

CONFIRMATION

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NO. _____ FILED _____
A.M. _____ P.M. _____

JUL 07 2010

J. DAVID NAVARRO, Clerk
By L. AMES
DEPUTY

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO,

Plaintiff,

v.

The LEGISLATURE OF THE STATE OF
IDAHO; The IDAHO STATE TAX
COMMISSION; and ROYCE CHIGBROW,
TOM KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

**Motion for Leave to File Amended
Complaint for Declaratory Judgment
and Injunctive Relief**

COMES NOW the Plaintiff and moves the Court for leave to file the Amended Complaint attached hereto as Appendix A which provides for two causes of action and makes additional minor changes to the original Complaint.


Since the original Complaint was filed only as of June 7th and no motions have been heard,

we propose not to file a brief in support hereof unless the Court requires such.

Respectfully submitted.

DATED this 7th day of July, 2010.

The HUNTLEY LAW FIRM PLLC


Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Hon. Lawrence Wasden, Attorney General
Steven L. Olsen, Deputy Attorney General
Melissa Moody, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

☐ HAND DELIVER
☒ U.S. MAIL
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)

Attorneys for the Defendants


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APPENDIX A

Attorney for Plaintiff

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State Representative SHIRLEY RINGO,

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Defendants.

Case No. CV OC 1011269

**Amended Complaint for Declaratory
Judgment and Injunctive Relief**

Plaintiff as her claim alleges:

PARTIES

1. At all times relevant hereto, the Plaintiff, Shirley Ringo, was and is a resident of the State of Idaho and a member of the Idaho House of Representatives. As such Plaintiff possesses

standing and an interest, both as a Legislator and a citizen and taxpayer of the state of Idaho, to bring this action to require the Legislature, the Executive, and the agencies of government to comply with the duties imposed by the Constitution of the State of Idaho in implementing and executing the imposition and collection of taxes in a uniform manner, and in this instance, especially, but not exclusively, income taxes imposed upon multi-state corporations doing business in the State of Idaho. As a State Representative, Plaintiff is a Constitutional Officer with a sworn duty and responsibility to support and uphold the Constitution of the State of Idaho.

2. The Defendants, the Idaho Legislature and the Idaho State Tax Commission (and the Commissioners thereof) are charged under the Constitution of the State of Idaho, Article VII, Section 5 to levy and collect taxes in a “uniform manner,” that provision of the Constitution reading in part as follows:

§ 5. Taxes to be uniform – Exemptions

All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxing of all property, real and personal. . .”

Defendants are also sworn to uphold the Constitution of the State of Idaho.

STATEMENT OF THE FACTS

3. The power to tax, or exempt from taxation remains with the Legislature under the Idaho Constitution and the Legislature possesses plenary power in all matters of taxation except as prohibited or limited under the Idaho Constitution.

4. The Idaho Supreme Court has on several occasions ruled that the Idaho Legislature may not delegate its power to tax to an outside agency, such as the Defendant Idaho State Tax Commission, without “meaningful standards.” For example, in *Sun Valley Company v. The City of*

Sun Valley, 109 Idaho 424 at 427 (1985) the Court stated:

The non-delegation doctrine, as it is called, traditionally required that laws delegating legislative authority to either the executive branch or the judiciary [provide] meaningful “standards.” These standards which insure that decision makers in the other branches, who are not publicly accountable through the election process, would not act arbitrarily, capriciously, or discriminatory.

5. Broad delegation of legislative authority without designation of detailed standards is only proper when the agency’s internal guidelines provide meaningful standards against arbitrary decision making.

6. Plaintiff has been informed by recently retired Level IV Auditor Stan Howland, who has served as an auditor for the Idaho State Tax Commission, of the facts alleged in this Complaint and, therefore, on information and belief, alleges them in support of this Complaint. The Affidavit of former Level IV Auditor Stan Howland is attached to this Complaint as Appendix A and made a part hereof as though fully set forth herein.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 as well as individuals) who protested their assessments.

12. 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.

12. 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 Auditor Stan Howland has 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 reported by Auditor Stan Howland, 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.

13. The information provided by Auditor Stan Howland includes the illustrative fact that 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.

14. Since the filing of this Complaint various personnel attached to the Tax Commission have advised that there are certain other devices being utilized or contemplated, which result in a lack of equal treatment of taxpayers, both corporate, partnership and individual who are in the same class of taxpayers, or a gross violation of established policies and procedures, all of which will result

in extreme financial loss of income to the State of Idaho and the unequal taxation of both individuals and business entities within the same classes of taxpayers, or will improperly deflect the burden of taxation upon other classes of taxpayers. The Commission personnel are fearful for the impact their testimony might have on their job status, but are willing to testify if provided proper protection by this Court through *in camera* or other appropriate device.

15. Based upon the above and foregoing facts, the State of Idaho to the detriment of the vast majority of its institutions and citizens, will suffer severe, permanent, irreparable damages unless the Court prohibits the further use of Compromise and Closing Agreements (C&Cs) until such time as the Defendants provide a constitutionally appropriate system for delegation of legislative authority to the Idaho State Tax Commission, with appropriate standards and safeguards to the public interest being contained at either or both levels.

16. Plaintiff is entitled to bring this action as a “Private Attorney General” for at least three reasons, among others: (1) the incumbent Attorney General was previously a Deputy Attorney General when certain of the unconstitutional actions alleged herein were being undertaken; (2) currently, Deputy Attorney Generals assigned to the Tax Commission are involved in either agreeing with or failing to object to the unconstitutional procedures which are being implemented; and (3) prior to the initiation of this lawsuit, a request was made upon the Attorney General’s office to conduct a thorough and proper investigation of the circumstances and he failed, and continues to file to do.

FIRST CAUSE OF ACTION

(Cause of Action Under Idaho Constitution Article VII, Section 5)

17. Plaintiff re-pleads paragraphs 1 through 16 as though fully set forth herein.

18. Plaintiff, by virtue of her standing as stated in paragraph 1 herein above, and as a “Private Attorney General” seeks judgment and order under Article VII, Section 5 of the Constitution of the State of Idaho requiring the Defendants to cease their violations of the Constitution in the administration of Idaho tax assessment and collection and further seeks an order declaring the present system of assessment and collection of taxes unconstitutional until and unless the Legislature and the Tax Commission adopt statutes, rules and regulations in compliance with the requirements of the Idaho Constitution.

19. Pending final resolution of this case, Plaintiff seeks leave to conduct discovery and to move this Court for a hearing requiring the Defendants to show cause, if any they have, why a Preliminary Injunction should not be granted enjoining the Defendants from engaging in the unconstitutional activities herein above alleged.

20. Plaintiff has been required to retain the services of counsel to bring this action and is entitled to recover her reasonable costs and attorneys fees as private attorney general, the Common Fund Doctrine, and/or pursuant to sections 12-120 and 12-121, Idaho Code.

SECOND CAUSE OF ACTION

(Equal Protection of the Laws Under the Idaho Constitution Article I, Section 13 and the Fifth and Fourteen Amendments to the Constitution of the United States of America)

21. Plaintiff re-pleads paragraphs 1 through 20 as though fully set forth herein.

22. Plaintiff, by virtue of her standing as stated in paragraph 1 herein above, and as a “Private Attorney General,” seeks judgment and order under Equal Protection Clauses of Idaho Constitution Article I, Section 13 and the Fifth and Fourteen Amendments to the Constitution of the United States of America requiring the Defendants to cease their violations of the Constitutions in the administration of Idaho tax assessment and collection and further seeks an order declaring the

present system of assessment and collection of taxes unconstitutional until and unless the Legislature and the Tax Commission adopt statutes, rules and regulations in compliance with the requirements of the Idaho and United States Constitutions.

23. Pending final resolution of this case, Plaintiff seeks leave to conduct discovery and to move this Court for a hearing requiring the Defendants to show cause, if any they have, why a Preliminary Injunction should not be granted enjoining the Defendants from engaging in the unconstitutional activities herein above alleged.

24. Plaintiff has been required to retain the services of counsel to bring this action and is entitled to recover her reasonable costs and attorneys fees as private attorney general, the Common Fund Doctrine, and/or pursuant to sections 12-120 and 12-121, Idaho Code.

WHEREFORE, Plaintiff prays judgment as follows:

1. For Declaratory Judgment that the present statutes, rules, regulations and procedures utilized by the Legislature and the Idaho State Tax Commission violate the mandates of the Constitution of the State of Idaho relative to delegation of legislative authority to the Tax Commission; and further violate the mandates of both the Federal and State Constitutions relative to "equal protection under the law."

2. The Court enjoin the Defendant Tax Commission and its Commissioners from entering into further Compromise and Settlement Agreements and other improper or illegal practices until such time as a constitutional system is established by the Defendants; Plaintiff will be moving for entry of a Preliminary Injunction and ultimately a Permanent Injunction;

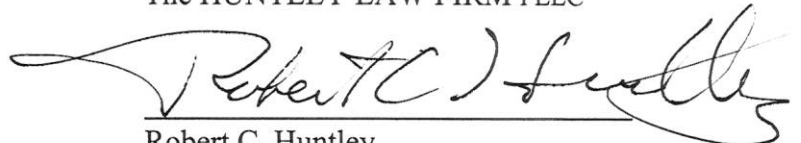
3. For an award of attorney fees to Plaintiff's attorney under the Private Attorney General Doctrine and/or the Due Process and Equal Protection Clauses of the Federal and State

Constitutions; and

4. For Plaintiff's costs and such other and further relief as may be meet and equitable in the premises.

DATED this 7th day of July, 2010.

The HUNTLEY LAW FIRM PLLC



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APPENDIX A TO COMPLAINT

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State Representative SHIRLEY RINGO,

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the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No.

Affidavit of Stan Howland

STATE OF IDAHO)
 ss.
County of Ada)

STAN HOWLAND, being first duly sworn, deposes and says:

1. I was employed by the Idaho State Tax Commission from 1980 through 2008,

Affidavit of Stan Howland - 1

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.

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- 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

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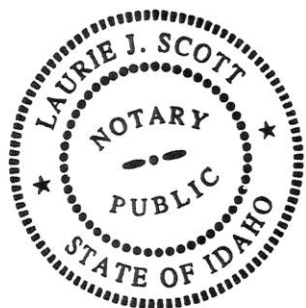
Further sayeth Affiant naught.


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