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Uncommon Law

July 29, 2010

**Via Hand Delivery**

Honorable Lawrence Wasden  
Attorney General

**Proposal To Suspend *Ringo v. State* Litigation Pending  
Official Investigation**

Dear Lawrence:

I have authority from my client, Representative Shirley Ringo, to make the following proposal.

I perceive you to be a man of integrity, and am hopeful you view me in the same light.

We each, as lawyers, have sworn a Sacred Oath to support and defend the Constitution of the State of Idaho and the Laws enacted pursuant thereto. Having done so, we each place our personal integrity and our duties and reputations as Attorneys above partisan politics in the service of our clients and the People of Idaho.

You, as a current separate and independent constitutional officer of Attorney General, and I, as a former Supreme Court Justice, have an enhanced appreciation of the responsibilities imposed upon us by that Oath.

Delivered herewith are sworn affidavits of four former senior employees of the Idaho State Tax Commission which clearly demonstrate that the public interest, including taxpayer/citizen confidence in the integrity and fairness of tax assessment and collection, requires investigation by a duly appointed team of persons learned in either the law or taxation.

The affidavits of the following are presented herewith:

1. Stan Howland, former Level IV Tax Auditor, 28 years of service;
2. Robert Chatterton, Senior Tax Auditor with 33 years in the department;
3. Gary Mattox, Principle Tax Auditor with 30 years in the department; and
4. Joe Schwartz, 20 years service with 18 as Manager of Coeur d'Alene office of the Idaho State Tax Commission

We know of a number of current employees of the Tax Commission who have concerns they would like addressed in the public interest. They will testify if given appropriate job protection.

Our proposal is as follows:

**First: Investigation Panel.** An official Investigation Panel will be commissioned with appropriate authority as follows:

Position No. 1: Gubernatorial appointment of neutral qualified chairperson selected from the University of Idaho Law School or the Business Schools of one of the Idaho Universities

Position No. 2: CPA nominated by Attorney General

Position No. 3: CPA nominated by Representative Shirley Ringo

Position No. 4: Attorney General Wasden or Deputy Attorney General of his choosing

Position No. 5: Attorney Robert C. Huntley

The Panel will be appointed either by the Governor or the Legislature, whichever is appropriate, and will be compensated and provided funding as appropriate for such investigative panels.

The Panel will be tasked with a goal of presenting a report to the Governor and the Legislature on or before July 1, 2011.

**Second: Suspension of case**

The case of *Ringo v. Tax Commission and the Legislature* is calendared for proceedings before the District Judge. The parties agree to seek a stay of proceedings pending the outcome of this investigation. Since an attorney from each side of the litigation is a member of the Panel, it is likely that the result of the investigation will be that the case may be dismissed. In any event, the investigation will obviate the need for extensive and expensive discovery in the litigation.

I hereby respectfully request an opportunity to meet with you and such staff members of your choosing to discuss and refine this proposal.

Yours in the Interest of Good Government,



Bob Huntley



initially having been employed as Tax Auditor and then throughout the 28 years of my employment I advanced to ultimately having become a Level IV Tax Auditor, the highest non-supervisory rank in the Bureau.

2. From approximately 1982 through my retirement date I audited multi-state corporations.

3. I am a graduate of Cambridge High School after which I matriculated at Idaho State University, then attended the College of Idaho for a short period prior to attending Treasure Valley Community College Flight School from which I graduated in 1968 with an Associate of Science Degree in Aviation. I graduated from Boise State University in 1980 with a Bachelor's Degree in Accounting.

4. In the later years of my employment with the State of Idaho, audit management and staff became increasingly distressed about the fact that the Commission was engaged in what we perceived to be violations of both the letter and the intent of the Idaho Tax Code in utilizing Compromise and Closing Agreements ("C&Cs") to reduce the tax liability of a select group of Idaho taxpayers.

5. In the early 1990s I began bringing my concerns about the inappropriate and illegal compromise of tax liability of taxpayers who filed protests of tax audits. The State of Idaho, throughout my years of service, has enjoyed the services of a very competent cadre of auditors. Rarely were the C&Cs issued on the basis of incorrect audit adjustments. Rather, they were issued for reasons not consistent with the Tax Code.

6. In many instances, C&Cs were issued which reduced tax liabilities in ways that were totally inconsistent with the audit adjustments and were in violation of the Tax Code, in disregard

of the results of the audits.

7. In 1995-96 there was a concern about the practices mentioned above, which resulted in an audit by the Legislative Services auditors. The audit initially strongly recommended reforms, and was later “watered down” as the result of a letter written by the Attorney General.

8. As a result of the audit report, certain minimal changes in procedure were implemented which did not satisfy the mandates of the Idaho Constitution to provide uniformity of taxation among members of the affected class, with the result that the Tax Commission continued to enter into Compromise and Closing Agreements which were in violation of Idaho law.

9. In the spring of 2007, being unable to effect appropriate reforms within the Commission, I began to take my concerns public and documented the violations referenced herein to the Governor of the State of Idaho and various legislators and other public officials. At that time, the Commission had in effect its Rule 500 which provided that C&Cs could only be entered under any one of the three following circumstances:

- (1) Doubt as to liability;
- (2) Doubt as to collectability; or
- (3) Extreme hardship of the taxpayer.

10. Those standards were not adhered to by the Tax Commission in the issuance of the C&Cs. In the 2009 Session of the Idaho Legislature, Senate Bill 1128 was enacted into law to supposedly bring the system into compliance with the requirements of the Idaho Constitution relative to the delegation of legislative powers to the administrative agency. That legislation was totally ineffective and unfocused, and that fact, together with an amendment of Rule 500, resulted in the total removal of any restrictions upon the Commissioners in their use of Compromise and

Closing Agreements. The Commissioners continue to provide special tax reductions to taxpayers that have either filed incorrect or illegal tax returns. These compromises are done in total secrecy and without any means for legislative, executive or public oversight, all of which violates the requirements of the Constitution.

11. Under the current Idaho scheme, there are no appropriate standards and guidelines in either the statutes or the agency rules, regulations and practices, with the result that the Commission can, and does frequently, secretly and improperly forgive, compromise, or relieve corporations and other taxpayers, of all or a portion of their tax liability, in violation of the constitutional mandate.

12. The device utilized by the Tax Commission currently and in recent years is called a "Compromise and Closing Agreement" ("CSA" and sometimes referred to as "C&Cs") under Commission Rule 500. The current Rule 500 is totally devoid of any protection from secret deals with favored taxpayers which results in taxes not being uniform upon the same class of subjects, all in violation of the Idaho Constitution.

13. The C&Cs result in a loss of revenue to the State of Idaho in a magnitude of millions of dollars each year, unfairly favoring those taxpayers in the subject classes who happen to know how to "game the system," with a resultant shifting of the tax burden to other taxpayers.

14. The State of Idaho Legislative Services Office issued an original "Legislative Audit Report" in 1996 which reported serious deficiencies in the system resulting in violations of the constitutional mandate. During that process a number of instances of unjustified compromises with large multi-state corporations were documented.

15. In the years following 1996, the improper C&Cs have been and are increasingly

utilized by the Commission to grant illegal reductions in tax payments to taxpayers (including multi-state corporations) who protested their assessments.

16. The procedures utilized by the Tax Commission provide absolutely no meaningful transparency whereby the public, the legislature or the press can receive any information or oversight into the proper use of the C&Cs. The procedure is as follows:

- The audit staff performs its function and makes a report as to the resulting tax, penalty, and interest deficiency.
- Frequently the audit staff makes a request of the taxpayer for documentation necessary to making a proper determination of the taxpayer's full liability. Frequently the taxpayers are refusing to provide the properly requested and necessary documentation and the Commissioners refuse to enforce their subpoena power in a very *ad hoc* and infrequent manner, thus favoring some taxpayers over others.
- If a taxpayer objects to the assessment recommended by the auditor, the case next goes to the desk of a single Commissioner (in the case of multi-state corporations, to the desk of Commission Chairman Royce Chigbrow) and then the Commissioner in secret negotiates with the taxpayer and works out a compromise.
- The Commissioner who is considering the protest (who does not necessarily or usually have special expertise in the multi-state audit arena) does not consult with the auditor.
- The C&Cs are signed and filed in the confidential files of the Commission. The agreements are not available for any third party to examine and make a determination

as to whether the agreements are founded upon a lawful premise. The current statutory framework does require that the Commission make a report to the Legislature in March of each year. However, the report by the Commission to the Legislature does not contain any detail by which a C.P.A., a lawyer, or any other expert can determine the basis or legal correctness of the final tax assessment.

- There ostensibly is a procedure where the single Commissioner involved is expected to consult with a second Commissioner in the completion of a C&C over a certain dollar amount. However, each of the four Commissioners preside over different types of taxes, i.e., income, sales, property, etc., with multi-state taxation being one of the more complex fields. Not only is the lead Commissioner lacking in expertise in the field, but no other Commissioner has developed the required expertise to execute a meaningful sign-off.

17. In the last five to ten years favoritism to certain taxpayers have occurred which are provided herewith as examples which are not totally inclusive:

(a) A wealthy Idaho resident, through the C&C procedure, was provided a \$1.6 Million tax break **before** the audit report was issued and the audit in that case was removed from the professional auditors. In this case the taxpayer claimed that the State had no jurisdiction to levy a tax because of no business presence in the state of Idaho, when in fact that investigating auditor did identify that the taxpayer has substantial business operations in the state. The auditor had determined that the position the taxpayer was taking before the State of Idaho was fraudulent.

(b) A non-cooperative taxpayer was given a special discount on the years under audit and the audit staff was banned from auditing that taxpayer during the following two years.



(c) One Commissioner reversed an audit adjustment on a friend and individual who is prominent in Idaho politics.

(d) On one occasion, a tax manager for a large Idaho company told a Commissioner in a protest hearing that his opinion was asked by the Governor on all reappointments. This event occurred several months before the Commissioner was up for reappointment and the taxpayer received a \$100,000 discount.

(e) Conservatively, seventy-five (75%) percent of all large corporate taxpayers refuse to provide documentation to the auditors on tax deductions or other issues. The Commission **never** requires the taxpayer to provide the information at the protest level.

(f) A taxpayer was permitted to file on an incorrect method which created large losses understating tax liability which was then carried forward to future years.

(g) Many of the C&C compromises are made in violation of the rules established by publicized formal opinions of the Commission, which published opinions remain on file as guidance to other taxpayers who have no knowledge of the secret deviation from the precedence established by the publicized opinion. Many C&Cs are issued which are in direct conflict with previous written decisions.

(h) In the three years last past approximately seventy-five (75%) percent of the protests by taxpayers have been settled through the use of C&Cs rather than written decisions. Written decisions are available to the public and C&Cs are not.

(i) In one case of which I have knowledge, a taxpayer had been audited seven times over the past twenty years utilizing a tax filing method not authorized by Idaho law. In all but one instance the taxpayer was granted a compromise and one such compromise was the settlement of

a \$220,000 tax liability for \$80,000.

(j) In another case, the Commission upheld the negligence penalty assessed against a taxpayer who had filed illegal tax returns for fifteen years. After publicly upholding the penalty, the Commission secretly dismissed the penalty with a C&C after a phone call from the taxpayer.

18. There is currently pending in the case of two taxpayers possible and likely compromise of tax liability of approximately \$50 Million, which will typically result in a compromise that based on the Commission's action over the past several years, will result in a loss to the State tax base of between \$15 Million and \$40 Million.

Further sayeth Affiant naught.

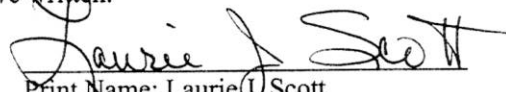
Dated this 7 day of June, 2010.

  
Stan Howland

On this 7 day of June, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Stan Howland**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



  
Print Name: Laurie J. Scott  
NOTARY PUBLIC for the State of Idaho  
Residing at: Meridian, Idaho  
My commission expires: 3/19/14



1. I worked as an auditor for the Tax Commission for 33 years, retiring in 2006. I believe the Tax Commission operated efficiently and ethically for the first two thirds of my career. One attorney handled all the corporate protests and the Commission usually had a written decision in a reasonably short time period after a protest hearing. The percentage for protested cases was not large.

2. Commissioner Looney instigated a semi-weekly meeting of attorneys and Corporate Tax Managers to review protested cases. The object of the meeting was to group areas of conflict and to decide how to get the correct answer to contested issues. From those meetings, cases were selected to take to court to find answers for that case and set precedence for future cases. One of the biggest problems we had was finding taxpayers that would proceed through the court system. Once the Tax Commission issued a decision the taxpayer would usually just pay. I was told by one previously serious tax manager that he just wanted a decision by the Tax Commission and to see if we were committed to our position.

3. After Commissioner Looney retired, Commissioner Hammond took over. Apparently Hammond didn't want anything on the record and began issuing Compromise and Closing (C&Cs) Agreements. Because interstate corporate tax departments met frequently to discuss tax issues, it took only a short time before most tax audits were protested. The attorney assigned to the protest always started the meeting by saying: "The Tax Commission will entertain offers to close this case."

4. The C&C agreements did not sit well with the auditors for various reasons. Several reasons were:

- 1) The corporations began refusing to provide documentation for their tax positions, stating that we should write our report and they would deal with the Commissioner later;

- 2) Many of the issues being compromised had various legal decisions supporting the audit position;
- 3) On follow up audits, the same issues had to be hashed over again and again;
- 4) Many, many cases were piling up in the legal department. They expanded their staff but some cases were taking years to resolve. In several cases, two or three audit cycles would languish in Legal.

5. Sometime during this time frame, the Statesman ran an article that the City of Boise had a policy where they would not compromise cases because it led to frivolous lawsuits. In the case of the Idaho Tax Commission, it was obvious to auditors that C&Cs lead to where no taxpayer in its right mind would agree to any audit adjustments.

6. Over the later years, most of my cases were compromised by the commissioner or were still unresolved cases when I retired. I have forgotten specific issues in most of these cases for sanity reasons. A couple situations that I do remember are illustrative:

- 1) I had an audit scheduled for months when the Commissioner called me the week or two before, saying he had already settled the case and I needed to cancel my trip. When I asked how the audit could be compromised before the actual audit was started, he said he had accepted \$150,000 with the assurance from the taxpayer that \$150,000 is the amount of possible contested issues. Later, the audit department wrote to Montana for their audit workpapers. Montana and many other states have very similar tax laws and audit positions as Idaho. We found that we would have doubled our audit assessment if we had made the trip.
- 2) The sales tax commissioner put together a joint task force on a very large corporation that was a perennial problem. This corporation sold millions of dollars of product within Idaho but remitted very little sales tax and did not file income tax returns. This corporation also sold warranty contracts and handled service issues. When the joint audit group arrived, the company would only provide certain sales tax records and refused any documentation concerning income tax. The company said they would not provide income tax records until a higher level determined that they actually owed income tax to Idaho. However, they would not give the auditors records to facilitate the decision. The Tax Commission cancelled the sales and income tax audits with the compromise that the corporation would open a call center in Idaho. The call center did open but was later closed.
- 3) I issued an audit report to a corporation that protested the audit adjustments. I was not allowed to attend the protest hearing. The commissioner issued a C&C with a very low recovery percentage. He said the taxpayer brought in records supporting its

position that they represented to the Commissioner had **NOT** been provided to me. Later, legislative auditors brought me the supposed new information and asked me if those records now supported the company's case because they couldn't see that it did so. I reviewed the information and found this information was the **same** documentation that was presented to me during the audit. It consisted of data that did not tie to the numbers on the tax return.

- 4) I attended an informal protest hearing where the commissioner said he and his wife had a wonderful time at dinner with the Corporation Tax Manager last night. Each promised they would get together again the next time the Corporation manager was in town. He said the restaurant was top notch. The corporation got a very favorable C&C.

7. It must be said that some Tax Commission corporation income audits involve only a few thousand dollars, but other audits have more than \$10 million at stake. In any event, agency transparency should require that use of C&Cs needs to be public. In general, I think they should never be used for the reasons I have stated above. I cannot say there have been under-the-table payments for any of these C&Cs, but the possibility certainly exists.

8. Attorney General Lawrence Wasden was an attorney assigned to the Tax Commission for a few years. My main recollection of him was a short training session he presented for income tax auditors where he explained what the meaning of "taxpayer equity" was from a Tax Commission prospective. **He stated that equity did not have anything to do with treating one taxpayer the same as another taxpayer.** He stated that equity only related to fairly treating a taxpayer protesting a case. I do not agree with Mr. Wasden's definition of equity and I do not believe most taxpayers would agree with it either. That interpretation also does not comport with the Idaho Constitution which requires equal treatment of taxpayers within the same class.

Further sayeth Affiant naught.

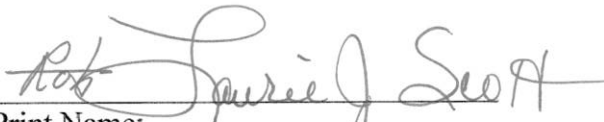
DATED this 29<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
Robert Chatterton

On this 29<sup>th</sup> day of July, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert **Chatterton**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



  
\_\_\_\_\_  
Print Name:  
NOTARY PUBLIC for the State of Idaho  
Residing at: Minden, Idaho  
My commission expires: 3/19/14





1. I am a former work associate of Mr. Stan Howland, who has provided an affidavit for the case of Representative Shirley Ringo versus the Idaho Legislature, the Idaho State Tax Commission and the Commissioner's. I am in total agreement with what Mr. Howland has stated in his affidavit.

2. I was an auditor for the Idaho State Tax Commission from June 1979 through May 2009. I spent slightly over 30 years with the Tax Commission as an auditor, the majority of which time I was a Principle Tax Auditor (the senior most Principal Tax Auditor in the State during that period). I spent over 25 years as a Principle Tax Auditor, auditing some of the largest companies and corporations in the State of Idaho and throughout the United States.

3. I graduated from Boise State University in 1975 with a degree in Business Management, which course work included a significant number of credits in Accounting and Economics. After graduation I spent 4 years working for a small bookkeeping & accounting firm in Boise (John Wagers & Company) before I was hired as an auditor with the Idaho State Tax Commission. I worked in the Sales Tax Audit Division as distinguished from the Income Tax Division where Stan Howland was employed.

4. During my 30 years with the Tax Commission I personally witnessed many cases of Compromise & Close Agreements issued by the Commission similar to what Mr. Howland has identified in "paragraph 17" of his affidavit. Some of the C&C Agreements were audits which I had performed. Many other of the cases were audits performed by fellow auditors. As Mr. Howland has stated, over the past 15 years "the entire audit management and staff became increasingly distressed about the fact that the Commission was engaged in what we perceived to be violations of both the letter and the intent of the Idaho Tax Code in utilizing Compromise and Closing Agreements ("C&Cs") to reduce the tax liability of a **select group of Idaho taxpayers**".

5. In the spring of 2007, I (like Mr. Howland) tried to address the issue by writing to the Governor and the Audit Management Staff, about my concerns over the Commissioner's Utilizing Comp & Closing Agreements to close so many cases, when there was no basis for granting any reduction in tax under the applicable Rule 500 standards of:

- (1) Doubt as to liability;
- (2) Doubt as to collectability; or
- (3) Extreme hardship of the taxpayer.

6. In most all the cases, the auditors had documented the liability of the taxpayer to a point that the evidence was irrefutable. However, the Commission issued Compromise & Close Agreements for less than the liability owed, dismissed a substantial portion of the liability, or totally closed the case with no liability for the taxpayer. To put it simply, over the last 15 years the Tax Commission has resorted to a "Let's Make A Deal" philosophy of handling audit cases. This philosophy has demoralized the audit staff to the point that many question why they even perform some audits, if the findings will not be supported by the Commission.

7. I can provide examples of Sales Tax Audit cases which were improperly closed with Compromise & Closing Agreements, and will simply provide the following examples which are illustrative of what I have experienced over the years:

(a) My very first case was on assignment with the Twin Falls office where the Senior Auditor and I worked for a number of months preparing a detailed audit of a business relative to the sales tax. We completed our audit and the Chairman of the Commission conducted a hearing with the taxpayer in Boise, and at the close of the hearing the Senior Auditor advised me that the Commissioner had simply directed that the file be closed and the entire \$80,000 assessment be forgiven, with no appropriate reason given. The Senior Auditor noted that the taxpayer had a radio talk show and the culture was that we would compromise cases

where political influence was involved. The taxpayer was influential in the Twin Falls area and was influential with the legislature.

(b) In one case an audit was conducted of a golf course wherein the membership fees were quite substantial. An audit disclosed that the taxpayer owed the State something between \$700,000 and \$900,000, which obligation was forgiven. No legitimate reason was given for closing the case, other than the possible reluctance of the legal staff to litigate the issue of what part of a membership fee is subject to tax.

(c) Another example is the case where an Idaho furniture retailer also had retail outlets in Oregon. The audit staff had documented that that retailer was making sales from the Oregon location, not collecting a sales tax, and delivering the furniture to customers in Idaho. The Idaho Code provided that such sales are subject to the Idaho Sales Tax. We conducted an audit of the Idaho sales location, and as part of our audit we requested the records of the sales made in Oregon which were delivered into Idaho. The taxpayer refused to provide the documentation and the Commission and staff attorneys refused to require the documentation be provided and the appropriate tax imposed, with the excuse that Idaho did not have authority to subpoena documents from Oregon. The fact was that a request could be made of the Oregon Attorney General to subpoena the documents for us.

The audit staff first became aware of this activity while auditing the Idaho locations because the records demonstrated that warranty and repair work on televisions and appliances sold from the Oregon outlets were being serviced in Idaho.

8. My service in the department continued beyond the time when Auditor Stan Howland went public with many of these concerns. I am very much aware of the fact that the many of the personnel are very demoralized about the uneven and inequitable enforcement of the

Tax Code. Although some cases are assigned to auditors by management, the bulk of the cases are subject to the auditors determining which cases they would like to take on. The atmosphere is such that where an auditor senses from past conduct that a given taxpayer has political influence and that months of work on an audit will go for naught, the auditor will pass that case and invest his time in the case of another taxpayer where there is more probability that the Commissioners will accept the audit.

9. Auditors are reluctant to invest their efforts in the audit of a politically connected and influential company because the end result will be a Compromise & Closing Agreement which generally results in the taxpayer paying less than is owed under a clear reading of the Tax Code and the rules and regulations which guide our assessments.

Further sayeth Affiant naught.


DATED this 29<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
Gary Mattox

On this 29<sup>th</sup> day of July, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Gary Mattox**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



  
\_\_\_\_\_  
Print Name: Laurie J. Scott  
NOTARY PUBLIC for the State of Idaho  
Residing at: Meridian, Idaho  
My commission expires: 3/19/14



1. I was employed by the State of Idaho from 1981 to 2001 and was the office manager of the North Idaho office of the Idaho State Tax Commission located in Coeur d'Alene, Idaho during the last 18 years of my employment.

2. I did not serve the function of an auditor, but was instead involved in managing the office and our focus was compliance and taxpayer assistance. I have read the Affidavit of Auditor Stan Howland which is attached to the Complaint in this case and in general terms the allegations he makes are consistent with what I experienced over the years while working for the Tax Commission.

3. I cannot speak to the specific cases which Mr. Howland discusses, but I find his testimony to be consistent with my understanding and his testimony is highly credible. I will discuss some additional problems which I believe need to be addressed by the Idaho Legislature in order to enhance the fairness of tax assessment and collection and earn credibility in the eyes of the citizens/taxpayers of Idaho.

4. Frequently there exists a need and proper circumstance in which a debt should be "settled," whether private, professional or governmental. This need is created by the reality of human nature and the complexity of our tax laws and the variety of situations to which the statutes and regulations must be applied.

5. One needs only to watch television to see the ads for attorneys who specialize in settling both tax debts and consumer credit debts to recognize that, in the real world, settlements are a way of life.

6. Prosecutors and Defense Attorneys have cut deals for as long as there has been a legal system. Without the ability to cut a deal in an appropriate circumstance, the court system would be grid locked.

7. The State Tax Commission is no different. Stan Howland is absolutely correct when he says that deals have been struck that reek of favoritism. Some are the result of the implied threat from politicians who have received a call from a major campaign donor requesting help, who then threaten that unless a deal is cut the budget for the agency will be diminished. I have experienced situations where politicians themselves have self-assessed a tax debt, were unable or unwilling to pay the debt, with the result that I was instructed by senior management to not pursue collection activity against these politicians for fear of retribution from them against the Tax Commission. ***(I am always amazed at how the definition of blackmail can be altered to fit the occasion.)*** While I will admit that the number of politicians who demanded a deal for their constituents far exceeded the number of those who demanded a deal for themselves, in my opinion, one is too many.

8. An example of legislators tarnishing the public faith in the fairness of the system of taxation in Idaho is that of Representative Hart from Athol. He is a member of the House Revenue and Taxation Committee and, as a member of a subcommittee of three, has cast the deciding vote on several recent changes in the tax code, but refuses to file or pay taxes himself.

9. I have had the experience of having politicians (Senator Shawn Keough for one) tell me that, because they did not vote for a particular tax bill, they will not tell their constituents to comply with the law and will “punish” the Tax Commission if the Tax Commission attempts to force compliance with the particular law.

10. I was involved in a case where a particular politician from Benewah County backed a particular tax law change, and then obtained an exemption from complying with this law because of the monetary hit he would take if forced to comply.

11. I dealt with a taxpayer in the Silver Valley in the mid-80's that opened a new manufacturing plant. This was during the time when all the mines in the Silver Valley had closed and the town of Wallace had dropped in population from over 9,000 to approximately 3,000. The unemployment rate was astronomical, the economy was dismal, and the opening of this new manufacturing plant would employ approximately 200 out-of-work taxpayers. After only a few months in operation, the owner owed the State of Idaho hundreds of thousands of dollars in employee taxes that had either been withheld from his employees' paychecks or were owed in Worker's Compensation and Unemployment tax. When I attempted to collect this debt I was ordered in no uncertain terms to cease all collection efforts because of the impact it would have on the already crippled economy in the Silver Valley if this firm were forced out of business. This taxpayer went on to become a very popular force in both local and state government. In my opinion, the State of Idaho was a silent, yet majority, stockholder in this firm yet failed to profit from their forced investment of hundreds of thousands of dollars. I can think of many taxpayers who would like to be able to force the State of Idaho into making them a "loan" of hundreds of thousands of dollars so they could start a business. The inequity of the situation was blatant and glaring.

12. The staff of Field Services in the Coeur d'Alene office where I was the Office Manager averaged more than \$1,000,000 each in collections per year. This money that was collected would not have come into the state coffers without the efforts of these employees. That averages out to over \$500 per hour collected per employee. The general public has long made the argument, as uninformed as it is, that government should be run more like a business. Ignoring for the moment that in the real world that viewpoint is without merit -- how long in the business world would an employee bringing in \$500 per hour be required to work to collect a



minimum sized debt, of say \$10? For this reason the Tax Commission had a policy that if the taxpayer had a good filing record, made an honest mistake, the tax had been paid, and the only debt left was the penalty and interest due, this balance would be written off after only minimal collection efforts were attempted. A taxpayer who pays \$50,000 per month in sales tax has the right to expect the same consideration as those taxpayers who may pay only \$50 per month. Attempting to justify any one-size-fits-all law is daunting.

13. Any honest, impartial investigation into the deals struck by governmental agencies is going to turn up hundreds, if not thousands, of examples. They happen every day. They are the norm, not the exception. To what degree they happen is not as important as the reason behind why they happen, i.e., are there reasonable standards and is there enough transparency in the system to prevent favoritism?

14. If the reason for a settlement is to finalize a complicated or questionable issue, then I do not see how this can be wrong. Without this form of settlement, the courts, our government, business and personal situations would become a disastrous melee of hassles.

15. To some degree this form of compromise happens on virtually every audit or serious collection issue. The taxpayer agrees to finalize the situation, whether it be an audit or balance due, and the Tax Commission agrees to minimize the impact of the situation on the taxpayer. It happens every day. Until the Tax Commission is funded at a much higher level, a level the public would never stand for, deals must and will be cut. There is no way to conduct business without them.

16. For example, I would compare my office in Coeur d'Alene with banks, law enforcement, tax consultants and CPA firms. How many bankers are there in North Idaho? Every one of them would love to have my client base. How many law enforcement officers are

there in North Idaho? They all carry guns to enforce the law while my staff enforced the law in very hostile situations with only a cell phone and a laptop. How many tax consultants and CPA firms are there in North Idaho giving advice and doing tax returns for the public, *for a fee*? I had a staff of eight. Without the ability to settle a problem with some form of compromise agreement there is no way that eight employees could even begin to handle the workload. Can you imagine North Idaho with only eight law enforcement officers, bankers and CPA's in total?

17. Whether or not deals and compromises are allowed is a moot point; that boat has already sailed. The issue is one of fairness and impartiality in making the deals. In testing the integrity and fairness of the Idaho tax structure, amendments must be considered which will provide the proper answers and assurances to the following questions:

- Who should be allowed to oversee such deals?
- Who should be allowed to participate in originating the deals?
- Who is to blame for a blackmail attempt? The blackmailer for trying to extort something of value or the victim if they pay the blackmailer?
- What constitutes fairness if one person is given some form of relief while another is not?
- Who gets to decide when common sense gets to play a role?
- How can the process be transparent and still maintain confidentiality?
- Who should be allowed access to view these compromises and settlements?
- Should a taxpayer be required to waive confidentiality if they want some form of relief?
- Who should audit the auditors?
- Who should audit the auditors who audit the auditors?
- Who should be in charge of establishing the budget for an agency so disliked by the public that any politician who votes to increase that agency's budget will likely be voted out of office?

18. On average, less than 0.8% (.008) of tax returns are audited in any given year. During the last few years of my tenure, the average audit brought in more than \$20,000. Consider the level of income a taxpayer must have before owing \$20,000, let alone make a

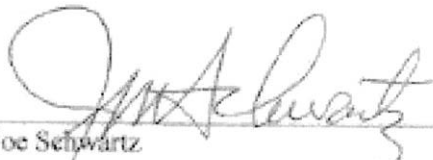
mistake and owe an additional \$20,000, and one has an example of the type of taxpayer who is most likely to be audited. That income bracket just happens to be the same type of taxpayer who can afford to make healthy political donations which in the real world make it possible to seek political favors or, alternatively, hire expensive attorneys to fight their battle for years in court and tie up scarce governmental resources and legal personnel.

19. In conclusion, I sympathize with Stan Howland and his issue relative to the lack of transparency and fairness in the current system of handling compromise and settlement agreements. However, as I have detailed above, there is much more reform needed to bring the operation of Idaho's system of assessing and collecting taxes up to standards wherein the taxation is fair and equal and shielded from the corrupting pressures brought to bear from external forces.

20. My retirement was forced upon me by a heart condition that I will always attribute to the stress of the job. The majority of this stress was not placed upon me by the taxpayers I dealt with, but rather by my inability to do the quality of work that I demanded of myself. While I am neither perfect nor a shining example of a Solomon-like judge of human nature, I do think I know right from wrong, ethical from unethical, and moral from immoral. The pressures brought to bear by outside forces was wrong, unethical and immoral. No impartial rendering of the facts could possibly come to any other conclusion.

Further sayeth Affiant naught.

DATED this 28<sup>th</sup> day of July, 2010.

  
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Joe Schwartz

On this 28 day of July, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Joe Schwartz**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Lorian M Wheatley  
Print Name:  
NOTARY PUBLIC for the State of Idaho  
Residing at: Potlatch, Idaho  
My commission expires: April 26, 2016

