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In re Board of Tax Appeals, Appeal No. 16-A-1079 Respondent's Brief Dckt. 46191

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IN THE SUPREME COURT OF THE STATE OF IDAHO

In re: Board of Tax Appeals, Appeal No. 16-A-1079. ---------- BRIAN STENDER, Canyon County Assessor, Petitioner-Respondent/Cross-Appellant, vs. SSI FOOD SERVICES, INC., Respondent-Appellant/Cross-Respondent	Docket No. 46191-2018

RESPONDENT/CROSS APPELLANT'S BRIEF

Appeal from the District Court of the Third Judicial District for Canyon County.

Honorable Gene Petty, District Judge presiding.

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I. STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal of the District Court's determination of the 2016 assessed value of real property and improvements of a food processing facility located in Wilder, Canyon County[1] (hereinafter "property"), owned by CTI-SSI Food Services, LLC[2] (hereinafter "SSI"), after a trial *de novo* conducted pursuant to Idaho Code § 63-3812(c). Petitioner, SSI, appeals the $17,000,000 value determined by the court, and alleges procedural errors. Respondent, Canyon County Assessor (hereinafter "Assessor"), does not dispute the court's value. However, the Assessor cross-appeals because it disagrees with the court's decision that SSI was not required by law to pay penalties and interest on the amount of taxes not timely paid.

B. Course of Proceedings.

In 2016, the Assessor valued the property at $18,286,630. Exhibit 1006. SSI appealed that assessment to the Canyon County Board of Equalization (BOE) so they could obtain a decision to appeal to the Board of Tax Appeals (BTA).[3] The BOE affirmed the Assessor's assessed value (Exhibit 1007) and SSI timely appealed the decision to the BTA. In its appeal, SSI asserted the market value of the property was $11,000,000. Exhibit 1008.

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[1] The property is identified for tax purposes as parcel number 367640100.

[2] Appellant's brief states, "During the course of proceedings in 2016, SSI began operating under the name CTI-SSI Food Services, LLC, but the caption on the lawsuit remained SSI." Appellant's Brief, p. 1 (n.1). County records show CTI-SSI Food Services, LLC, as owner of the property. Exhibit 4 (Bates 00006). While Appellant's intent in making this assertion or its relevance to this matter is, at present, unclear, a query made to the Idaho Secretary of State's Office found SSI Food Services, Inc., is not currently and has never been an entity filed with that office. See Attachment 1.

[3] The appeal was actually filed by Dave Smith of Sentinel Advisors, LLC, a firm that specializes in appealing tax assessments as agents for the taxpayer. See Exhibit 1006. Mr. Smith was unable to attend the BOE hearing so no evidence was presented to contest the Assessor's determination and the BOE upheld the value. Exhibit 5, p. 2; Tr., p. 325, Ls. 7-13.

Seven days before the November 17, 2016 BTA hearing, SSI disclosed an appraisal by Paul Hyde (hereinafter "Hyde") valuing the property at $6,500,000. Exhibit 1009. After considering the evidence presented, the BTA found the property to be valued at $10,000,000. Exhibit 1010. A motion for reconsideration filed by the Assessor was denied. Exhibit 1011. The Assessor subsequently filed an appeal with the District Court (hereinafter "court" or "district court") as provided in Idaho Code § 63-3812, which authorizes the Assessor to appeal BTA decisions.

On or about August 8, 2017, the parties filed a *Stipulation for Scheduling and Planning* (R., pp. 22-25) that was subsequently adopted in the court's *Order Governing Proceedings and Order Setting Trial and Pretrial Conference*, dated August 10, 2017. R., pp. 26-32. That order set forth deadlines for discovery including the disclosure of expert witnesses. The following table summarizes those deadlines and related disclosures:

Table 1.

Deadline	Date Produced	Disclosures	Reference in Record
Expert Disclosure Supporting Claims (160 days before trial) 10/19/2017	09/14/2017	Assessor: Cowan and Cox Disclosed as Experts Cowan BTA Appraisal Report Provided	R., pp. 47-59 Ex. 1012
	10/18/2017	SSI: Hyde Disclosed as Expert[4] Hyde Appraisal Report Provided	Ex. 1001
Rebuttal Expert Disclosure (90 days before trial) 12/20/2017	12/18/2017	SSI: Hyde Disclosed as Expert Rebuttal Witness	R., pp. 38-40
	12/20/2017	Assessor: J. Philip Cook Disclosed as Expert Cook Appraisal Review Provided	R., pp. 61-68 Not in Record
Supplemental Discovery Responses (30 days before trial) 02/20/2018	11/19/2017	Assessor: Cowan Revised Appraisal Report Provided	Ex. 1013
	12/18/2017	SSI: Hyde Review of Cowan Revised Report Provided	Ex. 1002
	01/31/2018	SSI: Hyde Review of Cook's Appraisal Review Provided	Ex. 1003
	02/20/2018	Assessor: Cook's Revised Appraisal Review Provided Cowan's 2nd Revised Appraisal Provided	Ex. 20 Ex. 17

[4] Hyde was also disclosed in SSI's *Expert Witness Disclosure* submitted November 16, 2017. R., pp. 33-35.

In pretrial motions, SSI unsuccessfully tried to exclude the testimony and appraisal review of the Assessor's rebuttal expert, J. Philip Cook (hereinafter "Cook"), (R., pp. 41-42; pp. 179-182) and the Assessor successfully compelled SSI to disclose certain documents it refused to provide in discovery (R., pp. 101-103; p. 6). Ultimately, a trial was held March 20-21, 2018, where SSI again objected to the testimony of Cook and his appraisal review, some of which was excluded by the court as being outside the scope of rebuttal.[5]

After the parties submitted closing arguments, and proposed findings of fact and conclusions of law, the court issued its *Findings of Fact and Conclusions of Law* on May 2, 2018. R., pp. 256-266. In it, the court concluded that the value of the property on January 1, 2016, was $17,000,000. The court also ordered the Assessor to notify the court whether additional taxes or a refund were due as a result of applying the assessed value. R., p. 265.

On May 8, 2018, SSI filed a motion for reconsideration. R., pp. 267-268. On May 14, 2018, the Assessor filed by affidavit a calculation of taxes due in the amount of $97,770.12, and separately, a calculation of penalties and interest accrued for failure to pay that amount when statutorily due. R., pp. 286-291. SSI objected to the interest and penalties, and a hearing was held on June 8, 2018. On June 21, 2018, the court denied SSI's motion for reconsideration (R., pp. 333-337); it also concluded in a separate order that SSI did not owe interest and penalties for late payment of taxes. R., pp. 327-332. The court then entered a *Judgment* declaring the market value as of January 1, 2016, to be $17,000,000; ordering SSI to pay additional taxes in the amount of

[5] Pages 30-43 were stricken. See e.g. Exhibit log for Exhibit 20. R., p. 405. While the Assessor disagrees that the pages were outside the scope of rebuttal, the Assessor accepts the decision as within the trial court's discretion.

$97,770.12; and concluding that SSI did not owe interest and penalties for late payment. R., pp. 338-339.[6] On July 26, 2018, SSI filed this appeal. R., pp. 383-387. On August 14, 2018, the Assessor filed his cross-appeal on the issue of interest and penalties. R., pp. 388-392. On August 21, 2018, the court filed an *Amended Final Judgment*.[7] R., pp. 402-403.

C. Statement of the Facts.

SSI owns and operates a food processing facility located on the property.[8] SSI acquired the facility and land in 2013 as part of a larger business acquisition that included other facilities in other states. At that time, SSI's parent company, CTI Foods Holding Co., LLC, commissioned an appraisal to determine how the total acquisition costs should be allocated to the various facilities included in the acquisition, including the Wilder facility. While the significance of the allocation was disputed by the parties, the appraisal allocated $12,100,000 in value to the property. Exhibit 1004.[9] At the time of acquisition, the property consisted of several buildings, some of which were constructed as early as 1989, and others more recently constructed. Numerous

[6] On July 3, 2018, the Assessor filed a memorandum of cost seeking costs and attorney's fees along with supporting affidavits. R., pp. 340-369. While the court, on August 21, 2018, ordered costs as a matter of right, it did not allow any discretionary costs or attorney's fees. R., pp. 395-401. The Assessor disagrees with the court's determination, but the Assessor has chosen not to appeal that decision.

[7] The *Amended Final Judgment* addresses costs but not interest and penalties as in the original *Judgment*. Presumably, the *Amended Final Judgment* supplements the original *Judgment* but does not replace it.

[8] The parcel consists of 24.69 acres of land and numerous buildings. Exhibit 1012, p. 1. The value of plant equipment (personal property) was not at issue in this case. Personal property is valued separately and accounted for under separate parcel numbers.

[9] Because the appraisal included some adjacent land that is not part of the plant property, some deductions are required to arrive at the $12,100,000. See Exhibit 20, pp. 7-8.

additions and improvements had been made to the facility, both before and after its acquisition by SSI, including in 2016.[10] Exhibit 1012, p. 1; Exhibit 1001, pp. 64-65.

The assessed values of the property, as determined by the Assessor, beginning with the year after acquisition, were as follows:

Table 2.

Year	As of Jan. 1
2014	$17,440,430
2015	$17,799,030
2016	$18,286,630

See Exhibit 4 (Bates 00006); Tr., p. 121, Ls. 9-12. When SSI appealed the assessed value in 2016, it first asserted the appropriate value was $11,000,000. Later, at the BTA, SSI asserted the value was $6,500,000, relying entirely on Hyde's appraisal. The BTA found the value to be $10,000,000. Exhibit 1010. The Assessor appealed to the district court because he found the Hyde appraisal to be fundamentally flawed and wholly unreliable.

In preparation for trial, and in compliance with the discovery order, the Assessor first timely disclosed his experts on September 14, 2017. Disclosed experts Mike Cowan and Joe Cox are both Idaho State-certified tax appraisers[11] employed by the Assessor. At the same time, the

[10] The value of 2016 improvements are not part of the appeal. That value was agreed to by the Assessor and SSI, and added to the subsequent property tax roll. Tr., p. 121, Ls. 3-12. The subsequent tax roll picks up value from improvements that did not exist on January 1, or that were missed. See Idaho Code § 63-301.

[11] Certification is granted by the Idaho State Tax Commission, based on established requirements. At BTA and throughout this matter, SSI largely based its case on the argument that certified tax appraisers are less qualified than

Assessor advised SSI that it had engaged an outside appraiser by the name of Scott Erwin, but that Mr. Erwin had just passed away unexpectedly.[12] The Assessor advised SSI that it was attempting to find a replacement expert. R., p. 57.

Next, on October 18, 2017, SSI timely disclosed its expert, Hyde, and Hyde's appraisal report. Meanwhile, the Assessor was still attempting to find a suitable independent expert. It was not until mid-October that the Assessor found and began initiating engagement discussions with Cook. Knowing full well that the deadline for disclosure of experts was approaching and could not be met, the Assessor's discussions with Cook related to his participation as a rebuttal witness to expose the flawed and unreliable appraisal of Hyde. After authorizing Cook to perform some preliminary work to assess Hyde's appraisal, it was ultimately decided that Cook would be retained as a rebuttal witness, and his name was disclosed on December 20, 2017, the deadline for such disclosure.[13] In the disclosure, Cook was not specifically labeled as a rebuttal witness, even though it was apparent from the content and timing of the disclosure. When it became apparent that Cook had not been specifically labeled a "rebuttal" expert, the Assessor's counsel immediately contacted SSI's counsel to clear up any misunderstanding and proposed to stipulate that Cook was a rebuttal expert. SSI's counsel ignored the overtures and instead filed a motion to exclude and strike. R., pp.

licensed appraisers. See e.g. Respondent's Closing Argument in the district court where SSI wrongly asserts that Cowan has "no designations." Actually, only certified tax appraisers are permitted to value property for assessment purposes. See Idaho Code §§ 54-4105, 63-105(A)(17), and 63-201(1); IDAPA 35.01.03.126(02). Licensed appraisers, like Hyde, are only permitted to make a value estimation in certain appeals. Idaho Code § 63-201(1)(b).

[12] Public record indicates Erwin passed away on August 30, 2017. *Weekly Mailer*, September 1, 2017.

[13] This is supported by Cook's invoices. R., pp. 346-347.

77-80. That motion was ultimately denied – the court finding that Cook was properly disclosed as a rebuttal expert and his testimony would be limited as such. R., pp. 179-182.

Cook's initial appraisal review was also disclosed on December 20, 2017. In that review, Cook reserved the right to revise the review based on a site visit that had been requested well before and was in process of being arranged with SSI. In addition, two days before Cook's initial appraisal review was disclosed, SSI supplemented its discovery responses by disclosing an "Appraisal Review" report wherein Hyde critiqued Cowan's revised appraisal report. Exhibit 1002. In Hyde's review report, he accuses Cowan of failing to use the proper definition of value (pp. 7-11); improperly using the cost approach (pp. 11-19); inappropriately applying the sales comparison approach (pp. 19-23); and for not using an income approach (pp. 23-24). In short, he opined that "Cowan incorrectly applied both the cost and sales comparison approaches" and "mistakenly believes that 'value in use' is the same as market value." Finally, he concludes that the "expert report prepared by Cowan is greatly flawed and violates the regular and customary practices employed by competent real estate appraisers" (p. 24).

On January 15, 2017, Cook was afforded an opportunity to tour the property. R., p. 1018.

On January 31, 2018, SSI again supplemented its discovery responses by again disclosing an "Appraisal Review" report by Hyde – this time regarding Cook's initial appraisal review. Exhibit 1003. The purpose of the report was to critique Cook's appraisal review.

Finally, on February 20, 2018, the Assessor supplemented its discovery responses to disclose Cook's revised appraisal review (Exhibit 20), which primarily accounted for his site visit.

R., p. 1; Tr., p. 394, Ls. 9-25; p. 395, Ls. 1-12. On the same day, the Assessor also disclosed Cowan's second revised report.[14]

At trial, the Assessor presented its case in chief, calling Cowan as its expert, and only, witness. SSI then called Hyde; Dave Kubosumi, the plant engineering manager; and David Smith, SSI's tax agent. In Hyde's testimony, as well as in his reports, which were in evidence, Hyde was critical of Cowan's methodologies and conclusions. Much time was spent by SSI in its case in chief trying to undermine not only Cowan's credentials and experience, but also his data, judgments and methodologies, by asserting that Hyde's were better in all respects. The Assessor called Cook as a rebuttal expert and relied on him to impeach and discredit Hyde, his methodologies and conclusions. Over objection, the court determined by its exercise of reasonable discretion, that such rebuttal logically and lawfully included Cook's testimony regarding his own expert methodologies and conclusions.

After considering the evidence presented *de novo*, the district court found that the methodologies and conclusions of Cowan and Cook were the most reliable and consistent with the evidence as whole, and determined that the value was $17,000,000.

[14] Cowan made adjustments to comparable properties used in his previous report, based on information that had been adjusted by third parties. Those adjustments ultimately had no effect on his analysis or conclusions. Tr., p. 90, Ls. 12-25; p. 91, Ls. 1-6.

II. ISSUES PRESENTED ON APPEAL

The Assessor contends that the issues presented in SSI's brief are insufficient, incomplete, duplicative, or otherwise incapable of analysis within the framework of applicable law. As a result, the Assessor reframes the issues as follows. The issues, as stated by SSI, will be addressed in this context to the extent necessary.

A. Additional Issues Presented on Appeal.

1. Is the District Court's finding regarding the 2016 assessed value of the property supported by substantial and competent evidence?

2. Did the District Court abuse its discretion in permitting the testimony of Mr. Cook?

B. Issue Presented on Cross-Appeal.

Did the District Court err in ruling that SSI was not obligated to pay penalties and interest on the unpaid amount of property taxes ultimately owed based on the assessed value found by the court?

III. ARGUMENT

A. Standard of Review.

Where the district court conducts a trial *de novo* in an appeal of a BTA decision, this Court defers to the district court's findings of fact that are supported by substantial evidence, but exercises free review over the district court's conclusions of law. *Canyon Cty. Bd. Of Equalization v. Amalgamated Sugar Co., LLC*, 143 Idaho 58, 60, 137 P.3d 445, 447 (2006) (citing *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 321, 109 P.3d 170, 175 (2005), and *Ada Cty. Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 205, 108 P.3d 349, 352 (2005)). The

construction and application of a statute are pure questions of law over which this Court exercises free review. *Id.* (citing *Ada Cty. Bd. of Equalization*, 141 Idaho at 206, 108 P.3d at 353.) Likewise, the interpretation of the Idaho Rules of Civil Procedure (IRCP) is a matter of law freely reviewed by this Court. *Id*. (citing *Goldman v. Graham*, 139 Idaho 945, 947, 88 P.3d 764, 766 (2004)). In *Idaho Youth Ranch, Inc., v. Ada Cty. Bd. of Equalization*, 157 Idaho 180, 182, 335 P.3d 25, 27 (2014), this Court reiterated the same standard citing *Amalgamated Sugar* and *Kimbrough v. Idaho Bd. of Tax Appeals*, 150 Idaho 417, 420, 247 P.3d 644, 647 (2011).

B. Argument on Additional Issues Presented on Appeal.

1. <u>Is the District Court's finding regarding the 2016 assessed value of the property supported by substantial and competent evidence?</u>

SSI attempts to argue two facets of this issue. First, SSI argues that the Assessor was required to specifically address why the BTA decision was erroneous, and that he failed to do so. This is exemplified by SSI's statement that "Canyon County did not address the underlying BOTA decision." Appellant's Brief, pp. 17-18. Second, SSI argues that some of the court's findings are factually incorrect, and, as a whole, otherwise incomplete and/or insufficient. Appellant's Brief, pp. 18-30. It appears that SSI misunderstands the applicable standards.[15]

As to SSI's first argument, in *Amalgamated Sugar*, this Court addressed the nature of a trial *de novo* in the context of an appeal from a BTA decision:

> Rule 84 of the Idaho Rules of Civil Procedure governs the judicial review of state agency actions. Under Rule 84(e)(2), the "scope of judicial review on petition from an agency to the district court shall be as provided by statute." I.R.C.P. 84(e)(2).

[15] Alternatively, SSI misstates the applicable law by, for example, its citing to totally unrelated and irrelevant statutory provisions dealing with appeals from decisions of the Idaho State Tax Commission related to <u>income tax</u> disputes, and related cases. See Appellant's Brief, pp. 17-18.

> Subsection (e)(1) of Rule 84 directs that "[w]hen the statute provides that review is *de novo*, the appeal shall be tried in the district court on any and all issues, on a new record." I.R.C.P. 84(e)(1). Idaho Code § 63–3812 applies when a party who appeared before the BTA is aggrieved by a BTA decision and appeals to the district court. I.C. § 63–3812. That statute states the appeal shall be taken and perfected according to Rule 84, and addresses the scope of review as follows:
>
> > Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial *de novo* on the issues in the same manner as though it were an original proceeding in that court. The burden of proof shall fall upon the party seeking affirmative relief to establish that the decision made by the board of tax appeals is erroneous.
>
> I.C. § 63–3812(c) (emphasis added). This Court has interpreted I.C. § 63–3812(c) to mean "[t]he issues before the district court are those raised below." *The Senator, Inc. v. Ada Cty., Bd. of Equalization*, 138 Idaho 566, 569, 67 P.3d 45, 48 (2003). Trial *de novo*, this Court has explained, means "a trying of the matter anew—the same as if it had never been heard before." *Gilbert v. Moore*, 108 Idaho 165, 168, 697 P.2d 1179, 1182 (1985).

Amalgamated Sugar, 143 Idaho at 60-61, 137 P.3d at 447-448. Thus, the decision of the BTA has no relevance in this appeal except as to whether the Assessor met his burden of proof that the BTA decision was erroneous. Whereas SSI argues the Assessor never addressed the BTA decision, it is clear that the court understood the *de novo* nature of the review as clearly spelled out by this Court in *Amalgamated Sugar* and *The Senator*. Once the court determined that the BTA decision was erroneous, based on the new record before it, the BTA decision had no relevance whatsoever.

As to SSI's second argument, and as cited by SSI, IRCP 52(a)(1) provides:

> For Actions Tried Without a Jury. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. A party

> may raise the question of the sufficiency of the evidence to support the findings whether or not the party raising the question has made an objection to the findings or a motion to amend them or a motion for judgment.

I.R.C.P. 52(a)(1) (effective July 1, 2016). While a party may clearly challenge the sufficiency of evidence to support a court's findings, there is no support for the proposition that the court must address every argument or point made in the trial, or anything close to that, which is essentially what SSI asserts. In *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982), cited by SSI, this Court found that there were no findings and conclusions concerning the issues of specific intent and dangerous probability that were of critical importance to the attempted monopoly claim. *Id.* 103 Idaho at 225, 646 P.2d at 996. In *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 165 P.3d 261 (2007), this Court explained the limited reach of *Pope*:

> The absence of findings may be disregarded by an appellate court where the record is clear and yields an obvious answer to the relevant question. *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 225, 646 P.2d 988, 996 (1982). The purpose of the underlying rule is to "afford the appellate court a clear understanding of the basis of the trial court's decision, so that it might be determined whether the trial court applied the proper law to the appropriate facts in reaching its ultimate judgment." *Id.* In *Pope* the Court was not able to determine whether the trial court recognized or properly applied the law in its decision concerning an attempted monopoly, but the Court did not remand the case for further findings because its review of the record led to the conclusion that no attempted monopoly existed.

Vanderford Co., Inc., 144 Idaho at 554, 165 P.3d at 268. In this case, the district court clearly made findings in compliance with IRCP 52. The question is whether they are sufficient to afford this Court a clear understanding of the basis for the district court's decision – not whether the court addressed every issue deemed important to SSI.

Listed below is a summary of the significant findings of fact made by the district court together with references to the record supporting that finding:

Table 3.

Finding of Fact	Reference in Record
5. The property was valued at between $11,000,000 and $12,100,000 when it was acquired.	Ex.1004, pp. 31-41 Ex. 20, p. 7 Ex. 1003, p. 17 Tr., p. 249, Ls. 19-24 Tr., p. 411, Ls. 17-23
6. The value of commercial property in Canyon County has increased since the acquisition.	Tr., p. 362, Ls. 10-14
7. SSI had invested approximately $10,000,000 in improvement since the acquisition.[16]	Ex.20, p. 9 Ex. 1001, pp. 64-65 Tr., p. 392, Ls. 24-25 and p. 393, Ls. 1-10
9. While there are three (3) recognized appraisal methods for determining assessed value, each method had significant limitations with regard to this property.	Ex. 20, pp. 6-7 Tr., p. 281, Ls. 21-25 and p. 282, Ls. 1-19
13. Cowan, Hyde and Cook were all qualified to testify as experts in the field of commercial real estate appraisal.	Ex. 1 Ex. 20, pp. 74-78 Tr., pp. 25-29 Tr., pp. 185-187 Tr., pp. 349-356
14-16. The court understood the substance of each expert and their respective conclusions.	See footnote[17]

[16] In its brief, SSI asserts that there is no evidence in the record that SSI spent $10,000,000 on improvements before 2016, and this finding by the district court was a "fundamental factual error." Appellant's Brief, p. 20. There is substantial evidence to support this finding.

[17] This is apparent from the court's findings, conclusions and orders.

Table 3 (continued).

17. The cost approach is the most reliable and most widely used and accepted approach for appraising special use properties, such as SSI.	Tr., p. 62, Ls. 11-25 and p. 63, Ls. 1-16 Tr., p. 281, Ls. 22-25 and p. 282 Ls. 1-6 Tr., p. 367 Ls. 10-21
18-19. In this case, the sales comparison approach and the income approach are less reliable than the cost approach.	Ex. 20, p. 6 Ex. 17, pp. 34-35 Tr., p. 110, Ls. 11-25 Tr., p 152, Ls. 22-25 and p. 153, Ls. 1-3
20. Hyde's appraisal of $6,500,000 was greatly understated and not supported by the weight of the evidence.	See footnote [18]

[18] Hyde's analysis and conclusions were unreliable based in part on the following facts:

a. Hyde failed to include in his report the statutory definition of "market value" in Idaho Code § 63-201(15), and also failed to refer to Idaho Code § 63-208(1), which addresses how the definition is to be applied for assessment purposes. While he claims to have considered these in performing his appraisal, he never mentions the concepts until he provides his review of the Cowan report and the Cook review over a year later and his response to the concept of "actual and functional use" both in his reports and at trial demonstrated a lack of understanding of the concept. Furthermore, in the very standards he relies upon, it states that the failure to clearly set forth the applicable definition of value in an appraisal report "is a red flag that the appraisal may be faulty." Tr., p. 273.

b. Hyde had no previous experience in applying the pertinent statutory standards in an appraisal of a special-use property for assessment purposes, and demonstrated a lack of understanding in how those standards apply. Tr., pp. 232-233.

c. When addressing the applicability of making adjustments to sales comparisons to account for expenditures made after the sale or tenant improvements, Hyde stated that he had "never seen it before" and that it was not industry practice. Tr., p. 319. When it was pointed out that there was a section in *The Appraisal of Real Estate* text (that he consistently referenced as authority) addressing adjustments for "Expenditures Made Immediately After Purchase" he tried unsuccessfully to explain how it didn't apply, and in the process demonstrated his lack of understanding and inability to comprehend the language of the section. Tr., pp. 223, 296-301.

d. Hyde failed to perform the cost approach, even though his own resource materials indicated that the cost approach was usually the best method for appraising special-use properties. Tr., pp. 281, 311. At trial, Hyde admitted that he probably should have performed the cost approach, and usually does 99.5% of the time for these types of assignments but implied that he didn't because it would have required more resources and expense. Tr., pp. 190, 219, 435.

e. Hyde failed to fully comprehend the Murray/Devine appraisal, stating that some of the improvement value related to land not part of the plant (property). Tr., pp. 249-250. Standing on its own, there is nothing in the Murray/Devine appraisal to support that statement. Read as whole, it is clear that the value of improvements and land related solely to the plant (property), and the value allocated to the plant (property) was $12,100,000.

f. Hyde asserted that, considering obsolescence from all sources, including depreciation, the property was 90% obsolete, whereas Cowan concluded it was 57% and Cook concluded it was 47% (although when applied to their individual new construction calculations, Cowan's and Cook's obsolescence determinations resulted in a similar value). Interestingly, the Murray/Divine appraisal concluded obsolescence from all sources,

Table 3 (continued).

21. Cowan and Cook relied heavily on the cost approach and their values were not dissimilar ($17,000,000 and $19,500,000).	Ex. 17 Ex. 20 Tr., p. 390, Ls. 22-25 and p. 391, Ls. 1-5
22. Cook's testimony and value was supported by the weight of the evidence and was "particularly credible and reliable".	Ex. 20 Tr., pp. 349-423
23. Based on a preponderance of the evidence, the assessed value on January 1, 2016, was $17,000,000.	Ex. 17 Ex. 20 Ex. 1004, pp. 31-41

Not only are these findings sufficient to afford this Court a clear understanding of the basis of the trial court's decision – they are also supported by substantial and competent evidence in the record.

This Court recently applied the substantial and competent evidence standard in the context of an *ad valorem* tax case on appeal in *Wurzburg v. Kootenai Cty.*, 155 Idaho 236, 308 P.3d 936. This Court stated:

> [V]aluation is necessarily somewhat imprecise, and a district court may weigh evidence to determine whether the assessment represents fair market value. It has long been the rule that the valuation of taxable property for assessment purposes must reasonably approximate the fair market value of the property in order to effectuate the policy embodied in article 7, section

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including depreciation was 50%, in line with Cowan and Cooks conclusions. Exhibit 1004, pp. 39-40. Furthermore, the Murray/Devine appraisal made no deduction for functional obsolescence, concluding: "The subject improvements appear to be well designed and adequate for their intended use. Therefore, no deduction is required for functional obsolescence." Exhibit 1004, p. 40. SSI's plant engineer also testified that the plant is less obsolete now than when it was purchased (Tr., p. 173), and that the plant produces product at or below the cost of sister facilities that produce the same product. Tr., pp. 178-180. The obsolescence conclusions of Cowan and Cook are reasonable and supported. Hyde's conclusion of 90% is not.

g. Hyde misstated and/or mischaracterized the findings of the BTA in several instances. Tr., pp. 431, 434, 435.
h. Hyde acknowledged that under his methodology, a plant would be valued as vacant regardless of its functionality, implying a plant is not suitable for the current user, even a new plant, regardless of cost. Tr., pp. 303-305.

> 5, of the Idaho Constitution, that each taxpayer's property bear the just proportion of the property tax burden. *Merris v. Ada Cty.*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). Fair market value is the touchstone in the appraisal of property for ad valorem tax purposes, and a valuation is arbitrary if it does not reflect that fair market value, notwithstanding that the valuation may have been determined by the application of an approved method of appraisal set out by the State Tax Commission. *Id*. There is no one factor that can be said to be the key to the proper appraisal of taxable property. *Id*. Market value is essentially a factual issue. *Id*. at 64, 593 P.2d at 399. An appraisal is, by definition, an "estimate of property value for property tax purposes," I.C. § 63–201(1), and a district court may rely on an appraiser's judgment in accepting one valuation over another. See *PacifiCorp*, 153 Idaho at 772, 291 P.3d at 455. The district court, in property valuation cases, is faced with a "battle of the experts" and the difficult task of evaluating competing theories of valuation where each expert utilized accepted valuation methods and also made decisions within the bounds of professional judgment. See *Id*. at 767, 291 P.3d at 450. Weighing the testimony of experts regarding a valuation is within the province of the trier of fact, here the district court. See *City of McCall v. Seubert*, 142 Idaho 580, 585, 130 P.3d 1118, 1123 (2006).

Wurzburg, 155 Idaho at 245, 308 P.3d at 945 (emphasis added). This Court concluded:

> The [assessors] valuations are supported by substantial and competent evidence, and we have no authority that directs us to require the assessor to use precisely the same comparable properties or the same method of the sales comparison approach as Wurzburg would have the assessor employ. Where Wurzburg merely argues that his expert is more reliable or the evidence he presents is entitled to more weight, we will not disrupt a district court's determination of weight that is supported by sufficient evidence. *Id*. at 586, 130 P.3d at 1124. The district court did not err in accepting the method of valuation and evidence in support presented by Kootenai County.

Id. (emphasis added). Likewise, here, the district court did not err.

SSI wants to ignore this standard and re-litigate the matter in this Court, arguing cap rates, depreciation, comparable sales, obsolescence, the value of improvements, definition of market

value, and the three approaches to determining market value. These matters have already been tried before the district court and do not need to be tried again.

This Court has clearly defined, in *The Senator,* what is meant by "market value" in the context of tax assessments. At a fundamental level, Hyde's reliance on the income and sales comparison approaches was flawed due to a failure to properly contemplate the principle of "actual and functional use" as required by Idaho law. The facilities Hyde used to derive a value were not comparable because they were not operating facilities and Hyde did not make proper adjustments to compare them with an operating SSI facility of equal utility to the end-user. Furthermore, his income approach was unsupported and his use of an unsupported cap rate of 9.5% conveniently resulted in a value near his flawed sales comparison approach. Tr., p. 372.

The Assessor demonstrated that SSI's appraisal was based on faulty appraisal methodology, as prescribed in authoritative literature often relied upon by SSI's own expert, and incorrect judgment in the consideration and analysis of the three approaches to value. The Assessor further demonstrated that while appraisal methodology relating to the cost approach requires informed judgment, based upon the appraiser's experience and available market data, sufficient evidence was provided to demonstrate by a preponderance of the evidence that the taxable value of the property exceeds $17,000,000, and could be as high as $19,500,000. Exhibit 17, p. 35; Exhibit 20, p. 52. The difference between the two values are explained simply as a matter of professional judgment. Tr., p. 391.

SSI relies heavily upon the sales comparison with the Pocatello facility Amy's Kitchen. There is disputed evidence in the record whether expenditures made after the sale[19] were $10,000,000 or $25,000,000, but Hyde did not make adjustments for either amount. Ultimately, the amount of adjustment made by Cook and Cowan is irrelevant, as the other comparable sales still support their respective value judgments.[20] Tr., pp. 419, 422, 432.

The district court weighed the evidence and determined, based on the whole of the evidence, the Assessor's value was credible and Hyde's was not. There is more than sufficient evidence in the record to support that conclusion.

2. Did the District Court abuse its discretion in permitting the testimony of Cook?

SSI continues to assert that Cook's testimony should not have been permitted whatsoever. The Idaho Rules of Civil Procedure do not define or address the scope of rebuttal witnesses or testimony. SSI cites some federal cases based on a now superseded rule.[21] This Court, in addressing rebuttal evidence has held that "[r]ebuttal evidence is evidence which explains, repels, counteracts, or disproves evidence which has been introduced by or on behalf of the adverse party," and that "[t]he fact that evidence may be admissible in the case in chief does not make it any less rebuttal." *State v. Olsen*, 103 Idaho 278, 281-282, 647 P.2d 734, 737-738 (1982). Furthermore, the trial court

[19] SSI nevertheless continues to argue that the amount of expenditures made after the sale was $10,000,000 and not $25,000,000, and, therefore Cowan and Cook used faulty information. To the extent such information informed the court's decision, it was clearly within the court's discretion to weigh the conflicting evidence and its reliability.
[20] SSI also makes the assertion that "no other food processing plants in the United States could be identified as being valued at $85 per square foot", citing Hyde's appraisal report (Exhibit 1001, p.4). Appellant's Brief, p. 10. What Hyde actually said is that he was "unable to find any comparable sale . . . over $50 per square foot before any adjustments". The problem is that Hyde selected only vacant "dark" sites for comparison, and according to Cook, did not make proper adjustments to compare them to SSI, an operating facility. See Exhibit 20.
[21] Fed. R. Civ. P. 26(a)(2)(C) was amended in 2010 to remove the definition of "rebuttal expert."

has broad discretion in decisions whether to admit evidence in rebuttal. Even where evidence admitted in rebuttal is not strictly rebuttal in nature, its admission is within the sound discretion of the trial court, provided that the party against whom the evidence is admitted had the opportunity to meet the evidence. *State v. Sorrell*, 116 Idaho 966, 783 P.2d 305 (Ct. App. 1989).[22] Lastly, this Court applies the abuse of discretion standard to review a district court's decision whether to allow rebuttal testimony. *Van Brunt v. Stoddard*, 136 Idaho 681, 686, 39 P.3d 621, 626 (2001).

Under Idaho Rule of Evidence 611, the trial court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment. I.R.E. 611(a). "Exercise of this control is a question of the trial court's discretion." *State v. Koch*, 157 Idaho 89, 101, 334 P.3d 280, 292 (2014). "To determine whether a trial court has abused its discretion, this Court considers whether the district court: (1) perceived the issue as one of discretion; (2) acted within the outer boundaries of that discretion consistent with applicable legal standards; and (3) reached its decision through the exercise of reason." *Hansen v. Roberts*, 154 Idaho 469, 472, 299 P.3d 781, 784 (2013).

SSI argues that Cook should have been disclosed by October 19, 2017, (the deadline for disclosure of experts supporting claims) in any event, and since he was not, and since the Assessor did not seek and obtain an extension of that deadline, Cook should have been precluded from

[22] While *Olsen* and *Sorrell* are criminal cases, and criminal cases are governed by different rules of disclosure, their application to the use of rebuttal at trial is still applicable. See e.g. *Van Brunt v. Stoddard*, 136 Idaho 681, 686, 39 P.3d 621, 626 (2001).

testifying or presenting evidence. SSI ignores the fact there was a later deadline for rebuttal experts (December 20, 2017), which was met.[23] When confronted with that fact, SSI's response seems to be that "well, Cook was not a rebuttal expert" not realizing the circular reasoning. There is no question, and the court found, that Cook was timely disclosed as a rebuttal expert. He was not used in the Assessor's case in chief – only on rebuttal. The question is not whether Cook was or was not a rebuttal witness, but whether his testimony and the evidence presented through him was in rebuttal of SSI's case in chief. Additionally, if Cook was timely disclosed, as he was, there was no basis for sanctions. So, SSI's arguments regarding sanctions is misdirected and time-wasting.

In this case it is instructive to review the sequence of disclosures, which are summarized in Table 1 on page 3. The Assessor first disclosed his two experts, Cowan and Cox, and Cowan's report. SSI then disclosed its expert, Hyde and his report. The Assessor disclosed Cowan's revised report. SSI disclosed Hyde's review of Cowan's report. The Assessor disclosed Cook and his initial appraisal review. SSI disclosed Hyde's review of Cook's appraisal review. And, finally, the Assessor disclosed Cook's revised appraisal review. So, before trial, SSI had disclosed three reports by Hyde – his appraisal and appraisal reviews of both Cowan's and Cook's appraisal reviews. At trial, all three reports were admitted and part of the record by the end of SSI's case in chief. Hyde testified about how his report, analysis and conclusions were superior to Cowan's. By the time Cook was called in rebuttal, Hyde had made both his report and Cowan's report fair game for rebuttal testimony on issues of methodology and conclusions. In order to test Hyde's

[23] These deadlines are summarized in Table 1 on page 3 of this brief.

methodologies and conclusions, Cook was required to prepare his own and compare them with Hyde's. He found that Hyde's were deeply flawed and inconsistent with applicable law and appraisal practice, and his report reflects that.

The credibility of Hyde was a major issue in this case. The decision of the Assessor to retain a highly qualified expert to rebut Hyde, his methodologies and conclusions, was perfectly acceptable, within the framework outlined by the court in the course of the proceedings, and necessary to dispel the imprimatur of credibility implied by Hyde's credentials. After hearing all the evidence it was apparent to the court that this Court's assessment of Hyde's credentials in *The Senator*, remain valid and relatively unchanged 15 years later.[24] Clearly, Cook's assessment of Hyde and his work (as well as Hyde's criticisms of Cowan's work) were normal, necessary, and perfectly acceptable for rebuttal, and did not exceed the court's boundaries of discretion regarding the scope of rebuttal.[25] The rebuttal evidence, while important and helpful, was only part of the evidence considered by the court. The court's determinations of what evidence was proper and how it was presented were clearly within the bounds of discretion available to the court.

[24] Ironically, this Court has reviewed a previous case, *The Senator, Inc. v. Ada Cty., Bd. of Equalization*, 138 Idaho 566, 67 P.3d 45 (2003), where Hyde served as an expert and made similar errors.

[25] While the Assessor disagrees with the court's decision that the pages 30-43 of Cook's appraisal review, relating to Cowan's report, were outside the scope of rebuttal, the Assessor accepts the decision as within the trial court's discretion.

C. Issue Presented on Cross-Appeal.

Did the District Court err in ruling that SSI was not obligated to pay penalties and interest on the unpaid amount of property taxes ultimately owed based on the assessed value found by the court?

Idaho statutes provide mechanisms to ensure that both parties to a property valuation case – the county and the taxpayer – are not unduly prejudiced financially because of delays caused by the appeals process. Specifically, if a court upholds the county's valuation, the statutes provide a method that ensures that the county is entitled to interest and late charges; conversely, if a court finds a lower valuation, the statutes provide a method that ensures that the taxpayer is entitled to interest and late charges.

The statutes require taxpayers to pay interest and late charges if they do not submit property tax payments in a timely fashion. Property taxes in Idaho are due on December 20 of each year, but the second half of due taxes is still considered timely paid if paid by June 20 of the following year. Idaho Code § 63-903(1). If the first half of the property taxes are not paid by the December 20 date, or similarly, if the second half of the property taxes are not paid by the June 20 date, then the taxpayer owes additional interest and late charges. As such, if a taxpayer does not pay the due property tax in full by these time limits, then the unpaid taxes are statutorily delinquent. Idaho Code §§ 63-201(7); 63-1001.

No statutes suspend the calculation or accrual of interest and late charges during property value appeal proceedings.[26] To the contrary, the relevant statute explicitly states that the obligation to pay taxes is not stayed during an appeal of the decision of the board of tax appeals:

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

Idaho Code § 63-3812(d) (emphasis added). The statute governing appeals of the decision of the board of equalization to the board of tax appeals contains similar language:

> . . . Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Idaho Code § 63-511(1). The board of tax appeals has also stated that taxpayers who believe that they have been unfairly assessed must still pay their property taxes on time, then go through the appeal process. See e.g., *In the matter of the appeal of David Veitch and Doreen Shababy from the order of the Board of Equalization of Bonner County for tax year 1997*, 1999 WL 72759, at *3 ("It is incumbent upon taxpayers to pay their property taxes on time even if they believe they have been unfairly assessed. Their remedy is the appeal process which can reduce the assessed value and thus produce a refund or credit").

In 1990, the Idaho legislature made sure that taxpayers were extended the same courtesy of being entitled to credits, refunds, and interest in the event that the county's valuation was ruled

[26] The statutes provide taxpayers with two main avenues to appeal property assessment decisions of the board of equalization. The first method is to appeal directly to district court. See Idaho Code § 63-511(3). The second method is to appeal to the board of tax appeals (see Idaho Code § 63-511(1)), with option of appealing that decision yet again to district court. See Idaho Code § 63-3812.

as erroneously too high. It passed House Bill 830, which created a new code section, Idaho Code § 63-2202A, which is substantially the same as the current Idaho Code § 63-1305.[27] Idaho Code § 63-1305(1) requires counties to refund taxes, and its definition of "refund" includes the "interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals." The statute requires compliance with refund orders by "any court or the board of tax appeals." Idaho Code § 63-1305(1). Accordingly, Idaho courts have enforced this statute as a nondiscretionary requirement for counties to pay taxpayers the interest on taxes paid that ended up being excessive as a result of the final determination. See e.g., *Amalgamated Sugar,* 143 Idaho at 62–63.

In 2016, the Assessor valued SSI's property at $18,286,630. Exhibit 1006. SSI appealed this value to the BOE, which affirmed the value. Exhibit 1007. Arguing that its property value was $6,500,000, SSI then appealed to the BTA, which reduced the assessed value of the property to $10,000,000. The Assessor then filed a petition for judicial review with the district court. R., pp. 10-14. To comply with Idaho Code § 63-1305(1)[28] and to accommodate SSI's demands[29], the County Treasurer took a ministerial action to issue a corrected tax bill reflecting a lower assessed value of $10,000,000, as found by the BTA, while the case was pending in district court. R., pp. 308-311, 326, 329; see also Tr., pp. 400, L. 24 – pp. 461, L. 23; R., p. 329. Subsequently, SSI then timely paid all property taxes that would be due for the property if the valuation were $10,000,000.

[27] H.R. 830, 1990 Leg. (Id. 1990)
[28] This section does not anticipate or consider that a decision by the BTA might be appealed and therefore not final.
[29] SSI's counsel demanded in an email and subsequent letter that the County prepare a corrected tax bill reflecting the BTA decision. R., pp. 308-325. The County agreed to do so in light of Idaho Code § 63-1305(1), but indicated that it was subject to change based on the final result. R., p. 326.

As such, no taxes were delinquent in the traditional and typical sense, and the County issued no delinquent tax notices to SSI. Tr., p. 461, Ls. 19-23. At the conclusion of litigation before the district court, the district court determined that the taxable assessed value of the property was $17,000,000. R., p. 265. The ministerial step of issuing a correcting tax bill in light of the BTA decision does not affect or modify applicable law with regard to when taxes are due and whether penalties and interest are due.

By requiring refunds and credits based on the order of "any court of the board of tax appeals," Idaho Code § 63-1305(1) does not envision the possibility that someone would appeal the decision of a district court or the board of tax appeals. The district court's reasoning in this case would penalize the County and all other counties for taking ministerial action to comply with Idaho Code § 63-1305(1) because its holding removes the County's ability to receive interest and penalties in any case in which the district court finds, on appeal, a higher assessed value than the board of tax appeals. R., pp. 327-332. No statute, case law, or legislative history shows any indication that this absurd outcome was the legislature's intent.

To not award interest and penalties to the County in this situation also creates problematic incentives for counties handling property tax litigation in the future. The courts should encourage – not discourage – this type of ministerial adjustment by the County, as it accommodates taxpayers and ensures that they do not have to pay excess taxes on the front end if the courts ultimately do not agree with the County's valuation. The Assessor believes that the court has erred as a matter of law in ruling that SSI does not owe penalties and interest on the amount of taxes ultimately determined by the court, and not timely paid as required by statute.

IV. ATTORNEY FEES ON APPEAL

When a nonprevailing party acts "without a reasonable basis in fact or law" in litigation involving a government entity, the court must award attorney's fees, witness fees, and other reasonable expenses to the prevailing party. Idaho Code § 12-117 states in part as follows:

> (1) Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.
>
> (2) If a party to a proceeding prevails on a portion of the case, and the state agency or political subdivision or the court hearing the proceeding, including on appeal, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

Succinctly put, "[t]he Court employs a two-part test for I.C. § 12–117 on appeal: the party seeking fees must be the prevailing party and the losing party must have acted without a reasonable basis in fact or law." *Alpine Vill. Co. v. City of McCall*, 154 Idaho 930, 939, 303 P.3d 617, 626 (2013). Courts must analyze and award attorney's fees claims in litigation involving political subdivisions based exclusively on Idaho Code § 12–117 – as such, Idaho Code § 12-121 does not apply. See *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 635, 226 P.3d 1277, 1282 (2010); *but cf Mendez v. Univ. Health Servs. Boise State Univ.*, 163 Idaho 237, 247, 409 P.3d 817, 827 (2018) (making no mention of the *Potlatch* case holding).

Idaho courts have provided some clues as to what they consider to qualify as "without a reasonable basis in fact or law." Factors that Idaho courts have looked at when determining the existence of a reasonable basis include the following:

1. Whether arguments are made without any analysis or factual support;[30]
2. Whether the argument mischaracterizes and misapplies the law to the extent that no reasonable basis in law exists;[31]
3. Whether the argument is not based on a reasonable construction of the statute;[32]
4. Whether any evidence supported the actions of the party;[33]
5. Whether the issue is one of first impression;[34]
6. Whether the issue is one on which other state courts disagree;[35]
7. Whether the argument is "largely incomprehensible, unreasonable, and lacking foundation in law"; [36] and
8. Whether there has been any "showing that the district court misapplied the law."[37]

[30] See *Rammell v. State*, 154 Idaho 669, 678, 302 P.3d 9, 18 (2012).
[31] *Id*.
[32] See *Daw ex rel. Daw v. Sch. Dist. 91 Bd. of Trustees*, 136 Idaho 806, 808–09, 41 P.3d 234, 236–37 (2001); *State v. Kling*, 150 Idaho 188, 194, 245 P.3d 499, 505 (Ct. App. 2010); *City of Blackfoot v. Spackman*, 162 Idaho 302, 311, 396 P.3d 1184, 1193 (2017) (noting that while the city's argument was "novel," the argument was not "reasonably based in law").
[33] See *Sanders Orchard v. Gem Cty. ex rel. Bd. of Cty. Comm'rs*, 137 Idaho 695, 703, 52 P.3d 840, 848 (2002); see also *Hauser Lake Rod & Gun Club, Inc. v. City of Hauser*, 162 Idaho 260, 266, 396 P.3d 689, 695 (2017) (awarding attorney fees on appeal against city when city attempted to enforce its code outside city limits in clear violation of Idaho constitution).
[34] See *Smith v. Idaho Dep't of Labor*, 148 Idaho 72, 76, 218 P.3d 1133, 1137 (2009).
[35] *Id*.
[36] *Morgan v. New Sweden Irr. Dist.*, 160 Idaho 47, 55, 368 P.3d 990, 998 (2016), citing *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 377, 973 P.2d 142, 148 (1999).
[37] *Id.*

In this case, the Assessor seeks attorney's fees on appeal pursuant to Idaho Code § 12-117 and Idaho Appellate Rule 41 because each of SSI's arguments raised in its appellate brief have no reasonable basis in law or fact as the Assessor's brief demonstrates. As an example, SSI's first argument, that the Assessor was required – and failed – to demonstrate why specific aspects of the BTA's decision were erroneous, has no foundation in the law. See Appellant's Brief, pp. 17-18, 22-23. As demonstrated earlier in this brief, by proving and convincing the district court that the property's value was $17,000,000, the Assessor satisfied any applicable burdens of proof.[38] SSI's brief cites no statute, rule, or court opinion that stands for its proposition that evidence that supports an opinion of value that is different from the BTA's final opinion somehow does not also qualify as evidence that the BTA erred.

SSI's second argument in its brief has no factual support. SSI's brief argues that no evidence was offered that could have been the basis of the district court's finding that approximately $10,000,000 of renovations and improvements were made to the subject property between 2013 and 2015. The trial transcript and the admitted exhibits directly contradict SSI's assertions – statements regarding the more than $10,000,000 of renovations and improvements

[38] In this case, SSI presented evidence that its opinion of value was $6,500,000 (Exhibit 1009), and the BTA concluded that the value was $10,000,000. At the subsequent district court trial, the Assessor presented evidence that Cowan's opinion of value was $19,500,000 (Tr., p. 112, Ls. 7-9; Exhibit 5), and Cook's rebuttal testimony concluded $17,000,000 (Tr., p. 403, Ls. 5-12; Exhibit 20). SSI again presented evidence that Hyde's opinion of value was $6,500,000. Tr., p. 207, Ls. 12-15; Tr., p. 211, Ls. 23-25; Exhibit 1001. The district court concluded that the value of the property was $17,000,000. R., p. 265.

were made at least three times at trial[39] and once in Cook's appraisal review, which was admitted into evidence.[40] The remaining arguments in SSI's brief all similarly lack foundation in the law.

SSI's third argument is that the district court's conclusions of law were insufficient.[41] See Appellant's Brief, pp. 21-22. Not only does SSI cite no statute or case law regarding what would constitute a sufficient conclusion of law, SSI's contentions run counter to the *Wurzburg* decision that states in no uncertain terms that "[m]arket value is essentially a ***factual*** issue." 155 Idaho at 245, 308 P.3d at 945 (emphasis added). SSI's fourth argument is that the district court incorrectly identified some conclusions of law as findings of fact. See Appellant's Brief, p. 22, 25-30. SSI does not, however, identify any legal authority in support of its assertions about what should have been a finding of fact as opposed to a conclusion of law, or what level of detail is required for the district court's decision. Furthermore, the Assessor has been unable to find any legal authority in Idaho law that supports SSI's method of identifying which statements should fall into which categories, or SSI's assertion regarding the level of detail that a district court must put into its findings of fact and conclusions of law.

[39] Tr., 364, Ls. 5-14; Tr., 385, Ls. 5-10; Tr., p. 392, L. 24 – p. 393, L. 17.

[40] Cook's appraisal review states that "Based on a summary of expenditures made to repair, remodel, and add to the plant between mid-2013 and mid-2015, CTI-SSI has spent nearly $10,400,000 upgrading the property." Exhibit 20, p. 8. See also Cowan's appraisal, which states that "Recent 2014 & 2015 additions to Plant 3 include a 3200sf dry storage and 600sf manufacturing area, respectively." Exhibit 5, p. 1; Exhibit 1012, p. 1.

[41] In doing so, SSI quotes only three sentences of the district court's 11-page opinion, and ignores the remainder of the district court's opinion, including the portions in which the court elaborates on SSI's expert's lack of credibility. See Appellant's Brief, pp. 21-22; cf. DC Opinion Findings of fact No. 19 ("When describing his use of lease rates from other facilities around the country, Mr. Hyde stated, 'I mean, I don't know a lot about them. I know where they are. I was able to find a little bit of information about them.'"), No. 20 ("Mr. Hyde's appraisal value of $6,500,000 was not supported by the weight of the evidence at trial."

SSI's fifth argument is that the district court abused its discretion by permitting Cook to testify and allowing his appraisal review to be introduced into evidence at trial. Appellant's Brief, pp. 30-36. This brief addresses in depth the permissibility of the district court's actions pertaining to Cook. By contrast, SSI cites no controlling case law, statute, or rule of evidence in support of its opposition to the district court's actions. Instead, the phrases that SSI allege come from a non-controlling federal district court case from New York appear nowhere in the cited court opinion. Furthermore, the other also non-controlling cases that SSI cites do not proscribe the district court's actions in this case. Overall, the scarcity of relevant and controlling legal authority cited in SSI's brief underscores the lack of legal basis of SSI's arguments.

Finally, because SSI's claim was based on an appraisal that was fundamentally flawed and failed to properly apply standards required by Idaho law and by appraisal standards, SSI acted without a reasonable basis in fact or law, from the very beginning of this case. SSI failed to properly vet the appraisal from the beginning. If it had, it would have discovered many of its fundamental flaws – not the least of which was its failure to even state the applicable definition of market value, not to mention apply it. The fact that the Hyde appraisal value was only 35% of the assessed value should have been its first clue that something was wrong. As a result, the Assessor had to needlessly incur costs and expenses to defend its action.

V. CONCLUSION

As stated in *The Senator*, "[i]ndividual irregularities and inequality in taxation will always exist. It is a process which cannot be reduced to an exact science. The law does not require exactitude, but it does require uniformity." *Id.* 138 Idaho at 572, 67 P.3d at 51. As a result "[i]t is the province of the trial court to weigh conflicting evidence and to judge the credibility of witnesses" in order to determine value. "Evidence is regarded as substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven." *Id.* 138 Idaho at 574, 67 P.3d at 53. The district court's findings regarding value are supported by properly admitted, substantial and competent evidence. The court's ruling as to value should be upheld. However, the district court erred as a matter of law in ruling SSI was not obligated to pay interest and penalties on unpaid taxes. The Assessor respectfully asks this Court to so find on appeal.

DATED this 18th day of January, 2019.

Bradford D. Goodsell
Sr. County Attorney, Civil Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 18th day of January, 2019, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

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January 15, 2019

Request Type: No Fee Certificate of No Record

Request #: 3397308
Receipt #:

Copies Requested: 1
Issuance Date: 01/15/2019

CERTIFICATE OF NO RECORD

I, Lawerence Denney, Secretary of State of the State of Idaho do hereby certify that I am the custodian of the corporation, limited partnership, limited liability company, limited liability partnership, and assumed business name records of this State.

I FURTHER CERTIFY That the records of this office *fail* to show **SSI FOOD SERVICES, INC.** filed as any of the above mentioned entities as of this date.

Lawerence Denney
Secretary of State

Processed By: Business Division

Verification #: 000735817

Attachment 1