Idaho)
corporation; and AVISTA CORPORATION, a)
Washington corporation,)

Plaintiff-Respondent,)

-vs-)

IDAHO STATE TAX COMMISSION, in its)
capacity as the STATE BOARD OF)
EQUALIZATION,)

Defendant-Appellant)

Docket No. 49126-2021

Ada Co. Case No. CV01-20-14896

APPELLANT’S BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County.
(Hon. Patrick Miller, District Judge)

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STATEMENT OF THE CASE

Nature of the Case

The Idaho State Tax Commission (“Commission”) appeals the district court’s decision that the Commission was not entitled to summary judgment on the Respondents’—Idaho Power Company and Avista Corporation (“Companies”)—alternative claim. The Companies claimed that commercial properties assessed by county assessors were consistently underassessed. They argued that principles of property-tax uniformity set forth in Article V, Section 7 of the Idaho Constitution required the Commission to reduce the assessed value of the Companies’ property to match the assessment level of the commercial properties.

The Commission moved for summary judgment on this issue, asserting that it was entitled to judgment in its favor based on principles of administrative deference. Specifically, the Commission argued that, in its role as the Board of Equalization, it had complied with Property Tax Administrative Rule 131 in equalizing property tax values. By application of Rule 131, the Commission determined that locally assessed commercial properties **had not** been systematically underassessed and that there was no constitutional need to equalize property tax values. Because Rule 131 ensures that locally assessed properties are adjusted when needed to satisfy Idaho’s constitutional uniformity requirements for property taxes, the Companies are unable to show an unconstitutional deviation of the assessment of their property from locally assessed properties.

The district court erroneously ruled that questions of fact existed regarding whether the locally assessed properties were constitutionally underassessed and did not grant the Commission’s motion for summary judgment. The district court erred because the questions of

fact identified by the court can only be reached by setting aside Rule 131 and the court provided no analysis as to why Rule 131 should be set aside. Indeed, the Commission’s interpretation of property tax law found in Rule 131 is entitled to administrative deference and the Commission’s motion for summary judgment should have been granted by the district court.

Statement of the Facts and Course of the Proceedings

The Companies requested hearings before the Idaho State Board of Equalization (“Board”)¹ regarding the uniformity of their operating property values for property tax year 2020. (R., pp. 233–35.) The Companies asserted that the Commission had unconstitutionally assessed the value of their operating property at a higher proportion than (1) railroad companies and (2) locally assessed properties. (Id.) The Companies’ two theories were later described, based upon the language in the Complaint, as the 4-R Act claim² and alternative claim, respectively. (R., p. 509.) As to the alternative claim, the Companies compared their assessments to those of locally assessed properties and relied upon the Commission’s ratio study data produced pursuant to Property Tax Administrative Rule 131. (R., pp. 97–106.) For context, this rule requires the Commission to monitor local assessments to ensure, using prescribed statistical measures, that all assessments are within a ten-percent deviation of market value. IDAPA 35.01.03.131.

¹ The Board of Equalization is required to “assess all operating property”—including the property owned by the Companies. Idaho Code § 63-405(1). Composed of the Idaho State Tax Commissioners, this Court has described the Board as “a constitutional board, clothed by statutory authority with quasi judicial powers in regard to the assessment of certain classes and kinds of property.” *Nw. Light & Water Co. v. Alexander*, 29 Idaho 557, 560, 160 P. 1106, 1109 (1916). *See also* IDAPA 35.01.03.407.

² The 4-R Act claim was named for its reliance upon the federal Railroad Revitalization and Regulatory Reform Act of 1976, commonly known as the “4-R Act.” 49 U.S.C. § 11501.

After a hearing, the Board ultimately rejected both of the Companies' arguments, citing to the effect of federal preemption and reliance on Rule 131 as the bases for its decision. (R., pp. 17–20.) The Companies timely appealed the Board's decision to district court. (R., pp. 8–15.) Before the district court, the Companies maintained that the Commission had unconstitutionally over-assessed the value of their properties relative to (1) railroads—the 4-R Act claim—and (2) locally assessed commercial property—the alternative claim. (R. pp. 11–12.)

On the 4-R Act claim, the Commission moved for judgment on the pleadings on the basis that “the only facts that [the Companies] argue entitle them to uniformity relief are a result of federal law that preempts the Idaho Constitution's uniformity requirement uniquely for the railroad industry.” (R. pp. 32–50.) The Companies opposed by filing their own motion for summary judgment. (R. pp. 51–130.) After a hearing, the district court granted the Commission's motion—agreeing with the Commission's theory that federal preemption required the adjustments to the value of certain railroad companies. (R., pp. 598–605.) As the Companies have filed a notice of cross-appeal regarding the 4-R Act claim, the Commission will address this part of the district court's decision in future briefing.

On the alternative claim, the Commission moved for summary judgment on the basis that any disparities between locally assessed property values and the Companies' property values were not systematic or intentional, as is required by Idaho law for relief.³ (R., pp. 142–65.) In particular,

³ The Commission alternatively moved for summary judgment on the basis that the district court lacked subject matter jurisdiction under Idaho Code § 63-409(1) because the Companies had not adequately raised the issue before the Board. (R., pp. 148–54.) The Commission has not appealed this portion of the district court's decision.

the Commission observed that the only evidence that the Companies relied upon to establish the under-assessment of locally assessed property were the Commission's ratio study data produced pursuant to Rule 131. (R., pp. 155–64.) The Commission also observed that Idaho law regarding uniformity of property taxation had never required the absolute uniformity requested by the Companies but instead protected against intentional and systematic discrimination. (R., pp. 155–59.) Finally, because it was uncontested that the Commission had complied with the requirements of Rule 131, the Commission argued that the Companies were in effect challenging Rule 131 and principles of administrative deference entitled the Commission to summary judgment. (R., pp. 159–63.)

In ruling upon the Commission's motion for summary judgment, the district court agreed with the Commission that the Companies would ultimately need to demonstrate some form of intentional systematic disparity between their assessments and local assessments. (R., p. 608–09 n.7.) However, the district court did not reach the Commission's administrative deference argument and instead concluded that deciding these issues involved unresolved questions of fact. (R., p. 612.) According to the district court:

Questions of fact therefore appear to exist whether the Tax Commission has fulfilled its obligation to equalize [the Companies'] centrally assessed property to other relevant property. Resolving these questions of fact will likely include, among other matters, determining whether Rule 131 provides a reliable indirect means of assuring equalization and what is the most appropriate methodology to calculate whether [the Companies'] property is or is not systematically assessed. The fact the 4-R act uses a ratio study does not, in the Court's judgment, mandate whether such a study is the correct methodology and even if it is, what are the appropriate values to be used (e.g. weighted mean or median). These, in the Court's judgment, are questions of fact.

(R., pp. 612–13.) In short, the district court viewed questions related to Rule 131 as questions of fact and did not apply principles of administrative deference in its decision.

The Commission moved the district court for permissive appeal on the portion of the district court’s decision related to the Companies’ alternative claim. (R., pp. 505–18.) In granting the Commission’s motion, the district court recognized it may have been mistaken when it “found that the Tax Commission’s reliance on calculations it performs under Rule 131 does not, as a matter of law, satisfy the Tax Commission’s obligation to equalize centrally assessed property.” (Aug. R., p. 2.) The district court further stated: “In this Court’s judgment, substantial grounds exist for a difference of opinion whether this Court is correct on controlling issues of law as to Count II. Having direction from the Supreme Court may completely avoid the need for a costly trial.” (Aug. R., p. 2.) This Court also granted the Commission permission to appeal the district court’s interlocutory order denying the Commission’s motion for summary judgment. The Commission then timely appealed. (R., p. 587–90.)

ISSUE

The Commission states the issue on appeal as:

Whether the Commission's Property Tax Administrative Rule 131 was entitled to deference so as to preclude the Companies from claiming that their property was unconstitutionally assessed?

ARGUMENT

A. Introduction

The district court erred by denying the Commission’s motion on a finding that there was an outstanding question of fact that needed to be resolved. In so finding, the district court implicitly set aside Property Tax Administrative Rule 131 without properly evaluating whether that Rule was entitled to administrative deference. The Commission’s uncontested compliance with Property Tax Administrative Rule 131 makes it impossible for the Companies to demonstrate the kind of systematic discrimination necessary for them to claim uniformity relief. As such, the Commission is entitled to judgment as a matter of law because the Companies are unable to establish an essential element of the alternative claim.

B. Standard of Review

On appeal, this Court reviews orders from a summary judgment motion de novo, applying “the same standard applied by the district court.” *Nettleton v. Canyon Outdoor Media, LLC*, 163 Idaho 70, 72, 408 P.3d 68, 70 (2017). Idaho Rule of Civil Procedure 56 allows for a defendant to move for summary judgment “if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” *Bedke v. Ellsworth*, 168 Idaho 83, 90, 480 P.3d 121, 128 (2021) (quoting *Nettleton*, 163 Idaho at 72, 408 P.3d at 70).

“The moving party is ‘entitled to a judgment as a matter of law’ because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” *Sanders v. Kuna Joint Sch. Dist.*, 125 Idaho 872, 874, 876

P.2d 154, 156 (Ct. App. 1994) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)). Determining whether a material fact exists differs in matters that proceed to trial where the Court sits as the finder of fact: “the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts.” *Galvin v. City of Middleton*, 164 Idaho 642, 645, 434 P.3d 817, 820 (2019) (quoting *In re Contest of Election*, 164 Idaho 102, 105, 425 P.3d 1245, 1248 (2018)) (emphasis added).

C. The Commission Is Entitled To Judgment As A Matter Of Law On The Alternative Claim

The Commission is entitled to summary judgment because the Companies cannot demonstrate an essential element of their alternative claim. The legal basis of the Companies’ alternative claim is that “based on the lower ratios of assessed values to market value for other commercial property[,]” constitutional uniformity entitles them to a corresponding reduction in their property values. (R., p. 12.) That is to say, the Companies argue that (1) locally assessed commercial properties have been systematically undervalued and (2) that constitutional principles of uniformity demand that the value of the Companies property be reduced so they do not bear an unfair share of property tax.

However, it is impossible for the Companies to prove this claim as there is no evidence to demonstrate that the locally assessed commercial properties were unconstitutionally underassessed. Indeed, the evidence the Companies rely on to support their claims—the data the Commission produced pursuant to Rule 131—shows the inverse: that such properties were properly assessed and that there is no systematic, unconstitutional, under valuation of local

assessed commercial property. (R., pp. 97–106.) As this Rule 131 data is uncontroverted, by rule the only conclusion that can be drawn from it is that there were no unconstitutional deviations from uniformity in local assessments. (R., pp. 191–94.) Accordingly, ultimately finding for the Companies would require invalidating or re-writing Rule 131. Thus, principles of administrative deference demonstrate that the Commission is entitled to judgment as a matter of law on the alternative claim. The district court erred by not applying these principles.

1. The Companies Must Show Systematic Discrimination For Uniformity Relief

The Companies argue that the Commission’s Rule 131 data shows that the locally assessed commercial properties were valued below market value and that these properties should have been equalized by the Board. (R., pp. 12, 97–106). As the Commission did not equalize these properties, the Companies argue that their values should be reduced. However, this argument takes a view of uniformity that is not practically achievable as has been long recognized in this Court’s precedent regarding Idaho’s Uniformity Clause.

The Idaho Constitution requires that: “All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax[.]” Idaho Const. art. VII, § 5. However, uniformity does not require exact uniformity as there will always be “individual irregularities and inequality in taxation[.]” *In re Bd. of Tax Appeals, Appeal No. 16-A-1079*, 165 Idaho 433, 439, 447 P.3d 881, 887 (2019) (quoting *Anderson’s Red & White Store v. Kootenai Cty.*, 70 Idaho 260, 265, 215 P.2d 815, 818 (1950)). These irregularities exist because property tax assessment “is a process which cannot be reduced to an exact science.” *Id.* As such, the “law

does not require exactitude, but it does require uniformity.” *Id.* This Court has never required exact mathematical uniformity. Instead, it has stated that: “The requirement of uniformity is violated... when one class of property is **systematically assessed** at a higher percentage of actual cash value, subjecting the taxpayer to a higher rate of taxation, than applies to other property within the taxing district.” *Ada Cty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 97–98, 609 P.2d 161, 164–65 (1980) (emphasis added).

This Court has had several occasions to opine on what the uniformity clause requires. “Where discrimination has occurred, this Court has held that the aggrieved taxpayer is entitled to relief where the valuation fixed by the assessor is manifestly excessive, fraudulent or oppressive, or arbitrary, capricious and systematically discriminatory.” *Id.* at 98, 609 P.2d at 165. “Where certain property is assessed at a higher valuation than all other property, the court will enforce the requirement of uniformity by a reduction of the taxes on the property assessed at the higher valuation, **if it be shown that the difference is the result not of mere error in judgment, but of fraud or of intentional and systematic discrimination.**” *Id.* (quoting *Washington County v. First National Bank*, 35 Idaho 438, 444, 206 P. 1054, 1056 (1922) (emphasis added)).

Further review of this Court’s uniformity precedent makes clear that a systematically discriminatory assessment ratio is required before finding that uniformity has been violated. This differs greatly from the individual irregularities that the Companies have raised by their use of the Commission’s ratio study data. For example, the *Idaho Telephone* case began because of a statutory scheme that was intended and designed to assess real and personal property throughout Idaho at twenty percent of their market value, while assessing operating property at forty percent

of its market value. 91 Idaho at 427, 423 P.2d at 339. The obvious result of this scheme was to cause operating property to bear double the proportion (by value) of the property tax burden across the state by law. *Id.* This Court invalidated that scheme and explained that uniformity is “violated when one class of property is **systematically assessed** at a higher percentage of actual cash value, thereby subjecting the taxpayer to a higher rate of taxation, than applies to other property within the taxing jurisdiction.” *Id.* at 429, 423 P.2d at 341 (emphasis added). On this basis, this Court struck down the statutory scheme as violative of the Uniformity Clause because it acted with “**the purpose** of imposing a higher ratio of assessment” for operating property. *Id.* at 434, 423 P.2d at 346 (emphasis added). Thus, *Idaho Telephone* holds that a specific statutory scheme that imposes discriminatory assessment ratios violates uniformity.

In the case of *Red Steer*, discriminatory valuation methods were used by the Ada County Assessor “in that improvements on residential and farm properties were assessed at 73% of their market value whereas commercial properties, such as Red Steer’s, were assessed at 100% of the market value of such improvements.” 101 Idaho at 96, 609 P.2d at 163. Red Steer argued that it should receive a 38% reduction in the valuation of its improvements on the basis of “inequities present” in the property values of the year at issue. *Id.* at 100, 609 P.2d at 166. This Court rejected Red Steer’s requested reductions and explained:

We reject Red Steer’s formula even though the district court found that there were inequities in the 1975 tax roll. It noted that while the inequities were pervasive, and resulted from “spot appraisals,” rapid population growth, constantly inflating property values and the addition of new properties to the tax roll, **they were not the kind of systematic, intentional discriminatory practices for which relief could be granted.** Since the district court could find and did find that the only intentional, systematic discrimination which occurred was in the application of the

27% reduction to residences and farms, **only that portion of the assessment required relief.** A court will not attempt to correct mere mistakes or errors of judgment on the part of the assessor.

Id. (emphasis added). This quote demonstrates that uniformity has never been interpreted by this Court to require corrections for minor inequities and inconsistencies in the property tax system. *See also Anderson's Red & White Store*, 70 Idaho at 265, 215 P.2d at 818. Red Steer was asking for a 38% adjustment in value, but the Court was only willing to adjust 27% because that was the percentage attributable to the systematic discrimination. The remaining 11% requested represented non-systematic inequities and inconsistencies that did not require relief. This holding demonstrates that exact statistical and mathematical exactitude have never been the purpose of Idaho's Uniformity Clause's protections.

In *Anderson's Red & White*, this Court observed that the assessor had "assessed stocks of merchandise at 20% of their respective actual cash value, and assessed all other property in the county at 10% of its actual cash value..." 70 Idaho at 262, 215 P.2d at 815. This Court pronounced the principle that "Individual irregularities and inequality in taxation will always exist. It is a process which cannot be reduced to an exact science. The law does not require exactitude, but it does require uniformity." *Id.* at 265. This Court remanded the case and ordered the district court to grant relief only if it found that either the other property in the county had been systematically undervalued or the appellant's property had been systematically overvalued. *Id.* at 266.

In *Idaho Telephone* and *Red Steer*, whether by operation of statute or assessment practice, there was a systematic undervaluation of an entire class or category of properties. *Idaho Telephone* and *Red Steer* were not situations where the assessing entity was aiming for a uniform one-hundred

percent ratio and simply fell short. Instead, the assessing entity was aiming for an entirely different number for one class or category of property than for others—evidencing the type of systematic discrimination that warrants uniformity relief. This differs greatly from the case at hand where the ratio study data indicates nothing more than acceptable deviations in local assessments. In other words, the Companies cannot present the kind of systematically discriminatory assessment practice required as an essential element for uniformity relief because the only deviations they have pointed to are allowable under Property Tax Administrative Rule 131.

Stated simply, placing an emphasis on exact mathematic uniformity misses the mark. Instead of requiring uniformity adjustments for any slight irregularity, this Court’s precedent has instead only required uniformity adjustments where the system of taxation intentionally produces a systematically discriminatory result. In this matter, the district court agreed with the Commission that the Companies would ultimately be required to demonstrate assessment errors that are “not an individual irregularity but rather a systematic disparity.” (R., p. 609.)

2. Property Tax Rule 131 Prevents Systematic Discrimination

The Commission has produced a rule to prevent systematic discrimination: Rule 131 is a bright line test to determine whether categories of assessed property are being systematically over assessed or under assessed. IDAPA 35.01.03.131. Pursuant with that rule, the Commission uses statistical methods to ensure categories of assessed value are within ten percent of market value. *Id.* The Commission, in exercising its authority to interpret Idaho’s tax laws, and consistent with

Idaho's case law, considers categories of property within 10% of full market value to be uniformly assessed for purposes of the Idaho Constitution. *Id.*

Property Tax Rule 131 operates to eliminate unconstitutional deviations from uniformity for the categories of locally assessed properties for which they are performed by the Tax Commission. A ratio study evaluates the statistics that come from a sample of assessment ratios. Assessment ratios compare the actual time-adjusted sales price of any properties that were sold to the assessed value, assigned by the local county assessor, for that same property. In that sense, an assessment ratio operates as a way of testing how accurate the assessor's estimate of fair market value was for any particular property. IDAPA 35.01.03.131.05; *see also* (R. p. 610). To test the overall accuracy of assessment in each county, the Tax Commission collects a sample of assessment ratios in five primary categories—including the vacant and improved commercial categories that the Companies claim were unconstitutionally underassessed. Properties are categorized to compare like properties. *Id.* From these samples, the Tax Commission then looks at all the ratios in a category, from smallest to largest, and selects the "median" or mid-point. *Id.* The median is the number where one half of the numbers in the sample are above and one half below. The Tax Commission then ensures that each of these medians (subject to adjustment that might be needed to obtain an appropriate "confidence interval") is within an acceptable range of 100%. *Id.*

Property Tax Rule 131 keeps values within an acceptable range by requiring that when statistical certainty indicates that the ratio study's median for a particular category is "less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized." IDAPA 35.01.03.131.07. When falling

outside of this range, equalization may occur through the Board ordering adjustment of “the value of all property in the category or any portion of the category included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property.” *Id.* This Rule reflects the Supreme Court’s interpretation of the uniformity provisions of the Idaho Constitution: the Rule’s methodology does not guarantee that each individual parcel is assessed exactly at one hundred percent of market value, but instead ensures that the category of property has not been systematically under or over assessed.

When categories of assessed property satisfy the requirements of Rule 131, by rule, these categories of property have been uniformly assessed and there has been no systematically discriminatory result. In the present matter, the Commission’s ratio study data, produced in accordance with Rule 131, indicates there were no unacceptable deviations in local assessments for the tax year at issue. (R., pp. 191–228.) This data shows that the locally assessed commercial properties were statistically within a 10% range of full market value. This data is uncontroverted and relied upon by both parties. Because the locally assessed commercial properties were statistically within 10% of full market value, by rule, the Companies cannot demonstrate that such commercial properties have been systematically under assessed. Likewise, this data cannot show that the Companies’ properties have been discriminated against or assessed at a higher percentage relative to the commercial properties. Taken altogether, it is impossible to use this Rule 131 data to demonstrate that systematic discrimination has occurred. As such a showing is an essential element of their claim, pursuant with Idaho’s uniformity case law, it is impossible for the Plaintiff’s to prevail.

3. Property Tax Rule 131 Should Be Given Deference

Finding for the Companies on the alternative claim would ultimately require this Court to invalidate Rule 131. As the district court concluded, it is uncontested that using the ratio study data and the statistical measure specified in Rule 131 demonstrates that the Companies assessments “are equalized.” (R., p. 612.) That the Companies’ assessments would not be equalized if a different statistical measure would be used is irrelevant unless the Rule is ultimately invalidated.

Finding for the Companies would ultimately require invalidating or rewriting Rule 131. This is indicated by the Companies’ proposed expert report: “I have been retained . . . to evaluate the statistical validity of the methods and conclusion contained in the Idaho 2019 sales ratio study for locally assessed property” (R., p. 436.) This expert testimony intends to directly challenge the propriety of Rule 131. (*Id.*) The Companies argue that if Rule 131 required the use of the weighted mean instead of the median, then adjustments would have been required for 2020. (R. p. 611).

Rule 131 is the Commission’s interpretation of both statutory and constitutional duties conveyed to the Commission and is entitled to administrative deference. Idaho Code § 63-109(2) provides the statutory power of the Commission to equalize values of property throughout the state by category:

The state tax commission shall equalize the assessments of property throughout the state, by categories, as shown by the abstracts transmitted by the several county auditors, county by county. **In such equalization, the state tax commission shall have power to increase or decrease the total value of any category of property in any county as shown by the abstract from that county when, in the opinion of the commission, the value of that category appearing in such abstract is not just and equal as compared with the value of other categories of property in**

that county, or the value of similar categories of property in other counties, because of its being greater than or less than the market value.

Id. (emphasis added). The Commission’s interpretation of administering this provision consistent with the Idaho Constitution’s Uniformity Clause is found in Rule 131. This Rule, so long as its followed, keeps locally assessed property within an acceptable uniform range because it requires the Commission to raise or lower non-uniform locally assessed property values.

Rule 131 is entitled to administrative deference. The Idaho State Tax Commission is charged by the Idaho Constitution and Idaho statute with ensuring uniformity in property taxation by way of the equalization process; Rule 131 is the Tax Commission’s longstanding tool for accomplishing this. Idaho Const. art. VII, §§ 5 & 12; Idaho Code § 63-109(2). This Court has explained a four-part test to determine the level of deference that should be granted to an agency’s interpretation laid forth in an administrative rule. *J.R. Simplot Co. v. Idaho State Tax Comm’n*, 120 Idaho 849, 820 P.2d 1206 (1991). “The first prong asks if the agency is entrusted to administer the statute at issue, so it is ‘impliedly clothed with power to construe’ this law.” *Canty v. Idaho State Tax Comm’n*, 138 Idaho 178, 183, 59 P.3d 983, 988 (2002). “The second prong says that the agency interpretation must be reasonable. An agency’s interpretation is reasonable if it is not ‘so obscure and doubtful that it is entitled to no weight or consideration.’” *Id* (quoting *Simplot*, 120 Idaho at 862, 820 P.2d at 1219). “The third prong of the *Simplot* test requires the Court to determine that the statutory language does not expressly treat the precise question at issue. If it does, no deference need be given to the agency.” *Id*. The fourth prong requires the Court to balance the rationales underlying deference and “the court should afford ‘considerable weight’ to the agency’s

statutory interpretation” if one or more of the rationales are present, and no cogent reason exists for denying the agency some deference. *Id.* at 184, 59 P.3d at 989 (quoting *Simplot*, 120 Idaho at 862, 820 P.2d at 1219). “The rationales to be considered include: (1) the rationale requiring that a practical interpretation of the statute exists, (2) the rationale requiring the presumption of legislative acquiescence, (3) the rationale requiring agency expertise, (4) the rationale of repose, and (5) the rationale requiring contemporaneous agency interpretation.” *Id.* Each of the four prongs of the *Simplot* test are satisfied here.

On the first prong asking whether the Commission is entrusted to administer the provisions at issue, the Idaho Constitution provides that the Commission acts as the Board of Equalization:

The duties heretofore imposed upon the state board of equalization by the Constitution and laws of this state shall be performed by the state tax commission and said commission shall have such other powers and perform such other duties as may be prescribed by law, including the supervision and coordination of the work of the several county boards of equalization.

Idaho Const. art. VII, § 12. As this Court has explained, the Board is “a constitutional board, clothed by statutory authority with quasi-judicial powers in regard to the assessment of certain classes and kinds of property.” *Nw. Light & Water Co. v. Alexander*, 29 Idaho 557, 560, 160 P. 1106, 1109 (1916). This explicit direction goes well beyond the implicit power required by the *Simplot* test. Additionally, the provisions at issue are not solely statutory, but constitutional principles that have been constitutionally committed to the Commission acting as the Board as well. Considering this, the Commission’s interpretation found in Rule 131 should at least warrant the same level of deference present in *Simplot*.

To the second prong of the reasonableness of the Commission’s interpretation, Rule 131 acts to keep all local assessment uniform. Rule 131 was not invented in a vacuum by the Commission but reflects a standard used worldwide by the International Association of Assessing Officers: “The ratio study shall be conducted in accordance with the ‘Standard on Ratio Studies’ and the ‘Standard on Verification and Adjustment of Sales[.]’” IDAPA 35.01.03.131.01. As cited above, the standard for uniformity has never been absolute: “Individual irregularities and inequality in taxation will always exist. It is a process which cannot be reduced to an exact science.” *In re Bd. of Tax Appeals*, 165 Idaho at 439, 447 P.3d at 887 (quoting *Anderson’s Red & White Store*, 70 Idaho at 265, 215 P.2d at 818). However, Rule 131 acts as a universal uniformity protection by requiring the locally assessed values to be within ten percent of the standard of fair market value. In light of the cases cited above and the Idaho Constitution’s commitment of the “supervision and coordination of the work of the several county boards of equalization” to the Commission, this interpretation is reasonable.

The third prong of whether the statutory language (and in this case constitutional language as well) “expressly treats the precise question at issue” also indicates that the Commission’s interpretation should be afforded deference. The Uniformity Clause does not explicitly speak to whether absolute uniformity is required; but the Idaho Constitution does charge the Tax Commission with the duty of equalizing to ensure uniformity is satisfactorily achieved. Idaho statute and Constitution give the Tax Commission the duty to equalize without explicitly saying what is required to satisfy the Uniformity Clause. Accordingly, the provisions at issue leave room for agency interpretation—meeting this prong of the test for deference.

Finally, at least several of the rationales exist to justify deference to the Commission's interpretation. First, the Commission's interpretation offers a practical interpretation of uniformity protections recommended by the International Association of Assessing Officers to be used and applied worldwide. *See* IDAPA 35.01.03.131.01 & .003.02.a. Second, the current version of Rule 131 has existed virtually unchanged since 2013 and the Legislature has provided acquiescence by choosing not to modify any of the provisions at issue. Ratio studies have been used by the Tax Commission for this purpose since the 1980's. *See Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982). Third, the issue requires agency expertise as recognized by the Idaho Constitution's explicit direction to the Commission to supervise and coordinate the work of local assessors. "If one or more of the rationales underlying the rule are present, and no 'cogent reason' exists for denying the agency some deference, the court should afford 'considerable weight' to the agency's statutory interpretation." *Canty*, 138 Idaho at 184, 59 P.3d at 989. Because these rationales are present, Rule 131 should not be invalidated by the Companies' alternative claim.

The Companies' alternative claim asks the Court itself to replace the Tax Commission's expertise and judgment on what methods are required to fulfill equalization duties and ensure that the Uniformity Clause is satisfied. The Tax Commission's Property Tax Rule 131 should be given deference. If improvements can be made to the rule, the appropriate venue is through the negotiated rule making process where all stakeholders can have a seat at the table.

CONCLUSION

The Commission respectfully requests this Court reverse the decision of the district court and enter summary judgment in favor of the Commission on the Companies' alternative claim.

The Companies cannot demonstrate intentional and systematic discrimination, as is required for the relief they seek. Rule 131 prevents systematic discrimination and is entitled to deference.

The Commission's uncontested compliance with Property Tax Administrative Rule 131 demonstrates that the Companies will be unable to show the unconstitutional assessment of locally assessed property necessary for uniformity relief on the Companies' alternative claim. When categories of assessed property satisfy the requirements of Rule 131, by rule, these categories of property have been uniformly assessed and there has been no systematically discriminatory result. In the present matter, the Commission's ratio study data, produced in accordance with Rule 131, indicates there were no unacceptable deviations in local assessments for the tax year at issue. (R., pp. 191–228.) This data shows that the locally assessed commercial properties were statistically within a 10% range of full market value. This data is uncontroverted and relied upon by both parties. Accordingly, the Commission is entitled to judgment as a matter of law.

Under this Court's prior case law, Rule 131 is entitled to deference. Finding for the Companies would ultimately require invalidating or rewriting Rule 131. The Companies' alternative claim asks the Court itself to replace the Tax Commission's expertise and judgment on what methods are required to fulfill the Tax Commission's equalization duties and ensure that the Uniformity Clause is satisfied.

DATED this 28th day of April, 2022.

/s/ Phil N Skinner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of April, 2022, served a true and correct copy of the foregoing APPELLANT'S BRIEF to the attorney listed below by means of the iCourt File and Serve:

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