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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, 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 REPLY BRIEF

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

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I. INTRODUCTION

Idaho Power Company and Avista Corporation ("Companies") have claimed that constitutional principles of uniformity require that their property be assessed at less than 100% of fair market value. This Court has heard claims of this kind before and has set clear precedent on this issue. Property owners making this extraordinary claim are only entitled to a reduction of value if they can show that the assessor has systematically discriminated against their class of property. This requires a showing of something more than individual irregularities or errors in judgment. Accepting the facts alleged in their complaint, the Companies are incapable of demonstrating systematic discrimination.

In the Complaint the Companies advanced two claims based upon two separate sets of facts to show a uniformity violation. First, they pointed to the fact that some, not all, railroads have their assessed values reduced pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"). [1] (R., pp. 10-11.) Accordingly, this claim was known at the district court level as the 4-R Act claim. (R., p. 605.) Second, the Companies relied on the data in the ratio studies produced pursuant to Property Tax Administrative Rule 131 ("Rule 131") which shows that in some counties, locally assessed commercial properties may be valued at less than 100 percent of fair market value. (R., p. 12.) Using the language of the complaint, this claim was known as the alternative claim. (R., p. 605.) Taking all the facts alleged as true, neither of these scenarios demonstrates the kind of systematic discrimination necessary to justify the relief the Companies seek.[2]

[1] 49 U.S.C. § 11501

[2] These two issues come before this Court through two different mechanisms. Only the first issue came before the district court on the standard that the facts alleged in the complaint are assumed to be true to evaluate whether the plaintiff has stated a claim upon which relief can be granted. The second issue came up through cross motions for

As to the first issue, the 4-R Act requires that the State apply specific, unique adjustments when it assesses the property of railroad companies. However, because the 4-R act was enacted by Congress, principles of federal preemption require Idaho to honor the law to the extent of the conflict and no further. These principles prevent the Companies from claiming that the unique treatment railroad companies received under federal law creates the kind of systematic discrimination that would entitle them to a reduction in their assessed property value. The district court correctly granted the Commission's motion for judgment on the pleadings as to the 4-R Act argument.

As to the second issue ("the alternative claim"), the fact that some specific properties are valued at less than 100 percent of fair market value is not evidence of systematic discrimination. Indeed, while the ratio studies data the Companies rely upon show some individual instances of commercial properties being valued less than fair market value, it collectively shows that the commercial and industrial properties were valued within the tolerances allowed for in Property Tax Administrative Rule 131. These tolerances are completely consistent with this Court's uniformity precedent. The Companies attempted to rely upon the ratio-study data to establish their alleged uniformity violation, the ratio-study data does not show systematic underassessment of commercial property. The Companies are only able to state a claim upon which relief can be granted related to this second issue if Property Tax Administrative Rule 131 and this Court's precedent were set aside. The district court's concerns that potential genuine issues of material fact prevented entry of summary judgment on the alternative claim were unmerited; summary judgment in favor of the Tax Commission is appropriate because the only facts asserted by the Companies do not and cannot show systematic discrimination.

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summary judgment as the Companies' claim relied on information outside of the pleadings—the ratio-study data prepared by the Commission.

II. ANALYSIS

A. "Systematic Discrimination" is Required for the Relief Sought by the Companies.

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.[3] 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*.

While the Companies effectively request it, 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). Thus, systematic discrimination requires a showing of something more than individual irregularities and errors in judgment; it exists when the system of taxation or assessment intentionally produces a discriminatory result.

[3] The uniformity clause is not the only constitutional provision that informs this requirement of uniformity. The Idaho Supreme Court has specifically held in *Idaho Telephone Company v. Baird*, that the uniformity clause must be construed considering section 2 of the same Article of the Idaho Constitution. 91 Idaho 425, 429, 423 P.2d 337, 341 (1967) (*abrogated on other grounds by Simmons v. Idaho State Tax Commission*, 111 Idaho 343, 723 P.2d 887 (1986)). This section provides: "The legislature shall provide such revenue as may be needful, by **levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property**, except as in this article hereinafter otherwise provided." Idaho Const. art. VII, § 2 (emphasis added). These two principles—uniformity and proportionality—must both be followed to ensure uniformity through the property tax system.

This Court has provided a series of examples how this systematic discrimination standard for a uniformity violation is applied. In *Idaho Telephone* the legislature had established a statutory scheme where property throughout Idaho was to be assessed at 20 percent of fair market value, while operating property was specifically instructed to be assessed at 40 percent of fair market value. *Idaho Telephone Co. v. Baird,* 91 Idaho 425, 423 P.2d 337 (1967). This Court invalidated that statutory scheme because it violated uniformity to intentionally disadvantage operating property by statute. *Id.* at 429, 423 P.2d at 341.

In *Red Steer*, farm and residential properties were asessed at 73 percent of fair market value while commercial properties were assessed at 100 percent of fair market value. *Ada Cty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 609 P.2d 161 (1980). *Red Steer* actually had pointed to the lowest common assesment value shared by other property owners in Ada County, which was 62 percent of market value, and asked the court for a 38 percent adjustment in their property value. *Id.* at 97, 609 P.2d at 164. This Court found that Red Steer was entitled to relief, but only for "**intentional, systematic discrimination** which occurred… in the application of the 27% reduction to residences and farms, only that portion of the assessment required relief." *Id.* at 100, 609 P.2d at 166 (emphasis added). The other 11 percent of the 38 percent relief Red Steer was seeking was attributed to errors in judgement (not intentional systematic discrimination) and this Court explained that it "will not attempt to correct mere mistakes or errors of judgment on the part of the assessor." *Id.*

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…" but even then, this Court was not prepared to grant relief without a finding of systematic discrimination; 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. *Anderson's Red & White Store v. Kootenai Cty.*, 70 Idaho 260, 215 P.2d 815 (1950).

In summary, for a property owners to receive uniformity relief for its property, they must show something more than irregulatiries arising from mistakes or errors of judgment on the part of the assessor. Property owners must show a systematic, deliberate effort to value other properties at less than market value or to value their property at more than market value.

In their breif to this Court, the Companies attempt to cast doubt on whether a showing of "systematic discrimnation" is still the standard for uniformity claims under Idaho's Constitution. They do this by pointing to statutory amendments in 2003 that established a statutory burden of proof in property tax appeals for showing that a valuation was erroneous or that property is exempt from tax. (Cross-Appellants' Opening Brief and Response, p. 37.) The Statement of Purpose for this legislation explained: "This legislation changes the legal standard from one that requires proof that an assessment is manifestly excessive, arbitrary and capricious, or fraudulent and oppressive, to one that requires simply that the assessment is erroneous."[4] These statutes addressing the burden of proof for showing, on appeal, that a valuation was erroneous or to establish that the property was exempt from tax, have nothing to do with the standard established by case law for relief under the Idaho Constitution's property tax uniformity provision. These statutes say nothing about the burden or requirement for establishing a violation of uniformity under the Idaho Constitution.

The Companies also attempt to cast doubt on the "systematic discrimination" standard by pointing to the 2019 case *In re Board of Tax Appeals, Appeal No. 16-A-1079*, 165 Idaho 433, 447 P.3d 881 (2019). *In re Board of Tax Appeals* was not a uniformity case. There was no uniformity

[4] https://legislature.idaho.gov/sessioninfo/2003/legislation/H0302/#sop

claim made in that case. The Companies acknowledge in their brief that *In re Board of Tax Appeals* was not a uniformity case, however they still assert that this Court somehow changed the "systematic discrimination" standard. The Companies stated, "Although this was a valuation case and **not an equalization case**, it is noteworthy that the Court did not include the term 'systematic discrimination' in describing the standard for uniformity claims." (Cross-Appellants' Opening Brief and Response, p. 38, emphasis added.) To be clear, *In re Board of Tax Appeals* was not a uniformity case; the Court never discussed the standard for uniformity claims at all. The word "uniformity" appears once in the entire opinion, when the court quotes *Anderson's Red and White,* but the Court didn't reference the quote for the purpose of uniformity and never discusses uniformity anywhere in the opinion. The uniformity standard is not discussed and analyzed in the case because the case does not concern the application of the standard. The Commission can find no legal authority (and the Companies have not provided one) that supports the view that the applicable standard has been changed.

Taking this Court's precedent altogether, property owners must show systematic discrimination to receive uniformity relief. Providing evidence of individual irregularities is not sufficient. The Companies have pointed to nothing that has changed this standard. It is worth noting that 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.)

B. The Facts Alleged in the Companies' Complaint do not Satisfy the Required Showing of "Systematic Discrimination."

The Companies pointed to two sets of facts in their complaint to the district court as the basis for their request for relief. First, some railroads get special treatment because of the 4-R Act. Second, the Rule 131 ratio studies show that some commercial properties are valued at less than

100 percent of fair market value. Neither scenario requires this Court to adjust the value of the Companies' property below fair market value.

To summarize the first scenario, the special treatment railroads receive is because of the federal 4-R Act. The effect of this federal law should not be taken into consideration when applying the constitutional and statutory provisions of Idaho's property tax system for all other taxpayers. The Commission acknowledges that the 4-R Act is an example of a system of taxation intentionally producing a discriminatory result. If the 4-R Act were enacted by the Idaho legislature it probably would constitute systematic discrimination in violation of Idaho's constitution. However, because it is a federal law, federal preemption supersedes Idaho's constitution and laws, to the extent of the conflict, and no further.

Turning to the second issue, irregularities in the ratio study data, produced pursuant to Property Tax Rule 131, do not constitute systematic discrimination. If the Companies could present evidence that the system employed by the various county assessors was intentionally under assessing commercial properties, then the Companies might actually have a case for systematic discrimination. The Companies did not allege in their complaint, nor did they asserted as a genuine issue of fact preventing summary judgment, that the ratio study data showing some commercial properties valued below 100 percent of fair market value was the result of an intentional systematic discrimination.

C. Applying the 4-R Act Adjustments to the Companies is Inconsistent with Idaho's Conflict Preemption Law.

The district court correctly concluded that, by way of the 4-R Act, "the federal government has preempted [the State Tax Commission's] equalization function as applied to railroads." (R., p. 604.) Further, it was correct in its view that the court "is 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 minimally interferes with the state's operation of that area." (R., p. 604.) Leading to the correct finding 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]" because Congress did not intend to occupy the entire field of taxation of real property by the states. (R., p. 605.)

Yet, the Companies continue to assert, "There is nothing in federal law that prevents Idaho from treating other members of this class in the same way as railroads." (Cross-Appellants' Opening Brief and Response, p. 19.) While it may be true that nothing prevents Idaho from treating all operating property the same as railroads, the Idaho legislature has not seen fit to adopt such a policy in Idaho law. Granting the Companies and other operating properties the same treatment as railroads would shift property tax burden onto residential and other categories of property; such a substantial move is a policy decision that is unauthorized and inappropriate for the Tax Commission to make without explicit legislative guidance to do so.

1. Congress Did Not Intend to Occupy the Entire Field of Property Tax in Idaho; the Federal Preemption is Limited to the Extent of the Conflict.

The Supreme Court of the United States has explained the 4-R Act in this way: "Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 to 'restore the financial stability of the railway system of the United States,' among other purposes. To help achieve this goal, Congress targeted state and local taxation schemes that discriminate against rail carriers." *CSX Transp., Inc. v. Alabama Dep't of Revenue*, 562 U.S. 277, 280 (2011). Under the direction of the statute, the 4-R Act pertains only to companies that own "rail transportation property." 49 U.S.C. § 11501(a)(3). The 4-R Act prohibits several different forms of state or local taxation that would "unreasonably burden and discriminate

against interstate commerce" for railroad companies. 49 U.S.C. § 11501(b). Under the restriction relevant to Plaintiffs' argument, states cannot:

> **[a]ssess** rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

49 U.S.C. § 11501(b)(1) (emphasis added). To comply, the Commission must use statistical methodology directed in 49 U.S.C. § 11501(c).

The Idaho Supreme Court has recognized two ways in which federal law may preempt state law. *Christian v. Mason*, 148 Idaho 149, 152, 219 P.3d 473, 476 (2009). "First, if Congress has shown the intent to occupy a given field, any state incursion into that field is preempted by federal law. Second, even if the field is not preempted, if state law conflicts with federal law, it is preempted **to the extent of the conflict.**" *Id.* (emphasis added). Preemption is unavoidable when it is the "clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Given the text of the 4-R Act, it is unquestionable that Congress clearly preempted the states from taking the actions that Congress wrote "a State may not do" which are laid forth in the text of the act. 49 U.S.C. § 11501(b).

By limiting the 4-R Act adjustments solely to the railroad industry, the Commission has recognized this federal preemption "to the extent of the conflict" and its proposed adjustments to any railroad's assessed value are a direct result of this preemption. *Christian*, 148 Idaho at 152, 219 P.3d at 476. Federal law requires railroads and only railroads to be treated differently. The 4-R Act clearly intends only to remove rail transportation properties from the uniformity equation—not to disrupt the states property tax system entirely.

Both parties cited various cases from other states dealing with 4-R issues. However, none of them are directly on point. The District Court summarized the various cases, then noted:

> Of the foregoing cases, only the Tennessee court framed its analysis under the preemption doctrine principles—and then with very little analysis. Overall, however, 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 the state law.

(R., p. 603.) The important takeaway from the non-Idaho cases is that courts have been reluctant to allow federal laws to disrupt states' property tax policy and processes. In other words, when a federal law acts to preempt some part of a state's property tax system, it should be limited narrowly to the extent of the conflict and no further. In this case the 4-R Act requires special treatment for railroads and no one else; it should not be allowed to further disrupt Idaho's property tax system.

2. Granting the Same Treatment for the Companies as to the Railroads Disrupts Idaho's Property Tax Policy and is Not Authorized.

On Cross-Appeal, the Companies only lightly touch on the district court's conclusion that federal preemption requires special treatment for railroads and no one else. "The Companies agree that Idaho is obligated to follow federal law, and also agree with the principle adopted by the district court that preemption operates to invalidate state laws only to the extend those laws actually conflict with federal law." (Cross-Appellants' Opening Brief and Response, p. 27.) The Companies' primary argument on Cross-Appeal seems to be: "is there any reason why the Tax Commission cannot follow the federal mandate while also providing for uniformity within the class of operating property taxpayers?" (Cross-Appellants' Opening Brief and Response, p. 8.) The answer is clear, yes, there is a reason, granting the Companies request for special treatment would shift property tax burden onto residential and other property types. That is a policy decision the legislature has not chosen to make. The Commission is required to provide special treatment

to the railroads because of the 4-R Act but has no authority to give that special treatment to anyone else.

Giving all operating property the same treatment prescribed for railroads in the 4-R Act results in the 4-R Act preempting the entire field of valuing operating property and results in shifting tax burdens to residential and all other categories of property. The Companies argue that Idaho's uniformity requirement is absolute, it doesn't matter what the reason, whether a federal statute, a hypothetical statute, or some other factor causing disparate treatment, if anyone else is getting special treatment resulting in an assessment less than 100 percent of market value, then Idaho's uniformity requirement demands the Companies get the same treatment as well. (Cross-Appellants' Opening Brief and Response, p. 28.) However, there are clearly delineated exceptions to uniformity. For example, uniformity concerns are not affected by property tax exemptions. *Simmons*, 111 Idaho at 349, 723 P.2d at 893; Idaho Const. art. VII, § 5. The Idaho Supreme Court has also recognized that the Legislature's related power to prescribe valuation methodologies for different types of property does not violate uniformity. *Idaho Telephone*, 91 Idaho at 431, 423 P.2d at 343. Because Idaho's constitutional requirement of uniformity must cede to federal law pursuant to the Supremacy Clause of the Constitution of the United States, the 4-R Act adjustments performed by the Commission must also be viewed as an additional exception to uniformity.

The district court was correct to grant the Tax Commission's motion for judgment on the pleadings as to the Companies 4-R Act argument. Plaintiffs are not entitled to the requested adjustment because the non-uniformity raised in the complaint is introduced by federal law that preempts Idaho's uniformity requirement uniquely for the railroad industry. Any other view goes beyond the scope of recognizing conflict preemption only to the extent

of the conflict and infringes upon Idaho's ability to manage Idaho tax policy, resulting in tax burdens shifting to residential and other property types.

In summary, taking as true the facts alleged by the Companies in their complaint, the Companies cannot establish that they are entitled to a uniformity adjustment because of the 4-R Act. The District Court correctly determined that principles of federal preemption did not allow the 4-R Act to serve as evidence of the kind of systematic discrimination necessary to require a uniformity adjustment.

3. The Companies' Remedy is to Show "Systematic Discrimination; Criticizing Rule 131 Does Not Accomplish This.

It is impossible for the Companies to establish systematic discrimination with Rule 131 ratio studies data. The only conclusion that may be drawn from Rule 131 ratio studies is that sometimes, some categories of property are valued less than 100 percent and some categories are valued more than 100 percent. At times, based on the information from the data, the Commission will require an equalization adjustment if a category ever goes above 110 percent or below 90 percent. But even in such scenarios, the ratio study data has not affirmatively demonstrated systematic discrimination, just that some categories of property are valued at below 90 percent or above 110 percent. While equalization adjustments made pursuant to Rule 131 are made to protect uniformity, these adjustments are not triggered by the "systematic discrimination" analysis described by this Court. Instead, any adjustments are made as an automatic safeguard to keep county properties from falling too far out of line with market values.

Rule 131 data will never show the intent of the law or the intent of the assessor. Ratio study data will only ever show variances from measured market value. As such, these variances and adjustments will never prove systematic discrimination

The Companies repeatedly assert in their brief that the Tax Commission believes that operating properties have no remedy other that Rule 131. This is not correct. The remedy, as established by a long history of cases issued by the Idaho Supreme Court is for property owners to bring a complaint with facts showing systematic discrimination. *Idaho Telephone Company v. Baird,* 91 Idaho 425, 423 P.2d 337; *Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 609 P.2d 161; *Anderson's Red & White Store v. Kootenai Cty.*, 70 Idaho 260, 215 P.2d 815. Here, the Companies have not done so. They pointed to the ratio studies prepared pursuant to Property Tax Rule 131, which show that some commercial properties are valued less than 100 percent of fair market value. However, they have neither alleged nor provided any evidence of systematic discrimination; relying wholly on the individual irregularities indicated by the ratio study data.

To be clear, it is not the Commission's position that Rule 131 was intended to be the only assurance of uniformity for operating properties. It is the Companies' complaint that made Rule 131 and the associated ratio studies data the sole focus in this case after the 4-R Act argument. The Companies criticize Rule 131 and its uniformity protection for operating properties by saying, "The Tax Commission has obviously not adopted a standard for equalizing centrally assessed property values, so there is no deference to be given. Rule 131 does not state that it is intended to be used for this purpose." (Cross-Appellants' Opening Brief and Response, p. 27.) The Companies are correct that Rule 131 wasn't designed for the purpose of assuring uniformity for operating properties. Rule 131's purpose is to equalize locally assessed properties through the ratio study process. It was the Companies that brought Rule 131 into this case by alleging that the ratio studies produced pursuant to the rule showed that the Companies were victims of discrimination because some commercial properties were valued below 100 percent of fair market value. The Commission's argument is simply that you will never prove systematic discrimination with Rule

131 ratio study data because the rule itself ensures adjustments to categories of property such that systematic discrimination will not be allowed to exist in the system (as to those properties that are subject to Rule 131 review).

The Commission's request for deference asks this Court to trust that Rule 131 ensures that ratio study data will never prove systematic discrimination. Property owners are free to point to any other set of facts to prove systematic discrimination. But in this case, the Companies have pointed to only two sets of facts in their complaint: (1) the railroad adjustments, which are required under the 4-R Act and (2) the ratio studies data. Systematic discrimination will never be proved with ratio studies data. All ratio studies will ever show is individual irregularities and errors in judgment that are corrected when they go too far astray.

Because of the nature of Rule 131 data, the district court erred in denying the Commission's motion for summary judgment. The district court incorrectly believed that additional fact finding was necessary related to Rule 131. It would be fruitless to remand this case for fact finding regarding the commercial property values in the Rule 131 ratio study data. Analyzing and criticizing Rule 131 ratio studies data cannot establish systematic discrimination because the data will never show anything more than individual irregularities and errors in judgment. The Rule 131 data does not show the intent of the county assessors or of the intent of the appraisal laws the assessors apply. No amount of fact finding related to the Rule 131 ratio studies will produce evidence of discriminatory behavior, only that classes of properties are appraised above or below market value. The most that can be shown from Rule 131 data is that some individual properties may be assessed below market value.

Ultimately, taking the facts alleged in the complaint as true and the Rule 131 data relied upon by the Companies as true, the Companies cannot establish systematic discrimination. Relying

on Rule 131 data can only demonstrate that there were some individual irregularities in the appraisal of commercial property. Ratio study data will never show discriminatory intent.

Because of the nature of Rule 131 data, it is impossible to use it to prove that systematic discrimination has occurred. The district court erred by denying the Commission's motion for summary judgment. Upon review, the Commission asks that this Court reverse the district court and enter judgment in the Commission's favor.

III. CONCLUSION

The Companies must show systematic discrimination for the relief they seek. This requires a showing of something more than individual irregularities or errors in judgment. As demonstrated in *Red* Steer, where the taxpayer requested a 38 percent reduction in value, this Court found that Red Steer was entitled to relief only for "**intentional, systematic discrimination** which occurred… in the application of the 27% reduction to residences and farms, only that portion of the assessment required relief." *Ada Cty. v. Red Steer Drive-Ins of Nevada, Inc.*, 101 Idaho 94, 100, 609 P.2d 161, 166 (1980) (emphasis added). The other 11 percent of the 38 percent relief Red Steer was seeking was attributed to errors in judgement (not intentional systematic discrimination) and this Court explained that it "will not attempt to correct mere mistakes or errors of judgment on the part of the assessor." *Id.*

Based on the facts alleged in their complaint, the Companies are incapable of demonstrating systematic discrimination. The Companies were free to point to any set of facts to show systematic discrimination. In their complaint, they only pointed to (1) the 4-R Act and the special treatment afforded to railroads, and (2) Property Tax Rule 131 and the related ratio studies data; neither shows systematic discrimination.

The district court correctly granted the Commission's motion for judgment on the pleadings with regard to the 4-R Act argument. The special preference given to the railroads under the 4-R Act is required by federal law. The principles of federal preemption require Idaho to honor the law to the extent of the conflict and no further. *Christian*, 148 Idaho at 152, 219 P.3d at 476. Granting the same treatment to the Companies (and other operating properties) would shift property tax burden onto residential and other property types; that is a policy decision that the Idaho legislature has not chosen to make. Congress did not intend the 4-R Act to preempt the entire field of state property taxation. Giving 4-R Act treatment to any other taxpayer is inappropriate and would disrupt Idaho's property tax policy in a way that was never intended.

The district court's concerns that potential genuine issues of material fact prevented entry of summary judgment on the alternative claim were unmerited; summary judgment in favor of the Tax Commission is appropriate because the Companies' arguments regarding Property Tax Rule 131 and the related ratio studies data do not and cannot show systematic discrimination. The fact that some specific properties are valued at less than 100 percent of fair market value is not evidence of systematic discrimination. All ratio studies will ever show is individual irregularities and errors in judgment that are corrected when they go too far astray.

DATED this 7th day of July, 2022.

/s/ Phil N Skinner
Phil N Skinner
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of July, 2022, served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to the attorney listed below by means of the iCourt File and Serve:

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