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Uncommon Law

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July 8, 2010

Via Hand Delivery

Honorable Cheri C. Copsey
District Judge
200 W. Front Street
Boise, Idaho 83720-7300

Re: Ringo v. Idaho Tax Commission; Case No. CV OC 1011269

Dear Judge Copsey:

Enclosed please find courtesy Chamber Copies of the following documents which were filed in the Clerk's Office today:

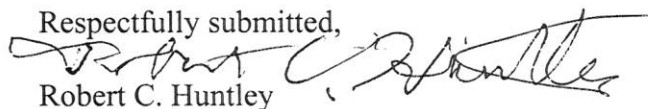
1. Motion for Issuance of Order to Show Cause and Notice of Hearing
2. Brief in Support of Order to Show Cause

Also enclosed is an original and two copies with envelopes addressed to counsel of a proposed Order and Notice of Order to Show Cause Hearing. Both counsel are amenable to receiving email notices if the Court finds that more convenient.

The Court has earlier scheduled a hearing on Plaintiff's motion to file her Amended Complaint on August 12th at 2:30. Further, the Court has scheduled a hearing time for the Defendants' Motion to Dismiss for lack of standing on September 9, 2010 at 3:30 p.m.

I presume the Court will wish to schedule the Order to Show Cause Hearing for some time subsequent to the September 9th hearing and I would suggest that the earliest date available to the Court for a two day hearing from and after November 8th would be appropriate.

Respectfully submitted,


Robert C. Huntley

Enclosures

cc: Melissa Moody melissa.moody@ag.idaho.gov

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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 Issuance of Order to Show
Cause Why a Preliminary Injunction
Should Not Be Issued Requiring the
Defendants to:**

- 1. Cease the Violations of the Idaho
Constitution as Asserted in Plaintiff's
Complaint; and**
- 2. Establish a Proper Constitutional
Procedure for Processing Protests of
Assessments by Taxpayers**

and

**Request for Scheduling of Order to
Show Cause Hearing**

COMES NOW the Plaintiff and moves the Court for an Order scheduling a hearing requiring the Defendants to Show Cause, if any they have, as to why this Court should not grant a Preliminary Injunction as requested in Plaintiff's initial Complaint and Amended Complaint.

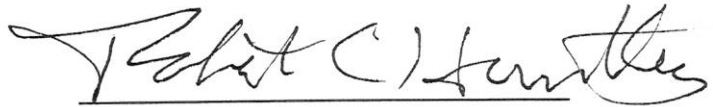
MOTION FOR ORDER TO SHOW CAUSE - 1

This motion is supported by the original Verified Complaint filed herein, together with the Affidavit of Stan Howland attached thereto as Appendix A. It is further supported by the allegations of the Amended Complaint and the brief filed simultaneously herewith, all of which establish that the Defendants are administering the Tax Commission in a manner in violation of the State and Federal Constitutions, which violations result in severe and substantial loss of income to the State of Idaho with a concomitant inability to provide essential public services and the damages to the State and the people of Idaho are severe and irretrievable, and that there is no adequate remedy at law.

Plaintiff requests that the Court issue the Order to Show Cause and Notice of Hearing thereon provided herewith.

DATED this 8th day of July, 2010.

The HUNTLEY LAW FIRM PLLC

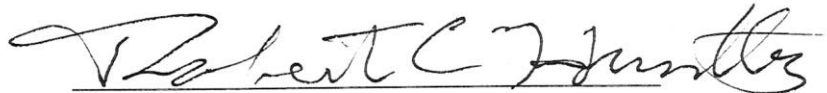


Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2010, I caused to be served a true and correct copy of the foregoing **VIA EMAIL** addressed to the following:

Hon. Lawrence Wasden, Attorney General
Steven L. Olsen, Deputy Attorney General
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Attorneys for the Defendants



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

Case No. CV OC 1011269

**Brief in Support of Motion for
Issuance of Order to Show Cause
Why a Preliminary Injunction Should
Not Be Issued Requiring the
Defendants to:**

- 1. Cease the Violations of the Idaho
Constitution as Asserted in Plaintiff's
Complaint; and**
- 2. Establish a Proper Constitutional
Procedure for Processing Protests of
Assessments by Taxpayers**

and

**Request for Scheduling of Order to
Show Cause Hearing**

This brief is in support of Representative Shirley Ringo's Request for an Order to Show Cause requiring the Defendants to show cause, if any they have, as to why this Court should not

issue a Preliminary Injunction requiring that the unconstitutional actions of the Tax Commission elucidated in the Amended Complaint and the Affidavit of Stan Howland cease and desist and that Declaratory Judgment be entered requiring that the Legislature and the Tax Commission be required to establish procedures consistent with the requirements of the State and Federal Constitutions.

The Amended Complaint and the Affidavit of Stan Howland, former Senior Level IV Tax Auditor of the Idaho Tax Commission, establish that the Defendants do not have in place either the statutory guidelines or the rules and regulations necessary to satisfy the requirements of the Idaho Constitution that the Legislature's taxing authority **NOT** be delegated to an agency of the Executive Branch of government without proper guidelines and standards which ensure that the functions constitutionally delegated to the Legislature are performed in a manner which is neither arbitrary, capricious, nor discriminatory.

The Affidavit of Stan Howland reads in part as follows at paragraphs 11 through 18:

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.

* * * * *


The Complaint and the Affidavit clearly establish clear and irreparable harm if the unconstitutional procedures are allowed to continue. The irreparable harm is not only the loss of millions of dollars per year to the State of Idaho at a time when jobs are being lost and services are not being provided, including the proper funding of education and the benefits of health and human services, but also in the unfair and unconstitutional casting of the burden of taxation from certain favored taxpayers to the shoulders of other taxpayers not similarly benefitted or privileged, all in violation of the mandates of the Idaho Constitution that taxes within classes be imposed fairly and equally.

Plaintiff respectfully requests that the Court require the Defendants to show cause, if any they have why the remedies prayed in Plaintiff's Amended Complaint should not be granted, together with such other and further relief as the evidence at the hearing might establish to be appropriate.

Respectfully submitted.

DATED this 8th day of July, 2010.

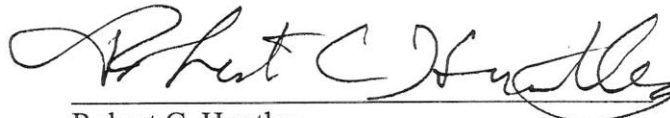
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official capacities and on behalf of the Idaho
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Defendants.

Case No. CV OC 1011269

**Order to Show Cause
and
Notice of Hearing**

The Court having considered the Verified Complaint of the Plaintiff, the Affidavit of Stan Howland, and the Amended Complaint of the Plaintiff, and being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, that on the ____ day of _____, 2010
the Defendants are ordered to appear before this Court in its courtroom in Boise, Idaho at ____

o'clock __.M. or as soon thereafter as counsel may be heard and show cause, if any they have, why a Preliminary Injunction should not be entered granting the relief requested in Plaintiff's Amended Complaint.

DATED this ____ day of July, 2010.

The Honorable Cheri C. Copsey
District Judge

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The Honorable Cheri C. Copsey
District Judge