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IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court Docket No. 43848

Case No. CV-2011-2136

BRENT REGAN and MOURA REGAN, husband and wife,

Plaintiffs/Appellants

vs.

JEFF D. OWEN and KAREN A. OWEN, husband and wife,

Defendants/Respondents

APPELLANTS' SUPPLEMENTAL BRIEF

Appeal from the District Court of the First Judicial District of the State of Idaho
In and For the County of Kootenai

Honorable John P. Luster, Senior District Judge

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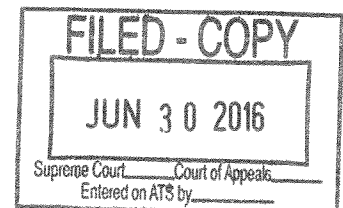


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SUPPLEMENTAL STATEMENT OF THE CASE

A) Nature of the Case.

This appeal is about whether a County's issuance of a tax deed for a parcel of real property in Idaho wipes out all vested easements on the property pursuant to Idaho Code section 63-1009, including prescriptive easements. Appellants Brent and Moura Regan ("Regan") claim the issuance of a tax deed does not eliminate prior vested easements. Respondents Jeff and Karen Owen ("Owen") argue the language of the statute shows the issuance of a tax deed to a County disposes of prior "encumbrances," which Owens argue and in which contention the trial court agreed includes easements. Regan's timely filed March, 2016 Appellant's Brief provides lengthier exposition on the facts of this case.

In its opinion filed October 9, 2015, the trial court in this case held in favor of Owens that pursuant to Idaho Code 63-1009 vested easements are eliminated by a tax deed conveyance of the servient estate, and thus that the Tax Deed to the Orphan Parcel eliminated Regans' claim to a prescriptive easement across that Orphan Parcel. C.R. 69-77. The trial court entered a final judgment on October 30, 2015, and this appeal followed. C.R. 78-80.

The narrow issue argued in this Supplemental Brief is whether wholly, or to some partial extent the Idaho Legislature's passage and the Governor's signing of Senate Bill number 1388 on March 30, 2016 applies retroactively to the issues on appeal. Regans argue it does not so apply, but that this Court may account for the legislature's intent in reaching a decision.

B) Course of the Proceedings on Appeal Regarding the Narrow Issue Presented.

On December 10, 2014, the district court entered a partial judgment certified as final under Rule 54(b) of the Idaho Rules of Civil Procedure (I.R.C.P.). Clerk's Record on Limited Appeal ("C.R.") 18. Owen appealed, and on December 18, 2014, this Court filed its opinion. *Regan v. Jeff*

D., 339 P.2d 1162 (2014) (a.k.a *Regan v. Owen*). In part of that Opinion, this Court remanded to the district court for further proceedings on the issue of whether Regans enjoy a prescriptive easement over the Orphan Parcel. *Id.*

On August 7, 2015, Owens' filed their third motion for summary judgment focusing on the prescriptive easement issue. C.R. 34. In its opinion filed October 9, 2015, the trial court ruled in Owens' favor that the Tax Deed to the Orphan Parcel eliminated Regans' claim to a prescriptive easement. C.R. 69-77. The trial court entered a final judgment on October 30, 2015. C.R. 78-80.

On December 10, 2015, Regans filed a Notice of Appeal from the trial court's judgment. C.R. 81-85. On January 27, 2016, Regans filed an amended Notice of Appeal from the trial court's December 17, 2015 amended final judgment. C.R. 90-94.

This Supplemental Brief is filed by Regan in response to this Court's denial on May 23, 2016 of the parties' Stipulation on Appeal for Entry of an Order. Ord. Ref. No. 16-200 (May 23, 2016). The Order denying the Stipulation provided 35 days for this Supplemental Brief to be filed, which date was calculated to be Monday, June 27, 2016. *Id.* Pursuant to the second sentence of Idaho Appellate Rule 20, this Supplemental Brief is certified to be timely filed.

C) Statement of Facts

The Court is aware of the facts of this case, but a brief iteration of select facts related to the narrow issue addressed in this Supplemental Brief is provided here. Regans own a 50.55-acre parcel in Kootenai County. C.R. 25. Abutting their parcel to the east is a 10.7-acre parcel owned by Owens. C.R. 25. Owens acquired their property through two separate conveyances. They acquired a 10.3-acre parcel from David and Helen Hanna by the Warranty Deed recorded in Kootenai County as Instrument No. 1781225 on February 11, 2003 (the "Owen Parcel"). C.R. 25. Later, Owens acquired a 0.4-acre parcel from Kootenai County by tax deed recorded in Kootenai

County on November 28, 2005 (the “Orphan Parcel”). C.R. 25. The Orphan Parcel abuts the northern boundary of the Owen Parcel along its entire length. A.R. 410.

Five parcels, including the Owens’ and Regans’ parcels, surround the Orphan Parcel, which was inadvertently created when the Original Grantors of these various lands deeded to the Marchelli Trust in April 1999. A.R. 464. The Original Grantors never conveyed the Orphan Parcel, and thus did not reserve an easement across it (as they did when conveying the other parcels).

An existing gravel roadway extends west from the corner of Bonnell Road to the Regans’ property. The roadway passes through the Orphan Parcel using much of its area. A.R. 275; 283-85. The roadway existed when Regans purchased the property from the Marchelli Trust in March of 1999, being used since that time by Regans. A.R. 280.

The Original Grantors did not pay the real property taxes assessed against the Orphan Parcel. As a result, in 2004 the Kootenai County Treasurer issued a tax deed conveying the Orphan Parcel to Kootenai County (the “Tax Deed”). R. 67-68. Respondent Jeff Owen purchased the Orphan Parcel from Kootenai County by a County Deed recorded in Kootenai County as Instrument No. 1997638 on November 28, 2005. R. 69-70. Jeff Owen then deeded the Orphan Parcel to Jeff D. Owen and Karen A. Owen, husband and wife, using a Warranty Deed recorded in Kootenai County as Instrument No. 2294085000 on December 9, 2010. A.R. 409-10.

STANDARD OF REVIEW

The narrow issue addressed by this Supplemental Brief raises both statutory interpretation and constitutional issues. The *CDA Dairy Queen, Inc.* case provides the standard of review:

‘Both constitutional questions and questions of statutory interpretation are questions of law over which [the Idaho State Supreme] Court exercises free review.’ *Stuart v. State*, 149 Idaho 35, 40, 232 P.3d 813, 818 (2010); citing *Federated Publ’ns, Inc. v. Idaho Bus. Rev., Inc.*, 146 Idaho 207, 210, 192 P.3d 1031, 1034 (2008). ‘The party challenging a statute or ordinance on constitutional grounds bears the burden of establishing that the statute or ordinance is unconstitutional and must overcome a strong presumption of

validity.’ *State v. Korn*, 148 Idaho 413, 416, 224 P.3d 480, 483 (2009); citing *State v. Reyes*, 146 Idaho 778, 203 P.3d 708 (Ct.App.2009). ‘The judicial power to declare legislative action unconstitutional should be exercised only in clear cases.’ *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep’t Water Res.*, 143 Idaho 862, 869, 154 P.3d 433, 440 (2007).

CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 382, 299 P.3d 186, 189 (2013).

ISSUE PRESENTED IN THIS SUPPLEMENTAL BRIEF

Whether Senate Bill number 1388, as amended, which was passed in 2016 by the Sixty-Third Idaho Legislature in its Second Regular Session and signed by Governor Otter on March 30, 2016 applies retroactively to the issues on appeal here, and, if not, what “effect the legislation has as to this case.” Ord. Denying Stip. For Entry of an Order Ref. No. 16-200 (May 16, 2016).

ARGUMENT

Introduction

Senate Bill 1388, as amended, was signed into law by Governor Otter on March 30, 2016. 2016 Idaho Sess. Laws, ch. 273 at 750, eff. Mar. 30, 2016. To facilitate ease of reading in this Supplemental Brief’s text, but not its citations, Regan refers hereinafter to that enacted Act as Senate Bill 1388. That ten (10) page Senate Bill as enacted is attached to this Supplemental Brief as Exhibit A.

Regan’s argument will examine the specific language of Senate Bill 1388 as enacted to determine whether the legislature meant it to be applied retroactively, then why pursuant to Idaho law and regardless of legislative intent Senate Bill 1388 cannot be applied retroactively, and thus why this Court does not have to consider any retroactive effect of Senate Bill 1388 on this case, except as this Court finds that Senate Bill may help this Court interpret Idaho Code section 63-1009 to reach a final ruling.

A. Senate Bill 1388 Does Not Mandate Retroactivity, but This Court's Compliance.

The Idaho State Supreme Court “freely reviews the construction of a statute.” *Twin Lakes Canal Co. v. Choules*, 151 Idaho 214, 217, 254 P.3d 1210, 1213 (2011); citing *BHC Intermountain Hosp., Inc. v. Ada Cnty.*, 150 Idaho 93, 95, 244 P.3d 237, 239 (2010). In such an undertaking, which is not argued to differ from the interpretation of enacted session laws:

The statute is viewed as a whole, and the analysis begins with the language of the statute, which is given its plain, usual and ordinary meaning. In determining the ordinary meaning of the statute, effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant. However, if the language of the statute is capable of more than one reasonable construction it is ambiguous, and a statute that is ambiguous must be construed with legislative intent in mind, which is ascertained by examining not only the literal words of the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and its legislative history.

Id. (Citations omitted).

Senate Bill 1388's Section 1 provides, in pertinent part, the legislature's intent and policy behind the statute:

It is the intent of the Legislature to clarify the scope and effect of Idaho's statutes governing tax deeds. . . . It was never the intent of the Legislature to allow local governments to destroy valid property interests held by third parties in land that is subject to a sale or other conveyance based on a tax delinquency, except where notice and opportunity to cure is provided under the statute. Doing so would constitute an uncompensated taking of property under both the Idaho Constitution and the United States Constitution. The Legislature would never have intended such a result and, by this legislation, makes that clear. As its context should have made evident, the purpose of Section 63-1009, Idaho Code, and the other referenced sections, has always been to convey title absolutely free and clear of liens and mortgages of a monetary nature. It was never the intent of the Legislature to allow a local governmental entity to convey more than the delinquent taxpayer owned and thereby to destroy valid property interests held by others without notice and an opportunity to cure. This clarification brings the interpretation of Idaho's tax deed statute into line with the interpretation of similar statutes in other jurisdictions, as had always been the Legislature's intent.

2016 Idaho Sess. Laws, ch. 273 § 1 at 750-51; see Exhibit A at 1. The legislature’s intent was “to clarify the scope and effect of Idaho’s statutes governing tax deeds.” *Id.* Regarding the effect of a tax deed conveyance, the Legislature states its legislative intent “has *always been* to convey title absolutely free and clear of liens and mortgages of a monetary nature.” *Id.* (Emphasis added.) The italicized language in the previous sentence is in the nature of clarifying language, i.e., “what I meant to say was,” and not language indicating an intent to have a retroactive effect on previous tax deed conveyance transactions.

In Idaho, “a retroactive statute is one that changes the legal effect of previous transactions or events.” *Stuart v. State*, 149 Idaho 35, 43, 232 P.3d 813, 821 (2010); citing *Engen v. James*, 92 Idaho 690, 695, 448 P.2d 977, 982 (1969). “The inhibitions of the state and federal constitutions with regard to impairing the obligations of contracts extend to contracts made by a state or municipal corporation.” *Aberdeen-Springfield Canal Co. v. Bashor*, 36 Idaho 818, 819, 214 P. 209, 210 (1923); citing *Fidelity State Bk. v. North Fork H. Dist.*, 35 Idaho 797, 209 P. 449 (1922). Further, and disagreeing with the District Court’s ruling in this case, Senate Bill 1388 makes it clear “[i]t was *never the intent* of the Legislature to allow a local governmental entity to convey more than the delinquent taxpayer owned and thereby to destroy valid property interests held by others without notice and an opportunity to cure.” *Id.* at 750-51 (emphasis added). The language of Section 1 avers merely to clarify the permanent intent of the legislature, such intent being confirmed to extend back to the original dates of the tax deed conveyance statutes.

Support for this legislative contention is in Idaho’s Session Laws of 1911, when statutes governing the process of redemption by a delinquent taxpayer prior to the conveyance and sale by a local governmental entity were amended. Those Session Laws amended Idaho Code section 1773, and part of its language after amendment stated, “Upon the payment of the money specified . . . , and the giving of the deed aforesaid by the treasurer, any deed or certificate of sale

that may have been made to the count[y becomes null and void, *and all right, title, and interest acquired by the county* under or by virtue of the tax sale ceases and determines.” Rep. Att’y Gen. 1911-1912 at 58 (emphasis added); citing 1911 Idaho Sess. Laws, ch. 10 at 27 re: I.C. § 1773 (1911). This accords with Senate Bill 1388’s Section 1 language where it states, “[i]t was *never the intent* of the Legislature to allow a local governmental entity to convey more than the delinquent taxpayer owned,” because since at least 1911 what a county owned upon seizing a property for taxes was never more than “all right, title, and interest acquired by the county under or by virtue of the tax sale . . .” I.C. § 1773 (1911). Because a delinquent taxpayer could not own property interests in his land belonging to others, such as easements appurtenant, a county would never acquire such property interests belonging to others when it seized the delinquent taxpayer’s property for nonpayment. I.C. § 55-101(3) (definition of real property includes “that which is appurtenant to land”). Therefore, when the 2016 legislature stated it *never intended* the seizure of real property to pay delinquent taxes “to destroy valid property interests held by others,” that contention has support in the Idaho Code as amended in 1911. 2016 Idaho Sess. Laws, ch. 273 § 1 at 750-51; see Exhibit A at 1. This accords with the legislature’s 2016 contention that “the purpose of Section 63-1009, Idaho Code, . . . has *always been* to convey title absolutely free and clear of liens and mortgages of a monetary nature,” and not to “destroy valid property interests held by others.” Id. (Emphasis added).

Therefore, at least regarding the Section 1 language of Senate Bill 1388, the resulting statutory amendments should not be construed to be retroactive to affect past transactions. *Stuart*, 149 Idaho at 43, 232 P.3d at 821. However, neither the legislature’s disclaimers nor claims in Section 1 satisfy the inquiry, and retroactivity may still be the effect of the 2016 law.

Section 8 of Senate Bill 1388 as enacted states:

An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. Being a clarification of existing law, the Legislature does not view the application of this amendment to prior conveyances as retroactive legislation. In any event, the Legislature expressly intends that these amendments shall be interpreted to apply to any and all conveyances by tax deed, past or future.

2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Exhibit A at 10.

The first sentence is a common emergency clause allowed by both the Idaho Constitution and Idaho statutes. Idaho Const. Art. III § 22 (“No act shall take effect . . . , except in case of emergency, which emergency shall be declared in the preamble or in the body of the law”); I.C. § 67-510 (“No act shall take effect . . . , except in case of emergency, which emergency shall be declared in the preamble or body of the law.”) The legislature certainly has this “decision-making function that is uniquely legislative.” *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 695, 718 P.2d 1129, 1133 (1986). Regans argue this sentence does not affect the issue of retroactivity, because with it the law is only “in full force and effect on and after its passage and approval.” 2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Exhibit A at 10. The first sentence does not trigger retroactive application of the amended statutes.

The second sentence of Senate Bill 1388’s Section 8 disclaims retroactivity and gives the legislature’s opinion: “Being a clarification of existing law, the Legislature does not view the application of this amendment to prior conveyances as retroactive legislation.” *Id.* This sentence appears to be another way of the legislature stating, “what actually happened in those prior conveyances was what we declare here by our clarification to be what happened, and not what the Court apparently believed we meant when it gave its guidance to the District Court in the case of *Regan v. Owen* in 2014.” Pursuant to this Court’s definition, “a retroactive statute is one that changes the legal effect of previous transactions or events.” *Stuart*, 149 Idaho at 43, 232 P.3d at 821. Idaho Code section 73-101 provides, “[n]o part of these compiled laws is retroactive, unless

expressly so declared.” The language of the second sentence of Section 8 is in the form of an opinion that the legislation believes its amendments are not retroactive, while in the same sentence the legislature appears to desire the application of the new language to prior conveyances.

If the statute is not retroactive, how can it apply to prior conveyances?

Senate Bill 1388 amended several statutes, including the Idaho Code section 63-1009 at issue here on appeal. 2016 Idaho Sess. Laws, ch. 273 § 7 at 758; see Exhibit A at 10. “With amendments to statutes, this Court has stated that they will not be deemed retroactive in application absent an express legislative statement to the contrary.” *Guzman v. Piercy*, 155 Idaho 928, 938, 318 P.3d 918, 928 (2014); citing *Nebeker v. Piper Aircraft Corp.*, 113 Idaho 609, 614, 747 P.2d 18, 23 (1987). In this case, the legislature does not desire to change the contractual terms of prior conveyances made by tax deeds, but would simply like to clarify that the property conveyed by a local government entity to a third-party using a tax deed could only include the property that entity was able to previously seize from the delinquent taxpayer. It is unknown whether any purchaser at a tax sale ever believed a conveying local government entity could sell property it did not own, and Regan finds no Idaho case law on that point.

“It is the long standing rule in this [S]tate that when the legislature amends a statute it is deemed, *absent an express indication to the contrary*, to be indicative of changed legislative intent.” *Nebeker*, 113 Idaho at 614, 747 P.2d at 23 (emphasis added); see also, *Lincoln Cnty. v. Fid. & Deposit Co. of Maryland*, 102 Idaho 489, 491, 632 P.2d 678, 680 (1981) (“When a statute is amended, it is presumed that the legislature intended it to have a meaning different from that accorded to it before the amendment.”) Certainly changed legislative intent would be found if the legislature expressly commanded its amendments be applied retroactively. However, in this case the legislature appears to expressly disclaim an intent to trigger retroactivity while expressly

claiming its intent was only to clarify the law with the amendments, in addition to commanding this Court to agree with it. 2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Ex. A at 10.

By the plain language of the Act, this Court can discern the legislature intended Senate Bill 1388 to clarify various statutes by amending them, because Section 1 of that Senate Bill states, “It is the intent of the Legislature to clarify the scope and effect of Idaho's statutes governing tax deeds.” 2016 Idaho Sess. Laws, ch. 273 § 1 at 750, see Ex. A, p. 1. Thus, in the first sentence of Section 1 and the second sentence of Section 8, here the latter found at Exhibit A, p. 10, the legislature declares its intent to merely clarify the law, and not to have retroactive effect so as to “change[] the legal effect of previous transactions or events.” *Stuart*, 149 Idaho at 43, 232 P.3d at 821 (defining retroactivity). Therefore, Senate Bill 1388 should not be found by this Court to be retroactive pursuant to reasonable interpretation of the first two sentences of its Section 8, however the third sentence remains to be analyzed.

The third sentence of Senate Bill 1388’s Section 8 states, “In any event, the Legislature expressly intends that these amendments shall be interpreted to apply to any and all conveyances by tax deed, past or future.” 2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Exhibit A at 10. The words “shall be interpreted” effectively confirm the legislature’s intent that the legislation is not made to be retroactive, but instead that the legislature expressly intends this Court to interpret the amendments according to the legislature’s opinion regarding the intent behind its clarification of the law. *Id.* Fortunately, this is impossible, because the legislature lacks such power.

Section 1 of Article II of Idaho’s Constitution states the separation of powers doctrine:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Idaho's Constitution does not allow the legislature to exercise the judicial department's power, "except as in this constitution expressly directed or permitted." *Id.* Regan does not find a constitutional provision expressly allowing the legislature to direct the judicial department in how to exercise the judicial power. Regan understands the indented paragraph above to stand for the proposition that not only may the legislature not exercise the judicial power, but that the legislature cannot direct the judiciary in how to exercise that power. *Id.*

As stated in the *Idaho Schools* case, "[t]he legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government" *Idaho Schools for Equal Educational Opportunity v. State*, 140 Idaho 586, 590, 97 P.3d 453, 457 (2004); citing Idaho Const., Art. V § 13. Regan argues the legislature's command to this Court to exercise its power in a particular way would be an unconstitutional deprivation by the legislature of this Court's power. Idaho Const., Art. V § 13. Therefore, while it may be helpful to this Court upon reflection to have the legislature's opinion as to whether the new statute is merely a clarification of existing law or retroactive legislation, lawful or not, the fact remains "[b]oth constitutional questions and questions of statutory interpretation are questions of law over which [the Idaho State Supreme] Court exercises free review." *Stuart*, 149 Idaho at 40, 232 P.3d at 818; citing *Federated Publ'ns, Inc. v. Idaho Bus. Rev., Inc.*, 146 Idaho 207, 210, 192 P.3d 1031, 1034 (2008).

The third sentence of Senate Bill 1388's Section 8 uses the words "shall be interpreted" to command this Court to agree with the legislature when this Court concludes its exercise of its judicial power to interpret statutes. 2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Exhibit A at 10. However, because the legislature has no power to deprive the judiciary of its inherent judicial power, it does not appear to Regan and Regan does not argue the legislature may *instruct* this Court on how to exercise its judicial power, in this case the power of statutory interpretation in a

way that would force this Court to adopt the legislature's interpretation of the statute. Idaho Const., Art. V § 13; see *Fidelity State Bk.*, 35 Idaho at 813, 209 P. at 465 (“one “distinct principle[] of constitutional law . . . prohibit[s] the assumption of judicial power by the legislative department.”) The legislature appears to command this Court precisely how to exercise its judicial power when the legislature uses the word “shall,” and Regan believes this Court may *and should* ignore that command and make its own interpretation of “these [Senate Bill 1388] amendments.” 2016 Idaho Sess. Laws, ch. 273 § 8 at 758; see Exhibit A at 10.

Therefore, the express language of Senate Bill 1388, both in Sections 1 and 8 do not indicate the legislature intended the statute to be retroactive in its application to tax deed conveyance transactions such that either local government entities or third party purchasers would have their then existing property transactions altered, but instead the legislature's intent was to command this Court to exercise its interpretive power in a particular way if those transactions ever came before the Court. The legislature cannot command this Court how to exercise its judicial power, and thus this Court remains free to decide whether the legislature intended to merely clarify the law.

In this case, if the Court agrees Senate Bill 1388 merely clarifies the law it would mean “the purpose of Section 63-1009, Idaho Code, has always been to convey title absolutely free and clear of liens and mortgages of a monetary nature[, but that] it was never the intent of the legislature to allow a local governmental entity to convey more than the delinquent taxpayer owned and thereby to destroy valid property interests held by others.” 2016 Idaho Sess. Laws, ch. 273 § 1 at 750-51; see Exhibit A at 1. Regan argues Senate Bill 1388 should not be applied retroactively to this case, but that this Court may upon reflection interpret the amendatory language according to the legislative intent to merely clarify the law.

Regan concludes the express language of Senate Bill 1388 does not require this Court to, and thus it should not apply the statute retroactively to this case based on that language. However, the Court remains free upon reflection to accept the legislature's clarifications to decide this case.

B. The Enacted Language of Senate Bill 1388 Cannot be Interpreted to be Retroactive.

Whenever two constructions of a statute are possible, and one construction would be constitutional and the other unconstitutional, the constitutional construction will be adopted. *Lawrence v. Defenbach*, 23 Idaho 78, 128 P. 81 (1912); see 2 Sutherland on Statutory Construction, 2d ed., sec. 641; *Bellevue State Bank v. Lilya*, 35 Idaho 270, 273, 205 P. 893, 896 (1922); *Griffith v. Owens*, 30 Idaho 647, 650, 166 P. 922, 925 (1917). To interpret Senate Bill 1388 as requiring a retroactive application would be unconstitutional in Idaho.

Idaho Code section 67-511 states:

Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted and the new provisions are to be considered as having been enacted at the time of the amendment.

In this case, Idaho Code section 63-1009 was amended by both strikeouts and additions of language. 2016 Idaho Sess. Laws, ch. 273 § 7 at 757-58, see Ex. A, p. 10. Specifically stricken was the following italicized language at issue in this case stating the deed conveys “*absolute title to the land described therein, free of all encumbrances except mortgages of record . . .*” Id. The italicized language added to section 63-1009 confirms the legislature's intent that “[t]he deed conveys to the grantee the *right, title, and interest held by the record owner or owners, provided that the title conveyed by the deed shall be free of any recorded purchase contract, mortgage, deed of trust, security interest, lien, or lease, so long as notice has been sent to the party in interest . .*” Id. The italicized language in the immediately preceding sentence carries the same language found in Idaho Code section 1773 as amended in the year 1911, viz., “*all right, title, and interest*

acquired by the county under or by virtue of the tax sale ceases and determines.” Rep. Att’y Gen. 1911-1912 at 58 (emphasis added); citing 1911 Idaho Sess. Laws, ch. 10 at 27 re: I.C. § 1773 (1911).

In 2016, the legislature mirrored the language used in 1911, which both supports the legislature’s contention that Senate Bill 1388 is merely a clarification of the law, and that the legislature recognizes the impossibility of retroactively altering a tax deed conveyance. This is especially true for the purposes of this case, where the district court is claimed to have erred by one party (Regan), and where in this appeal this Court is being asked to reach a final decision regarding that error.

Section 16 of Article I of the Idaho Constitution states in pertinent part, “No . . . law impairing the obligation of contracts shall ever be passed.” This bar is reiterated and then extended in Idaho’s Constitution by Section 12 of Article XI, where it states, “[t]he legislature shall pass no law for the benefit of . . . any individual, or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.” “The obligation of a contract is impaired by a statute which alters its terms, by imposing new conditions or dispensing with existing conditions, or which adds new duties or releases or lessens any part of the contractual obligation or substantially defeats its ends.” *Aberdeen-Springfield Canal Co. v. Bashor*, 36 Idaho 818, 822, 214 P. 209, 213 (1923).

Specifically regarding contracts to convey real property by tax deed, “[w]here a conveyance is made by the county to a third person the transaction rests upon contract which cannot be impaired by legislative enactment, the purchaser from the county having acquired a vested right.” *Washington County v. Paradis*, 38 Idaho 364, 369, 222 P. 775, 780 (1923); citing *Beecher v. Board of Supervisors*, 50 Iowa 538 (1879). “[A] county does not acquire a vested right

in property by virtue of a tax sale to it for delinquent taxes, [because] such a purchase of property by a county goes no further than to perpetuate the lien of the tax and is in aid of its collection.” *Id.*, 38 Idaho at 367-68, 222 P. at 778-79. Thus, vested rights of third parties are left alone and secure.

The second part of Section 12 of Article XI of Idaho’s Constitution is also very important to this case, because local government entities in Idaho may have significant financial liability if Senate Bill 1388 is NOT applied retroactively. That Section 12’s second part states, “[t]he legislature shall pass no law . . . which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.” Idaho Const., Art. XI § 12. If this Court does not construe Senate Bill 1388 to apply retroactively, new liabilities may arise to local public entities that have conveyed tax deeds for servient estates for appurtenant easements. Dominant estate holders of destroyed appurtenant easements would likely claim a taking of their real property interest had occurred. Therefore, Section 12 of Article XI of Idaho’s Constitution bars the legislature from passing a law that would impose on the people of a local government entity a new liability in respect to prior conveyances by tax deed. These new liabilities may arise related to tax deed transactions that occurred during the four-year period preceding this Court’s final decision. I.C. § 5-224 (statute of limitations for inverse condemnation).

“A statute of limitations may bar a constitutional right.” *Guzman v. Piercy*, 155 Idaho 928, 940, 318 P.3d 918, 930 (2014); see *Wadsworth v. Idaho Dep’t of Transp.*, 128 Idaho 439, 442, 915 P.2d 1, 4 (1996); citing *United States v. Dickinson*, 331 U.S. 745 (1947); see also *McCuskey v. Canyon Cnty. Comm’rs*, 128 Idaho 213, 215-18, 912 P.2d 100, 102-05 (1996) (holding that an inverse condemnation action was barred by the four-year statute of limitation in I.C. § 5-224).

To preserve the vested rights arising in both a purchaser of a servient estate and the vested rights residing in a nearby dominant estate holder when a tax deed sale happens, such a sale must be governed by the law in force at the time of sale, and cannot be affected by subsequent

legislation, and cannot be abridged or enlarged by subsequent legislation. One of the issues on appeal in this case is precisely what was conveyed by Kootenai County to Owen in 2005. This Court is barred by the Idaho Constitution from interpreting Senate Bill 1388 to apply retroactively, but this Court has the interpretive power to overturn the District Court's error, so that vested rights are not destroyed and liability claims against local governmental entities do not arise.

CONCLUSION

Senate Bill 1388 was enacted in 2016. Its amendments were expressly made to be "in full force and effect on and after its passage and approval," and it was thereafter passed by the legislature and approved by the Governor on March 30, 2016. Even if its language could be construed to require retroactive application, the legislature lacks the power to command this Court to find it thus, and the Idaho Constitution bars such application. This Court should conclude the amending language merely serves to clarify, in this case, Idaho Code section 63-1009, by accounting for legislative intent when it decides this case.

Respectfully submitted this 27th day of June, 2016.




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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27th day of June, 2016, I caused to be served two true and correct copies of the foregoing APPELLANTS' SUPPLEMENTAL BRIEF by First Class U.S. Mail with postage prepaid addressed to:

Susan P. Weeks
James, Vernon, & Weeks, PA
1626 Lincoln Way
Coeur d'Alene, ID 83814
Attorney for Respondents



Arthur B. Macomber
Attorney for Appellants Regan

IN THE SENATE

SENATE BILL NO. 1388, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO TAX DEEDS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION
2 31-808, IDAHO CODE, TO PROVIDE NONAPPLICATION TO EASEMENTS, HIGHWAYS,
3 AND RIGHTS-OF-WAY OWNED BY THE COUNTY, UNLESS EXPRESSLY CONVEYED AND TO
4 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 43-714A, IDAHO CODE, TO
5 FURTHER DEFINE THE TERM "PARTY IN INTEREST"; AMENDING SECTION 43-720,
6 IDAHO CODE, TO REVISE WHAT A TAX DEED CONVEYS; AMENDING SECTION 50-1823,
7 IDAHO CODE, TO REVISE WHAT A TAX DEED CONVEYS; AMENDING SECTION 63-201,
8 IDAHO CODE, TO FURTHER DEFINE THE TERM "PARTY IN INTEREST" AND TO MAKE
9 TECHNICAL CORRECTIONS; AMENDING SECTION 63-1009, IDAHO CODE, TO REVISE
10 WHAT A TAX DEED CONVEYS; AND DECLARING AN EMERGENCY AND PROVIDING APPLI-
11 CATION.
12

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

14 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to
15 clarify the scope and effect of Idaho's statutes governing tax deeds. In
16 the case of *Regan v. Owen*, the Idaho Supreme Court addressed whether a tax
17 deed issued pursuant to Section 63-1009, Idaho Code, has the effect of extin-
18 guishing an otherwise valid private easement across the subject property.
19 Similar legislative language exists with respect to counties in Section
20 31-808, Idaho Code, with respect to irrigation entities in Section 43-720,
21 Idaho Code, and with respect to cities in Section 50-1823, Idaho Code. The
22 court did not decide the issue, but remanded to a lower court. The lower
23 court subsequently ruled that, despite the harsh result, the statute has
24 this effect. While a private access easement was at issue there, the rea-
25 soning would also result in the elimination of public utility easements,
26 ditch rights, public highways and rights-of-way, conservation easements,
27 and all manner of third-party rights in the land including, for example,
28 interests of remaindermen following a life estate. By this legislation, the
29 Idaho Legislature rejects that conclusion. It was never the intent of the
30 Legislature to allow local governments to destroy valid property interests
31 held by third parties in land that is subject to a sale or other conveyance
32 based on a tax delinquency, except where notice and opportunity to cure is
33 provided under the statute. Doing so would constitute an uncompensated
34 taking of property under both the Idaho Constitution and the United States
35 Constitution. The Legislature would never have intended such a result and,
36 by this legislation, makes that clear. As its context should have made evi-
37 dent, the purpose of Section 63-1009, Idaho Code, and the other referenced
38 sections, has always been to convey title absolutely free and clear of liens
39 and mortgages of a monetary nature. It was never the intent of the Legisla-
40 ture to allow a local governmental entity to convey more than the delinquent
41 taxpayer owned and thereby to destroy valid property interests held by oth-
42 ers without notice and an opportunity to cure. This clarification brings the
43 interpretation of Idaho's tax deed statute into line with the interpretation

Ex. A (1 of 10 p.)

1 of similar statutes in other jurisdictions, as had always been the Legisla-
2 ture's intent.

3 SECTION 2. That Section 31-808, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 31-808. SALE OF COUNTY PROPERTY -- GENERAL PROCEDURE -- SALE OF PROP-
6 ERTY ACQUIRED THROUGH TAX DEED -- PROCEDURE AFTER ATTEMPTED AUCTION -- EX-
7 CHANGE OF COUNTY PROPERTY -- SALE OF CERTAIN ODD-LOT PROPERTY -- SALE, EX-
8 CHANGE OR DONATION OF PROPERTY TO OTHER UNITS OF GOVERNMENT. (1) A board of
9 county commissioners shall have the power and authority to sell or offer for
10 sale at public auction any real or personal property belonging to the county
11 not necessary for its use. However, personal property not exceeding two hun-
12 dred fifty dollars (\$250) in value may be sold at private sale without no-
13 tice or public auction. Prior to offering the property for sale, the board
14 of county commissioners shall advertise notice of the auction in a newspa-
15 per, as defined in section 60-106, Idaho Code, either published in the county
16 or having a general circulation in the county, not less than ten (10) cal-
17 endar days prior to the auction. If the property to be sold is real prop-
18 erty, the notice to be published shall contain the legal description as well
19 as the street address of the property. If the property is outside the corpo-
20 rate limits of a city and does not have a street address, then the description
21 shall also contain the distance and direction of the location of the real
22 property from the closest city.

23 If the property to be sold is acquired by tax deed, the notice required
24 to be published shall include, next to the description of the property, the
25 name of the taxpayer as it appears in the delinquent tax certificate upon
26 which the tax deed was issued. The property shall be sold to the highest bid-
27 der. However, the board of county commissioners shall set the minimum bid
28 for the tax deeded property to include all property taxes owing, interest and
29 costs but they may reserve the right to reject any and all bids and shall have
30 discretionary authority to reject or accept any bid which may be made for an
31 amount less than the total amount of all delinquent taxes, late charges, in-
32 terest and costs, including other costs associated with the property, ad-
33 vertising, and sale, which may have accrued against any property so offered
34 for sale, including the amount specified in the tax deed to the county. Such
35 action by the board in setting the minimum bid shall be duly noted in their
36 minutes. Failure to do so shall not invalidate a sale. For tax deeded prop-
37 erty, the board of county commissioners shall conduct an auction no later
38 than fourteen (14) months from the issuance of the tax deed.

39 (2) (a) Proceeds from the sale of county property not acquired by tax
40 deed shall be paid into the county treasury for the general use of the
41 county.

42 (b) If the property to be sold has been acquired by tax deed, pursuant
43 to the provisions of chapter 10, title 63, Idaho Code, the proceeds from
44 the sale, after payment of all delinquent taxes, late charges, interest
45 and costs, including the cost for maintaining the property, shall
46 be apportioned by the board of county commissioners to parties in interest
47 as defined in section 63-201, Idaho Code, and then to the owner(s) of
48 record of such property at the time the tax deed was issued on the prop-
49 erty.

Ex. A. (2 of 10p.)

1 (c) Once such tax deeded property has been sold, the board of county
2 commissioners shall within thirty (30) days notify all parties in in-
3 terest of such sale and the amount of the excess proceeds. Such parties
4 in interest shall respond to the board of county commissioners, within
5 sixty (60) days of receiving such notice, making claim on the proceeds.
6 No responses postmarked or received after the sixtieth day shall be
7 accepted. The board of county commissioners shall then make payment
8 to parties in interest in priority of the liens pursuant to law, within
9 sixty (60) days. All funds available after payment to parties in inter-
10 est shall be returned to the owner(s) of record of the property at the
11 time the tax deed was issued. All costs associated with the compliance
12 of this section shall be deducted from any amounts refunded to the par-
13 ties in interest or owner(s) of record.

14 (3) Any property sold may be carried on a recorded contract with the
15 county for a term not to exceed ten (10) years and at an interest rate not to
16 exceed the rate of interest specified in section 28-22-104(1), Idaho Code.
17 The board of county commissioners shall have the authority to cancel any con-
18 tract if the purchaser fails to comply with any of the terms of the contract
19 and the county shall retain all payments made on the contract. The title to
20 all property sold on contract shall be retained in the name of the county
21 until full payment has been made by the purchaser. However, the purchaser
22 shall be responsible for payment of all property taxes during the period of
23 the contract.

24 (4) Any sale of property by the county shall vest in the purchaser all
25 of the right, title and interest of the county in the property, including
26 all delinquent taxes ~~which~~ that have become a lien on the property since the
27 date of issue of the tax deed, if any, but excluding easements, highways, and
28 rights-of-way owned by the county, unless expressly conveyed.

29 (5) In addition to the purchase price, a purchaser of county property,
30 including property acquired by tax deed, shall pay all fees required by law
31 for the transfer of property. No deed for any real estate purchased pursuant
32 to the provisions of this section shall be delivered to a purchaser until
33 such deed has been recorded in the county making the sale.

34 (6) Should the county be unable to sell at a public auction any real or
35 personal property belonging to the county, including property acquired by
36 tax deed, it may sell the property without further notice by public or pri-
37 vate sale upon such terms and conditions as the county deems necessary. Dis-
38 tribution of the proceeds of sale shall be as set forth in subsection (2) of
39 this section.

40 (7) The board of county commissioners may at its discretion, when in the
41 county's best interest, exchange and do all things necessary to exchange any
42 of the real property now or hereafter held and owned by the county for real
43 property of equal value, public or private, to consolidate county real prop-
44 erty or aid the county in the control and management or use of county real
45 property.

46 (8) The board of county commissioners may, by resolution, declare cer-
47 tain parcels of real property as odd-lot property, all or portions of which
48 are not needed for public purposes and are excess to the needs of the county.
49 For purposes of this subsection, odd-lot property is defined as that prop-
50 erty that has an irregular shape or is a remnant and has value primarily to

1 an adjoining property owner. Odd-lot property may be sold to an adjacent
2 property owner for fair market value that is estimated by a land appraiser
3 licensed to appraise property in the state of Idaho. If, after thirty (30)
4 days' written notice, an adjoining property owner or owners do not desire to
5 purchase the odd-lot property, the board of county commissioners may sell
6 the property to any other interested party for not less than the appraised
7 value. When a sale of odd-lot property is agreed to, a public advertisement
8 of the pending sale shall be published in one (1) edition of the newspaper as
9 defined in subsection (1) of this section, and the public shall have fifteen
10 (15) days to object to the sale in writing. The board of county commissioners
11 shall make the final determination regarding the sale of odd-lot property in
12 an open meeting.

13 (9) In addition to any other powers granted by law, the board of county
14 commissioners may at their discretion, grant to or exchange with the federal
15 government, the state of Idaho, any political subdivision or taxing district
16 of the state of Idaho or any local historical society which is incorporated
17 as an Idaho nonprofit corporation which operates primarily in the county or
18 maintains a museum in the county, with or without compensation, any real or
19 personal property or any interest in such property owned by the county or
20 acquired by tax deed, after adoption of a resolution by the board of county
21 commissioners that the grant or exchange of property is in the public inter-
22 est. Notice of such grant or exchange shall be as provided in subsection
23 (1) of this section and the decision may be made at any regularly or spe-
24 cially scheduled meeting of the board of county commissioners. The execu-
25 tion and delivery by the county of the deed conveying an interest in the prop-
26 erty shall operate to discharge and cancel all levies, liens and taxes made
27 or created for the benefit of the state, county or any other political subdivi-
28 sion or taxing district and to cancel all titles or claims of title includ-
29 ing claims of redemption to such real property asserted or existing at the
30 time of such conveyance. However, if the property conveyed is subject to a
31 lien for one (1) or more unsatisfied special assessments, the lien shall con-
32 tinue until all special assessments have been paid in full. At no time shall
33 a lien for a special assessment be extinguished prior to such special assess-
34 ment having been paid in full. Any property conveyed to any local histori-
35 cal society by the county shall revert to the county when the property is no
36 longer utilized for the purposes for which it was conveyed.

37 (10) When the county has title to mineral rights severed from the prop-
38 erty to which they attach, and the mineral rights have value of less than
39 twenty-five dollars (\$25.00) per acre, the board of county commissioners may
40 act to return the mineral rights to the land from which they were severed in
41 the following manner: the proposed action must appear on the agenda of a reg-
42 ular meeting of the board of county commissioners; and the motion to make the
43 return must be adopted unanimously by the board voting in open meeting.

44 (11) If there are excess funds and the owner(s) of record of the prop-
45 erty at the time the tax deed was issued on the property cannot be located,
46 then the county treasurer shall put all remaining excess funds in an inter-
47 est-bearing trust for three (3) years. The county may charge for the actual
48 costs for performing the search, and after three (3) years, any remaining
49 funds shall be transferred to the county indigent fund. The levy set to fund
50 this portion of the indigent budget shall be calculated based on the budget

1 subject to the limitation in section 63-802, Idaho Code, less the money re-
2 ceived from the interest-bearing trust.

3 SECTION 3. That Section 43-714A, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 43-714A. DEFINITIONS. Words and terms used in this chapter, unless the
6 context otherwise requires, are defined as follows:

7 (1) "District" means an irrigation district organized under the provi-
8 sions of title 43, Idaho Code.

9 (2) "Board" means the board of directors of a district.

10 (3) "Treasurer" means the duly appointed officer of an irrigation dis-
11 trict, and his or her deputies or employees. Such treasurer acts as ex offi-
12 cio tax collector for the purposes of this chapter.

13 (4) The term "delinquent assessments" as herein used shall be deemed
14 and construed to include all general and special assessments and charges for
15 operation and maintenance, bond or loan contract payments, or other autho-
16 rized expenditures, entered in irrigation district assessment rolls, not
17 paid when due, and collectible in the manner provided in chapter 7, title 43,
18 Idaho Code.

19 (5) "Facsimile" means the reproduction or supplying of an exact copy
20 from an original document.

21 (6) "Party in interest" means a person or persons, partnership, cor-
22 poration, business venture, or other entity which that holds a valid and
23 legally binding recorded purchase contract, mortgage, or deed of trust,
24 properly recorded, or lease in and for the property for which a delinquency
25 entry has been made. For purposes of notice requirements in this chapter,
26 recording includes documents recorded in full or by memorandum providing
27 notice thereof.

28 (7) "Record owner or owners" means the person or entity in whose name or
29 names the property stands upon the records in the county recorder's office.
30 Where the record owners are husband and wife at the time the notice described
31 in section 43-717, Idaho Code, shall issue, notice to one (1) spouse shall be
32 deemed and imputed as notice to the other spouse.

33 (8) "Tax certificate" means a written assignment of a district's right
34 to a tax deed as provided in section 43-715, Idaho Code.

35 SECTION 4. That Section 43-720, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 43-720. TAX DEED -- RECITALS -- EFFECT AS EVIDENCE -- TITLE CON-
38 VEYED. The matters recited in the delinquency entry must be recited in the
39 deed, and such deed duly acknowledged or proved is prima facie evidence that:

40 (1) Benefits were apportioned to the property as required by law or wa-
41 ter rights were properly allocated to the property.

42 (2) The assessment was levied in accordance with law.

43 (3) The assessment was equalized as required by law.

44 (4) The assessment, together with statutory penalties, interest and
45 any other charges, was unpaid.

46 (5) At the proper time the delinquency entry was made as prescribed by
47 law and by the proper officer.

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1 (6) The property was unredeemed within the time allowed by the first
2 paragraph of section 43-712, Idaho Code.

3 (7) The person who executed the tax deed was the proper officer. Such
4 deed duly acknowledged and proved is prima facie evidence of the regular-
5 ity of all other proceedings for the assessment, inclusive, up to the exe-
6 cution of the deed. The deed conveys to the grantee the absolute title to
7 the lands described therein, free of all encumbrances, except purchase con-
8 tracts, mortgages, deeds of trust or leases of record to the holders of which
9 notice as has not been sent as in this chapter provided, and except any lien
10 for assessments which that have attached subsequent to the assessment re-
11 sulting in the issuance of the tax deed, and except any lien for state and
12 county taxes. For purposes of this section, the term "encumbrances" does not
13 include any easements, highways or rights-of-way of any type, whether public
14 or private.

15 Any number of descriptions of land in the same district may be included
16 in one (1) deed where the certificates are held by one (1) person, or the dis-
17 trict.

18 SECTION 5. That Section 50-1823, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 50-1823. TAX DEED -- FORM AND CONTENTS -- TITLE CONVEYED. The matters
21 recited in the delinquency entry must be recited in the deed to the city, and
22 such deed duly acknowledged or proved shall be prima facie evidence in that:
23 (1) the property was assessed as required by law; (2) that the property was
24 equalized as required by law; (3) that the assessments were levied in accor-
25 dance with law; (4) that the assessments were unpaid; (5) that at the proper
26 time the delinquency entry was made as prescribed by law and by the proper of-
27 ficer; (6) that the property was unredeemed; (7) that the person who executed
28 the deed was the proper officer of the city. Such deed duly acknowledged and
29 proved shall be prima facie evidence of the regularity of all proceedings for
30 the assessments up to and including the execution and delivery of the deed.
31 The said deed shall convey to the grantee ~~the absolute title to the lands de-~~
32 ~~scribed therein free and clear of all liens and encumbrances except mort-~~
33 ~~gages of record, holders of liens and bondholders to which notice has not~~
34 ~~been sent after request, as provided in this act, and except any liens for as-~~
35 ~~sessments which have attached subsequent to assessment resulting in the sale~~
36 ~~and except any lien for state and county taxes~~ the right, title, and interest
37 in the property as provided in section 63-1009, Idaho Code.

38 SECTION 6. That Section 63-201, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 63-201. DEFINITIONS. As used for property tax purposes in chapters 1
41 through 23, title 63, Idaho Code, the terms defined in this section shall
42 have the following meanings, unless the context clearly indicates another
43 meaning:

44 (1) "Appraisal" means an estimate of property value for property tax
45 purposes.

Ex. A (6 of 10p)

1 (a) For the purpose of estimated property value to place the value on
2 any assessment roll, the value estimation must be made by the assessor
3 or a certified property tax appraiser.

4 (b) For the purpose of estimating property value to present for an ap-
5 peal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code,
6 the value estimation may be made by the assessor, a certified property
7 tax appraiser, a licensed appraiser, or a certified appraiser or any
8 party as specified by law.

9 (2) "Bargeline" means those water transportation tugs, boats, barges,
10 lighters and other equipment and property used in conjunction with waterways
11 for bulk transportation of freight or ship assist.

12 (3) "Cogenerators" means facilities ~~which~~ that produce electric en-
13 ergy, and steam or forms of useful energy ~~which~~ that are used for industrial,
14 commercial, heating or cooling purposes.

15 (4) "Collection costs" are amounts authorized by law to be added after
16 the date of delinquency and collected in the same manner as property tax.

17 (5) "Credit card" means a card or device, whether known as a credit card
18 or by any other name, issued under an arrangement pursuant to which a card is-
19 suer gives to a cardholder the privilege of obtaining credit from the card
20 issuer or other person in purchasing or leasing property or services, ob-
21 taining loans, or otherwise.

22 (6) "Debit card" means any instrument or device, whether known as a
23 debit card or by any other name, issued with or without a fee by an issuer for
24 the use of the cardholder in depositing, obtaining or transferring funds.

25 (7) "Delinquency" means any property tax, special assessment, fee,
26 collection cost, or charge collected in the same manner as property tax, that
27 has not been paid in the manner and within the time limits provided by law.

28 (8) "Electronic funds transfer" means any transfer of funds that is
29 initiated by electronic means, such as an electronic terminal, telephone,
30 computer, ATM or magnetic tape.

31 (9) "Fixtures" means those articles that, although once movable chat-
32 tels, have become accessory to and a part of improvements to real property
33 by having been physically incorporated therein or annexed or affixed thereto
34 in such a manner that removing them would cause material injury or damage to
35 the real property, the use or purpose of such articles is integral to the use
36 of the real property to which it is affixed, and a person would reasonably
37 be considered to intend to make the articles permanent additions to the real
38 property. "Fixtures" includes systems for the heating, air conditioning,
39 ventilation, sanitation, lighting and plumbing of such building.

40 (10) "Floating home" means a floating structure that is designed and
41 built to be used, or is modified to be used, as a stationary waterborne resi-
42 dential dwelling.

43 (11) "Improvements" means all buildings, structures, manufactured
44 homes, as defined in section 39-4105(8), Idaho Code, mobile homes as de-
45 fined in section 39-4105(9), Idaho Code, and modular buildings, as defined
46 in section 39-4301(7), Idaho Code, erected upon or affixed to land, fences,
47 water ditches constructed for mining, manufacturing or irrigation purposes,
48 fixtures, and floating homes, whether or not such improvements are owned
49 separately from the ownership of the land upon or to which the same may be
50 erected, affixed or attached. The term "improvements" also includes all

1 fruit, nut-bearing and ornamental trees or vines not of natural growth,
2 growing upon the land, except nursery stock.

3 (12) "Late charge" means a charge of two percent (2%) of the delin-
4 quency.

5 (13) "Lawful money of the United States" means currency and coin of the
6 United States at par value and checks and drafts ~~which~~ that are payable in
7 dollars of the United States at par value, payable upon demand or present-
8 ment.

9 (14) "Legal tender" means lawful money as defined in subsection (13) of
10 this section.

11 (15) "Market value" means the amount of United States dollars or equiva-
12 lent for which, in all probability, a property would exchange hands between a
13 willing seller, under no compulsion to sell, and an informed, capable buyer,
14 with a reasonable time allowed to consummate the sale, substantiated by a
15 reasonable down or full cash payment.

16 (16) "Operating property" means real and personal property operated
17 in connection with any public utility, railroad or private railcar fleet,
18 wholly or partly within this state, and which property is necessary to the
19 maintenance and operation of the public utility, railroad or private railcar
20 fleet, and the roads or lines thereof, and includes all rights-of-way ac-
21 companied by title; roadbeds; tracks; pipelines; bargelines; equipment and
22 docks; terminals; rolling stock; equipment; power stations; power sites;
23 lands; reservoirs, generating plants, transmission lines, distribution
24 lines and substations; and all title and interest in such property, as owner,
25 lessee or otherwise. The term includes electrical generation plants under
26 construction, whether or not owned by or operated in connection with any
27 public utility. For the purpose of the appraisal, assessment and taxation of
28 operating property, pursuant to chapter 4, title 63, Idaho Code, the value of
29 intangible personal property shall be excluded from the taxable value of op-
30 erating property in accordance with the provisions of section 63-602L, Idaho
31 Code, and the value of personal property, other than intangible personal
32 property, shall be excluded from the taxable value of operating property in
33 accordance with the provisions of section 63-602KK, Idaho Code.

34 (17) "Party in interest" means a person who holds a ~~properly~~ recorded
35 purchase contract, mortgage, deed of trust, or security interest, lien or
36 lease upon the property. For purposes of notice requirements in section
37 63-1009, Idaho Code, recording includes documents recorded in full or by
38 memorandum providing notice thereof.

39 (18) "Person" means any entity, individual, corporation, partnership,
40 firm, association, limited liability company, limited liability partner-
41 ship or other such entities as recognized by the state of Idaho.

42 (19) "Personal property" means everything that is the subject of owner-
43 ship and that is not included within the term "real property."

44 (20) "Private railcar fleet" means railroad cars or locomotives owned
45 by, leased to, occupied by or franchised to any person other than a railroad
46 company operating a line of railroad in Idaho or any company classified as a
47 railroad by the interstate commerce commission and entitled to possess such
48 railroad cars and locomotives except those possessed solely for the purpose
49 of repair, rehabilitation or remanufacturing of such locomotives or rail-
50 road cars.

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1 (21) "Public utility" means electrical companies, pipeline companies,
 2 natural gas distribution companies, or power producers included within fed-
 3 eral law, bargelines, and water companies which are under the jurisdiction
 4 of the Idaho public utilities commission. The term also includes telephone
 5 corporations, as that term is defined in section 62-603, Idaho Code, except
 6 as hereinafter provided, whether or not such telephone corporation has been
 7 issued a certificate of convenience and necessity by the Idaho public utili-
 8 ties commission.

9 This term does not include cogenerators, mobile telephone service or
 10 companies, nor does it include pager service or companies, except when such
 11 services are an integral part of services provided by a certificated utility
 12 company, nor does the term "public utility" include companies or persons
 13 engaged in the business of providing solely on a resale basis, any telephone
 14 or telecommunication service ~~which~~ that is purchased from a telephone cor-
 15 poration or company.

16 (22) "Railroad" means every kind of railway, whether its line of rails
 17 or tracks be at, above or below the surface of the earth, and without regard
 18 to the kind of power used in moving its rolling stock, and shall be consid-
 19 ered to include every kind of street railway, suburban railway or interur-
 20 ban railway excepting facilities established solely for maintenance and re-
 21 building of railroad cars or locomotives.

22 (23) "Real property" means land and all rights and privileges thereto
 23 belonging or any way appertaining, all quarries and fossils in and under the
 24 land, and all other property ~~which~~ that the law defines, or the courts may in-
 25 terpret, declare and hold to be real property under the letter, spirit, in-
 26 tent and meaning of the law, improvements and all standing timber thereon,
 27 including standing timber owned separately from the ownership of the land
 28 upon which the same may stand, except as modified in chapter 17, title 63,
 29 Idaho Code. Timber, forest, forest land, and forest products shall be de-
 30 fined as provided in chapter 17, title 63, Idaho Code.

31 (24) "Record owner" means the person or persons in whose name or names
 32 the property stands upon the records of the county recorder's office. Where
 33 the record owners are husband and wife at the time of notice of pending issue
 34 of tax deed, notice to one (1) shall be deemed and imputed as notice to the
 35 other spouse.

36 (25) "Special assessment" means a charge imposed upon property for a
 37 specific purpose, collected and enforced in the same manner as property
 38 taxes.

39 (26) "System value" means the market value for assessment purposes of
 40 the operating property when considered as a unit.

41 (27) "Tax code area" means a geographical area made up of one (1) or more
 42 taxing districts with one (1) total levy within the geographic area, except
 43 as otherwise provided by law.

44 (28) "Taxing district" means any entity or unit with the statutory au-
 45 thority to levy a property tax.

46 (29) "Taxable value" means market value for assessment purposes, less
 47 applicable exemptions or other statutory provisions.

48 (30) "Transient personal property" is personal property, specifically
 49 such construction, logging or mining machinery and equipment which is kept,
 50 moved, transported, shipped, hauled into or remaining for periods of not

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1 less than thirty (30) days, in more than one (1) county in the state during
2 the same year.

3 (31) "Warrant of distraint" means a warrant ordering the seizure of per-
4 sonal property to enforce payment of property tax, special assessment, ex-
5 pense, fee, collection cost or charge collected in the same manner as per-
6 sonal property tax.

7 SECTION 7. That Section 63-1009, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 63-1009. EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the
10 grantee the ~~absolute title to the land described therein, free of all encum-~~
11 ~~brances except mortgages of record to the holders of which notice has not~~
12 ~~been sent as provided in section 63-1005, Idaho Code, any lien for property~~
13 ~~taxes which may have attached subsequently to the assessment and any lien~~
14 ~~for special assessments~~ right, title, and interest held by the record owner
15 or owners, provided that the title conveyed by the deed shall be free of any
16 recorded purchase contract, mortgage, deed of trust, security interest,
17 lien, or lease, so long as notice has been sent to the party in interest as
18 provided in sections 63-201(17) and 63-1005, Idaho Code, and the lien for
19 property taxes, assessments, charges, interest, and penalties for which the
20 lien is foreclosed and in satisfaction of which the property is sold.

21 SECTION 8. An emergency existing therefor, which emergency is hereby
22 declared to exist, this act shall be in full force and effect on and after
23 its passage and approval. Being a clarification of existing law, the Legis-
24 lature does not view the application of this amendment to prior conveyances
25 as retroactive legislation. In any event, the Legislature expressly in-
26 tends that these amendments shall be interpreted to apply to any and all
27 conveyances by tax deed, past or future.