

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
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ORIGINAL
CLERK DISTRICT COURT

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DEPUTY

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Attorney for Appellant Philip Hart

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

PHILIP L. HART, Appellant vs. IDAHO STATE TAX COMMISSION and IDAHO BOARD OF TAX APPEALS Respondents.	: CASE NO. <u>CV10-9226</u> : APPEAL FROM THE IDAHO BOARD OF TAX APPEALS : PURSUANT TO I.C. 63-3812, and RULE 84 Idaho Rules of : Civil Procedure <u>L3</u>
_____ :	

COMES NOW Appellant Philip L. Hart, a resident of the County of Kootenai, State of Idaho, by and through his attorney Starr Kelso and does hereby appeal from the Tax Commission Decision in Docket Number 21551 and Docket Number 21552, the Idaho Board of Tax Appeals Final Order Dismissing Appeal Appellant Hart's Appeal No. 10-B-1289 entered August 24, 2010, and the Idaho Board of Tax Appeals Order Denying Appellant Hart's Motion for Reconsideration entered September 24, 2010. Name of Agency: Idaho State Tax Commission and the Idaho Board of Tax Appeals;

1. Title of District Court: District Court For The First Judicial District Of The State Of Idaho. Jurisdiction is proper, pursuant to Idaho Code section 63-3812 (a) in this District Court because Appellant Hart is a resident of the County of Kootenai, State of Idaho.

3. The actions for which judicial review is sought:
 - a. BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO, In the Matter of the Protest of Philip L. Hart, Petitioner, DOCKET NOS. 21551 & 21552, DECISION dated September 30, 2009;
 - b. BEFORE THE IDAHO BOARD OF TAX APPEALS, IN THE MATTER OF THE APPEAL OF PHILIP HART from the decision of the Idaho State Tax Commission assessing additional income tax, penalty, and interest for taxable years 1996 through 2004, APPEAL NO. 10-B-1289, FINAL ORDER DISMISSING APPEAL dated August 24, 2010;
 - c. BEFORE THE IDAHO BOARD OF TAX APPEALS, IN THE MATTER OF THE APPEAL OF PHILIP HART from the decision of the Idaho State Tax Commission assessing additional income tax, penalty, and interest for taxable years 1996 through 2004, APPEAL NO. 10-B-1289, ORDER DENYING RECONSIDERATION dated September 24, 2010.
4. From the decision of the State Tax Commission (paragraph 3 [a] above) it appears that at least some manner of partial hearing may have been held before the State Tax Commission on July 7, 2009. It is unknown to Counsel for Appellant the extent and manner, if any, in which the possible hearing, was recorded. The State Tax Commission would presumably possess this information and record, if any. See paragraph 8 below in this regard.
5. Preliminary Statement of Issues:
 - a. The applicability of, and compliance with, Idaho Constitution, Article III, Section 7, to the issuance of any deficiency notice to him by the federal government demanding a response during the time he was serving in the 2008 Idaho Legislature?;
 - b. Whether the Idaho State Tax Commission Income Tax Audit Bureau's Notice of Deficiency regarding taxable years 1996 through 1998 (Docket Number 21551) and or the Idaho State Tax Commission Income Tax Audit Bureau's Notice of Deficiency regarding taxable years 1999 through 2004 (Docket Number 21552), based solely upon federal tax documentation, conform to the

- taxation authority granted by the State of Idaho and United States Constitutions because it, and or its result, is an unapportioned direct tax?;
- c. Whether the issuance of any deficiency notice(s), when not provided to Appellant Hart, by the federal government, are valid and or evidence of any tax owed by Appellant Hart to the State of Idaho under either or both of the cited Docket Numbers 21551 and or 21552?;
 - d. Whether the federal government's unsworn to and incorrect calculation of claimed income taxes due from Appellant is valid any evidence of any tax owed by Appellant to the State of Idaho?;
 - e. Whether the State of Idaho income tax statutes, as a graduated tax, fails the uniformity requirement of Article VII, Section 5 of the Idaho Constitution?;
 - f. Whether the State Board of Tax Appeals upheld the sanctity of Article III, Section 7 of the Idaho Constitution in failing to confirm Appellant's Constitutional obligation to his constituency?;
 - g. Whether the Idaho State Tax Commission's and the State Board of Tax Appeals affirmation thereof, acceptance of Appellant Hart's checks, and his promise to pay (which he complied with) the remainder of a required cash deposit by a taxpayer as security, without ever advising Appellant that it was not acceptable security, was a violation of its own rules, regulations, and Due Process Clauses under the Idaho and U.S. Constitutions?;
 - h. Whether the Idaho State Tax Commission/Idaho Board of Tax Appeals is estopped from asserting, and/or has waived any alleged claim of, noncompliance by Appellant Hart with the "twenty percent deposit requirement" given its acceptance of Appellant Hart's cash payments, its acceptance of the cash deposit and Appellant Hart's promise to pay (without comment and without communication from its legal department that the promise was not acceptable), and its subsequent retention of the payment of the unpaid portion of the "twenty percent deposit requirement" when Appellant Hart paid it in full as promised?;

- i. Whether the Idaho State Tax Commission/Idaho Board of Tax Appeals erroneously placed any burden of proof on Appellant Hart because Idaho Code 63-3002 and Idaho Code 63-3004 which adopts and implements U.S. Code section 7491 that changed the burden of proof in tax appeals from the taxpayer to the revenue service violated Idaho state law and further violated Appellant's due process rights under the Idaho and U.S. Constitutions?;
- j. Whether the jurisdictional prerequisite requirement of a twenty percent deposit requirement of an any taxpayer, including Appellant Hart, contesting any notice of deficiency violates Appellant Hart's constitutional rights under the Due Pocess clause under the Idaho and U.S. Constitutions?;
- k. Whether the State Tax Commission/Idaho Board of Tax Appeals refusal to acknowledge and accept the cash deposit filed with the State Tax Commission for at least one of the two entirely separate Docket Numbers regarding Appellant Hart, when the cash deposit was in excess of either of the individually "required" deposits, violates the statutes of Idaho, rules of the Commission and Board of Appeals, and Appellant Hart's Due Process rights under the Idaho and U.S. Constitutions.
- l. Whether the State Tax Commission/State Board of Tax Appeals violated the statutes of Idaho, rules of the Commission, and Appellant Hart's rights to Due Process under the Idaho and U. S. Constitutions by not recording and/or otherwise transcribing the hearing referenced in the State Tax Commission Decision as having occurred on July 7, 2009;
- m. Whether the State Board of Tax Appeals violated the statutes of Idaho, rules of the Board, and Appellant Hart's rights to Due Process under the Idaho and U.S. Constitutions by not holding a hearing on Appellant Hart's appeal.
- n. Whether the State Tax Commission/State Board of Tax Appeals violated the statutes of Idaho, rules of the Commission, and Appellant Hart's rights to Due Process under the Idaho and U.S. Constitutions, after (1) receiving "additional materials" from Appellant Hart on September 10, 2009, (2) without providing Appellant Hart with a further opportunity and/or hearing to discuss the

additional materials with it, (3) without providing Appellant Hart of its notice of intent, and (4) with knowledge on the part of the State Tax Commission that it had not received all the information requested from Appellant Hart by the State Tax Commission and/or offered to be provided the State Tax Commission by Appellant Hart, by beginning preparation of its Decision in both Dockets and then subsequent issuance of its Decision in both dockets, on September 30, 2009 .

- o. Whether the State Tax Commission/State Board of Tax Appeals violated Appellant Hart's rights to Due Process under the Idaho and U.S. Constitutions, and the rules of evidence and procedure by giving consideration to unsworn representations made by the IRS and ignoring, not considering, or otherwise giving greater value and weight to the sworn to returns filed by Appellant Hart in determining tax liability, if any, of Appellant Hart.
- p. Whether Idaho Code section 63-3812 (c) erroneously places the burden of proof on Appellant Hart because Idaho Code 63-3002 and Idaho Code 63-3004 adopt and implement U.S. Code section 7491 and it has changed the burden of proof in tax appeals from the taxpayer to the revenue service and thus violates Idaho state law and further violates Appellant's due process rights under the Idaho and U.S. Constitutions?;

- 6. A transcript of any and all proceedings recorded and or transcribed by both the State Tax Commission and the Idaho State Board of Tax Appeals is requested.
- 7. Certification: The undersigned, attorney for Appellant Hart, hereby certifies that a true and correct copy of the foregoing was made upon the Idaho State Tax Commission, and the Idaho State Board of Tax Appeals, on October 20, 2010, by regular First Class U.S. Mail, postage prepaid thereon and by fax as follows:

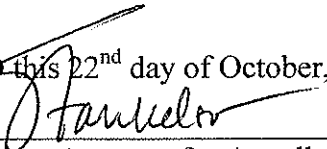
State of Idaho
Board of Tax Appeals
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800 Park Plaza IV
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Fax no.: 208-334-7846

8. Certification: The undersigned, attorney for Appellant Hart, hereby certifies that he has been informed by the respective representatives of the State Tax Commission and the Idaho Board of Tax Appeals that there are no transcripts or recordings in existence. Thus no estimated cost for transcripts has been paid.
9. Certification: The undersigned, attorney for Appellant Hart, hereby certifies that he has been informed by the representative of the State Tax Commission that its entire record was sent to the Idaho Board of Tax Appeals. The undersigned, attorney for Appellant Hart, further hereby certifies that he has been informed by the representative of the Idaho Board of Tax Appeals that there is no fee charged for the record on appeal from it.

DATED this 22nd day of October, 2010.



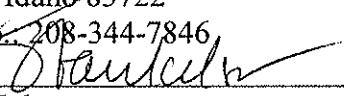
Starr Kelso, Attorney for Appellant Phil Hart

CERTIFICATE OF SERVICE: I certify that a copy of the foregoing was mailed and faxed to the following agencies and person on the 22nd day of October, 2010.

State of Idaho
Board of Tax Appeals
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