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Uncommon Law

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August 31, 2010

Via Email

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

Re: Ringo v. Idaho State Tax Commission
Application for Issuance of Preliminary Injunction and Brief

Dear General Wasden, Steve and Melissa:

We provide herewith the Application for Issuance of Preliminary Injunction and brief we are filing with the Court.

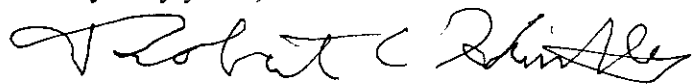
The Application has nine affidavits appended thereto and I believe we have earlier provided you all of them except for Appendix I, which is a Joint Affidavit of Stan Howland, and three incumbent auditors, two of whom are officed in Boise and one in Idaho Falls.

You will note that in these documents we have removed the Legislature as a Defendant and will be filing a non-objection to your motion to dismiss the Legislature if and when you consent to the appointment of an appropriate Investigating Panel.

I believe you will agree, after considering all of the affidavits, that a panel should be convened. In our meeting recently we each discussed "**our clients**". Clearly, at this time it is eminently clear that in addition to our formal clients listed in the pleadings, both your office and mine have an even higher duty to consider the following as our clients: (a) the People of Idaho; (b) the Idaho Constitution; and (c) our integrity both as attorneys and members of the Bar. We cannot in good conscience allow this situation to go un-investigated and unchanged.

We look forward to working with you in our mutual interests in serving the People of Idaho.

Very truly yours,



Robert C. Huntley

RCH:ljs
Attachments

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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 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

Brief in Support of

**Application, Pursuant to I.R.C.P.
Rule 65, for Issuance of Preliminary
Injunction Requiring the Defendants
to:**

**(1) Cease and desist from engaging in
utilizing "Compromise & Closing
Agreements" to reduce tax
assessments until such time as
statutes or rules are provided which
satisfy the requirements of the
Constitution of the State of Idaho;**

**(2) Cease and desist from engaging in
other unconstitutional activities
which deprive the State of Tax
Revenue, which activities are
demonstrated in the affidavits filed
herewith;**

and

**Request for Hearing to Determine
why Preliminary Injunction should
not Issue**

This brief is in support of Representative Shirley Ringo's Application for Preliminary Injunction under I.R.C.P. Rule 65 requiring Defendants to show cause, if any they have, as to why this Court should not issue a Preliminary Injunction requiring that the statutory violations and unconstitutional actions of the Tax Commission elucidated in the Amended Complaint and in the nine affidavits (Appendices A through I) appended to the Application filed herewith 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 Constitution of the State of Idaho and existing and amended statutes.

The Amended Complaint and the nine affidavits appended to the Application herein, 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. The Constitution and the applicable case law mandate 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 (Appendix A to the Application) reads in part as follows at paragraphs 11 through 16:

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.

The nine affidavits attached to the Application establish the following facts, among others:

- Currently the audit protests before the Commission involve a potential of more than \$75 Million in lost revenue to the state of Idaho (Appendix I, paragraph 3.)
- Taxpayer wrongfully claiming “nonbusiness income” allowed a \$680,000 reduction in taxes (Appendix I, paragraph 6(3)).
- Taxpayer allowed to violate Idaho Code § 63-3022 re “carryback” (Appendix I, paragraph 6(1)).
- Taxpayer illegally granted tax relief under recommendation of a Deputy Idaho Attorney General despite another Deputy Attorney General stating that it would be illegal to compromise the issue (Appendix I, paragraph 6(4)).
- Large multistate corporation refused to provide documentation. Commission issued written decision upholding denial of requested dispensation and then one month later offered the taxpayer \$70,000 in tax forgiveness in violation of Administrative Rule 500 (Appendix I, paragraph 6(5)).
- Without any legal basis, Commission illegally wrote off \$1.2 Million Dollars to a large multistate taxpayer, which taxpayer had received illegal writeoffs over a period of approximately nine (9) years (Appendix I, paragraph 6(7)).
- Deputy Attorney General persuaded Commission to grant protesting taxpayer a

\$10,000 concession on an issue that was not under protest to keep the taxpayer happy (Appendix I, paragraph 6(8)).

- Compromise and Closing Agreements (C&Cs) issued which reduced tax liabilities which were inconsistent with audit adjustments and violated the Tax Code (Appendix A, paragraph 6).
- Under current Idaho statutes and Commission regulations, there are no appropriate standards and guidelines to ensure that the Tax Commission meets the requirements of the Idaho Constitution (Appendix A, paragraph 11).
- Taxpayers frequently refuse to provide documentation and Commission refuses to enforce the production with its subpoena power, thus favoring some taxpayers over others (Appendix A, paragraph 16). Conservatively, 75% of all large corporate taxpayers refuse to provide documentation for the auditors on tax deductions or other issues and the Commission never requires the taxpayers to provide the information at the protest level (Appendix A, paragraph 17(e)).
- Wealthy Idaho taxpayer granted a \$1.6 Million Dollar tax break **before** the audit report was issued, in violation of Commission procedures and with no justification for the tax break (Appendix A, paragraph 17(a)).
- A taxpayer was audited seven times over twenty years utilizing a tax filing method not authorized by Idaho law and in all but one instance the taxpayer was granted a compromise. In one instance a \$220,000 tax liability was compromised down to \$80,000 (Appendix A, paragraph 17(i)).
- Auditor had an audit scheduled several months in advance and Commissioner

advised the auditor a week or two before the audit that the audit should be canceled. The Commissioner had accepted \$150,000 and based on a Montana audit under similar tax laws the liability was at least twice that amount (Appendix D, paragraph 6(1)).

- Tax liability of a very large corporation which had per annually avoided taxation while remitting very little sales tax and did not file tax returns in Idaho. Joint Task Force was convened to perform audit and the company refused to provide records. The Commission canceled the sales tax and income tax audits with the compromise that the corporation would open a call center in Idaho. The call center did open, but later closed (Appendix D, paragraph 6(2)).
- Following informal protest hearing, Commissioner stated that he and his wife “had a wonderful time at dinner with the corporation tax manager last night” and the corporation was awarded a very favorable C&C (Appendix D, paragraph 6(4)).
- Taxpayer was forgiven an entire \$80,000 assessment by a Commissioner with no appropriate reason given, with the senior auditor on the case noting that the taxpayer had a radio talk show and that the culture at the Commission was to compromise cases where political influence was involved (Appendix C, paragraph 7(a)).
- Audit on golf course indicated a liability of \$700,000 to \$900,000 which was forgiven in its entirety for no apparent or legal reason (Appendix C, paragraph 7(b)).
- Oregon furniture retailer which had outlets in Idaho was not collecting sales tax on furniture delivered to customers in Idaho. Taxpayer refused to provide documentation, Commission and Staff Attorneys refused to require documentation

and refused to require that the appropriate tax be imposed (Appendix C, paragraph 7(c)).

- Auditors are reluctant to invest efforts in the audit of politically connected and influential companies because the end result will be a C&C which results in a taxpayer paying less than that which is owed (Appendix C, paragraph 9).
- Politicians and legislators successfully exert pressure for tax benefits on behalf of constituents (Appendix B, paragraphs 7 through 11).
- Taxpayer that incorrectly claimed “nonbusiness income” (NBI) on capital gain received from the sales of a line of business illegally granted a C&C at a cost to the state of approximately \$65,000. The only excuse given by the Commissioner being that it was a “business decision” based upon a “liquidation exception”, which exception is nonexistent in the Tax Code (Appendix H, paragraph 7).
- Commission has developed a “Lets Make a Deal” approach rather than “Lets Enforce the Law” (Appendix F, paragraph 10).
- Deputy Attorney Generals and Commission “policy staff” refuse to advise auditors on tax issues (Appendix F, paragraphs 12, 13 and 14).
- A public utility allowed to receive “Investment Tax Credit” without documenting entitlement thereto and C&C issued without involvement of auditors or without even apprising auditors of the fact of the compromise (Appendix F, paragraphs 15(a), (b) and (c)).
- Auditor pressured by an Idaho Senator on behalf of a Minnesota corporation which had a plant in Idaho (Appendix F, paragraph 15(d)).

- Changes in the statute in 2009 via Senate Bill 1128 and in Commission Rule 500 have failed to address the problems and have in fact served to lessen and weaken the controls and oversight of the Commission in its issuance of C&Cs (Appendix G, paragraph 8).
- Taxpayer allowed to claim nonbusiness income with a single sheet of papers listing items and amounts (Appendix G, paragraph 10(a)).
- Taxpayer's unsubstantiated claims allowed by legal staff (Appendix G, paragraph 10(b)).
- Taxpayer permitted to receive a \$50,000 Idaho Investment Tax credit on property that the taxpayer could not demonstrate was ever used in Idaho (Appendix G, paragraph 10(c)).
- Taxpayer that claimed over \$5 Million Dollars in Idaho credit for increasing research and development activities, none of which was allowable and the taxpayer did not protest the disallowance or any other issue. There were thirteen other reasons for the assertion of the negligence penalty which amounted to nearly \$400,000 for the audit period. The taxpayer asked for and received abatement of all penalties even though the taxpayers did not protest a single audit issue. The auditor strongly objected to the abatement of the penalties and was threatened with disciplinary action if he persisted in his objections (a few years later the auditor was subpoenaed to testify by the United States Department of Justice at the criminal trial of the taxpayer's former employee who was responsible for the **fraudulent claims** (Appendix G, paragraph 10(d)).

- Worldwide high technology company granted \$100,000 reduction in tax assessment in situation where there is no rational or statutory basis for the discount of 20% of the assessment (Appendix I, paragraph 6(10)).
- Deputy Attorney General Larry Allen, in a case where the taxpayer was given a \$19,000 discount, advised the auditors who objected to the “giveaway” that no specific issues were conceded in the Compromise and Closing Agreement issued by the Commissioner (Appendix I, paragraph 6(10)).
- Taxpayer with long history of refusing to provide legally required documentation to support its tax returns and where the Commission had actually entered a Decision supporting the audit, was given a discount by a Commissioner through a C&C at a cost of over \$400,000 to the State (Appendix I, paragraph 6(11)).
- Taxpayer who was assessed penalties for filing tax returns on a basis where tax liability was incorrectly reported and where Investment Tax Credit carry-forwards were illegally claimed and where taxpayer was assessed negligence and substantial underpayment penalties. The taxpayer was given a Compromise and Closing Agreement which abated the penalties which the law and practices of the Commission require “**must**” be assessed (Appendix I, paragraph 6(12)).
- Deputy Attorney General Larry Allen involved in granting taxpayer a “discount” in violation of Idaho law (Appendix I, paragraph 6(13)).
- 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 facts set forth in the nine affidavits and summarized in paragraph 17 herein above establish the Plaintiff's entitlement to issuance of a Preliminary Injunction under various subsections of I.R.C.P. Rule 65 as follows:

- Rule 65(e)(1):** Restraining the commission or continuance of the acts complained of; and
- Rule 65(e)(2):** The commission of the unconstitutional acts alleged will produce waste and great or irreparable injury.
- Rule 65(e)(4):** The Defendants during the pendency of the action threaten, or vow to remove, or dispose of monies belonging to the State of Idaho with intent to defraud the State of Idaho of lawfully assessed revenues.

CONCLUSION

The Amended Complaint and the nine affidavits 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 has no clear, speedy nor adequate remedy at law and, therefore, injunctive relief is appropriate as well as relief by way of a Declaratory Judgment.

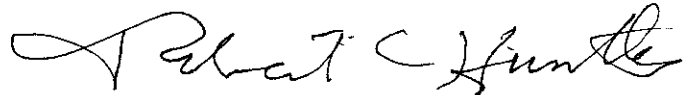
Plaintiff respectfully requests that the Court require the Defendants to show cause, if any

they have, why a Preliminary Injunction should not be issued consistent with the Application for Preliminary Injunction filed simultaneously herewith as well as such other and further relief, including Declaratory Judgment, as the evidence at the hearing might establish to be appropriate.

Respectfully submitted.

DATED this 31st day of August, 2010.

The HUNTLEY LAW FIRM PLLC

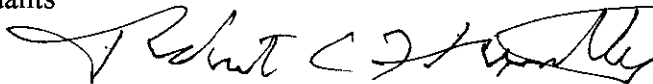


Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 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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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 IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM C.
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

**Application, Pursuant to I.R.C.P.
Rule 65, for Issuance of Preliminary
Injunction Requiring the Defendants
to:**

**(1) Cease and desist from engaging in
utilizing "Compromise & Closing
Agreements" to reduce tax
assessments until such time as
statutes or rules are provided which
satisfy the requirements of the
Constitution of the State of Idaho;**

**(2) Cease and desist from engaging in
other unconstitutional activities
which deprive the State of Tax
Revenue, which activities are
demonstrated in the affidavits filed
herewith;**

and

**Request for Hearing to Determine
why Preliminary Injunction should
not Issue**

COMES NOW the Plaintiff and Applies to the Court, pursuant to Rule 65 of the Idaho Rules of Civil Procedure, for a Preliminary Injunction requiring the Idaho State Tax Commission to:

(1) Cease and desist from utilizing its current “Compromise & Closing Agreement” system for granting reduction of tax assessments until such time as the Defendants establish standards and guidelines required by the Constitution of the State of Idaho which will render “constitutional” the delegation of the legislative power of taxation to the Idaho State Tax Commission; and

(2) Cease and desist from other conduct which unconstitutionally deprives the State of Idaho of tax revenues as provided by statute, which conduct will be set out more specifically below.

This motion is supported by the following documents which are incorporated herein by reference:

1. Verified Complaint filed herein;
2. Amended Complaint filed herein;
3. Initial Affidavit of Stan Howland attached hereto as Appendix A;
4. Affidavit of Joe Schwarz attached hereto as Appendix B;
5. Affidavit of Gary Mattox attached hereto as Appendix C;
6. Affidavit of Robert L. Chatterton attached hereto as Appendix D;
7. Affidavit of Barbara Nichols attached hereto as Appendix E;
8. Affidavit of Steve Fields attached hereto as Appendix F;
9. Affidavit of Paul Chugg attached hereto as Appendix G;
10. Affidavit of Terry Harvey attached hereto as Appendix H;
11. Joint Affidavit of Barbara Nichols, Terry Harvey, Stan Howland and Paul Chugg

attached hereto as Appendix I; and

12. Plaintiff's Brief in Support of Issuance of Preliminary Injunction filed herewith.

Grounds for Preliminary Injunction Under Rule 65(e)

The facts set forth in the documents referenced above and the facts summarized in the "Supporting Facts" section of this Application below establish that a Preliminary Injunction in favor of the Plaintiff and against the activities of the Defendants should issue. (Plaintiff has voluntarily consented to the dismissal of The Idaho State Legislature as per the motion of the State.)

Rule 65(e)(1): Restraining the commission or continuance of the acts complained of; and

Rule 65(e)(2): The commission of the unconstitutional acts alleged will produce waste and great or irreparable injury.

Rule 65(e)(4): The Defendants during the pendency of the action threaten, or vow to remove, or dispose of monies belonging to the State of Idaho with intent to defraud the State of Idaho of lawfully assessed revenues.

Facts Supporting Grounds for Issuance of Preliminary Injunction

The many egregious acts and omissions of the Defendants, perpetrated over a number of years and continuing to this date to the great detriment of the People of the State of Idaho and the institutions of state and local government are summarized or highlighted as follows with references to the substantiating affidavit(s):

- Currently the audit protests before the Commission involve a potential of more than \$75 Million in lost revenue to the state of Idaho (Appendix I, paragraph 3.)
- Taxpayer wrongfully claiming "nonbusiness income" allowed a \$680,000 reduction in taxes (Appendix I, paragraph 6(3)).

- Taxpayer allowed to violate Idaho Code § 63-3022 re “carryback” (Appendix I, paragraph 6(1)).
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- Compromise and Closing Agreements (C&Cs) issued which reduced tax liabilities which were inconsistent with audit adjustments and violated the Tax Code (Appendix A, paragraph 6).
- Under current Idaho statutes and Commission regulations, there are no appropriate standards and guidelines to ensure that the Tax Commission meets the requirements of the Idaho Constitution (Appendix A, paragraph 11).
- Taxpayers frequently refuse to provide documentation and Commission refuses to

enforce the production with its subpoena power, thus favoring some taxpayers over others (Appendix A, paragraph 16). Conservatively, 75% of all large corporate taxpayers refuse to provide documentation for the auditors on tax deductions or other issues and the Commission never requires the taxpayers to provide the information at the protest level (Appendix A, paragraph 17(e)).

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later closed (Appendix D, paragraph 6(2)).

- Following informal protest hearing, Commissioner stated that he and his wife “had a wonderful time at dinner with the corporation tax manager last night” and the corporation was awarded a very favorable C&C (Appendix D, paragraph 6(4)).
- Taxpayer was forgiven an entire \$80,000 assessment by a Commissioner with no appropriate reason given, with the senior auditor on the case noting that the taxpayer had a radio talk show and that the culture at the Commission was to compromise cases where political influence was involved (Appendix C, paragraph 7(a)).
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- Auditors are reluctant to invest efforts in the audit of politically connected and influential companies because the end result will be a C&C which results in a taxpayer paying less than that which is owed (Appendix C, paragraph 9).
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state of approximately \$65,000. The only excuse given by the Commissioner being that it was a “business decision” based upon a “liquidation exception”, which exception is nonexistent in the Tax Code (Appendix H, paragraph 7).

- Commission has developed a “Lets Make a Deal” approach rather than “Lets Enforce the Law” (Appendix F, paragraph 10).
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- Auditor pressured by an Idaho Senator on behalf of a Minnesota corporation which had a plant in Idaho (Appendix F, paragraph 15(d)).
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- Taxpayer who was assessed penalties for filing tax returns on a basis where tax liability was incorrectly reported and where Investment Tax Credit carry-forwards were illegally claimed and where taxpayer was assessed negligence and substantial underpayment penalties. The taxpayer was given a Compromise and Closing Agreement which abated the penalties which the law and practices of the Commission require “**must**” be assessed (Appendix I, paragraph 6(12)).
- Deputy Attorney General Larry Allen involved in granting taxpayer a “discount” in violation of Idaho law (Appendix I, paragraph 6(13)).

No Security for Bond Should be Required of Plaintiff Under Rule 65(c)

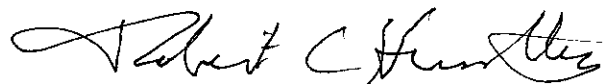
No losses to the Defendants will be incurred by requiring them to cease their illegal and unconstitutional conduct.

Request for Hearing

Plaintiff requests a hearing in support of this Preliminary Injunction be conducted by this Court at the earliest availability of the Court and counsel from and after December 1, 2010. The evidence involved in this action is primarily in the records and knowledge of the Defendants and Plaintiff can present her case for Preliminary Injunction after relatively limited discovery.

DATED this 31st day of August, 2010.

The HUNTLEY LAW FIRM PLLC



Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 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
Melissa Moody, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

melissa.moody@ag.idaho.gov

steve.olsen@ag.idaho.gov

Attorneys for the Defendants

A handwritten signature in black ink, appearing to read "Robert C. Huntley", written over a horizontal line.

Robert C. Huntley

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APPENDIX A TO COMPLAINT

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.

Affidavit of Stan Howland

STATE OF IDAHO)

County of Ada)
ss.

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

APPENDIX A

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.

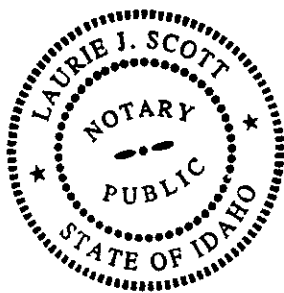
Further sayeth Affiant naught.


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

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
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rhuntley@huntleylaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
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State Representative SHIRLEY RINGO,

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The LEGISLATURE OF THE STATE OF
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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. CV OC 1011269

Affidavit of Joe Schwartz

STATE OF IDAHO)
) ss.
County of Latah)

JOE SCHWARTZ, being first duly sworn, deposes and says:

AFFIDAVIT OF JOE SCHWARTZ - 1

APPENDIX B

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

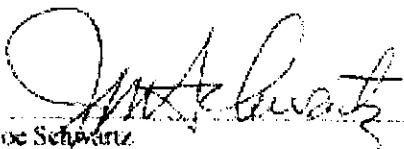
mistake and owe an additional \$20,000, and one has an example of the type of taxpayer who is most likely to be audited. That income bracket just happens to be the same type of taxpayer who can afford to make healthy political donations which in the real world make it possible to seek political favors 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.

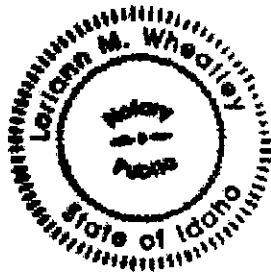
Further sayeth Affiant naught.

DATED this 25 day of July, 2010.


Joe Schwartz

On this 25 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.



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

Lorrain M. Wheatley

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
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Attorney for Plaintiff

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

Defendants.

Case No. CV OC 1011269

Affidavit of Gary Mattox

STATE OF IDAHO)

ss.

County of Ada)

GARY MATTOX, being first duly sworn, deposes and says:

AFFIDAVIT OF GARY MATTOX - 1

APPENDIX C

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 29th day of July, 2010.




Gary Mattox

On this 29th 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

Robert C. Huntley ISB#894
 The HUNTLEY LAW FIRM PLLC
 815 W. Washington Street
 P.O. Box 2188
 Boise, Idaho 83701
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Attorney for Plaintiff

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

Defendants.

Case No. CV OC 1011269

Affidavit of Robert Chatterton

STATE OF IDAHO)
 ss.
 County of Ada)

ROBERT CHATTERTON, being first duly sworn, deposes and says:

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.

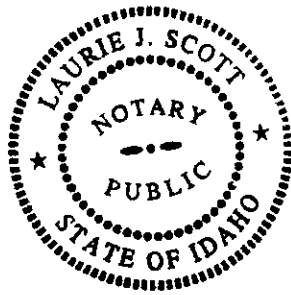
Further sayeth Affiant naught.

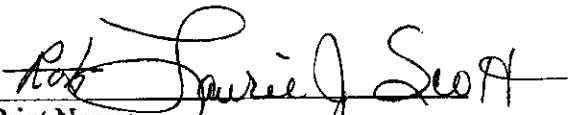
DATED this 29th day of July, 2010.


Robert Chatterton

On this 29th 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: Meridian Idaho
My commission expires: 3/19/14

Robert C. Huntley ISB#894
 The HUNTLEY LAW FIRM PLLC
 815 W. Washington Street
 P.O. Box 2188
 Boise, Idaho 83701
 Telephone: 208-388-1230
 Facsimile: 208-388-0234
 rhuntley@huntleylaw.com

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

Affidavit of Barbara Nichols

STATE OF IDAHO)
) ss.
 County of Ada)

BARBARA NICHOLS, being first duly sworn, deposes and says:

1. My most recent job title is Manager - Multistate Income Tax Audit and I have been an employee of the Commission since June of 1983. I manage a staff of twelve, all professionals conducting multistate corporate income tax audits. I have maintained an active

AFFIDAVIT OF BARBARA NICHOLS - 1

APPENDIX E

CPA license since 1980, in addition to earning by MBA from Boise State.

2. As a current long-time employee of the Idaho State Tax Commission I feel it is my public duty to be available for testimony relative to very serious problems in the administration of our Department.

3. I have watched with interest the revelations of former auditor Stan Howland over the past two years and am aware of the above captioned litigation and have read the affidavits filed in connection with this litigation of the following:

Stan Howland, former Level IV Tax Auditor, 28 years of service;
Robert Chatterton, Senior Tax Auditor, 33 years of service;
Gary Mattox, Principle Tax Auditor, 30 years of service; and
Joe Schwartz, 20 years of service with 18 as Manager of the Coeur d'Alene office

4. I have witnessed some of the same or similar actions as are depicted in one or more of the foregoing affidavits. I support the request in this litigation that an Investigating Panel be established. Such would be in the public interest.

5. Some of the activities set forth in the affidavits continue to this day and others are being implemented which will result in unequal taxation of taxpayers within various classes in violation of the mandate of the Idaho Constitution that taxes be equally applied to members of a defined class of taxpayers.

6. I am familiar with the Tax Code of the State of Idaho, Tax Commission Rule 500 as it read two years ago, and the present terms of the Tax Code brought about by Senate Bill 1128 enacted by the 2009 Legislature. That legislation has failed to address any of the problems and in fact it served to lessen and weaken the controls and oversight over the Commission in the issuance of Compromise & Closing Agreements.

7. The Affidavit of Stan Howland recounts several examples of inappropriate action by the Commission, one of which is the following in which I was one of the auditors involved with the case. I affirm that former auditor Stan Howland has correctly stated the facts:

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.

8. I am knowledgeable about numerous inequities in the administration of tax assessment and collection, which violate both the letter and the spirit of the Idaho Constitutional mandate, which have existed over the past ten or more years and continue to this date. I am willing to provide testimony and suggestions for improvement in the Tax Code and the Rules of the Commission to a proper Investigating Panel if we can be provided with appropriate protection of my continued employment with the Tax Commission in the service of the people of Idaho.

9. Currently, with rare exceptions, auditors are not permitted to be present when the Commissioner is negotiating with a taxpayer or his representative about possible compromises of tax assessments. Recently, the only deputy attorney general with comprehensive knowledge of multi-state taxation has been transferred out of our office.

Further sayeth Affiant naught.

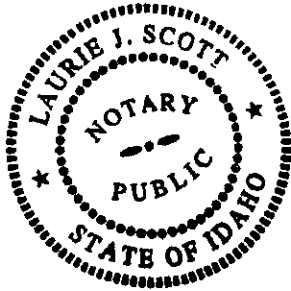
DATED this 16th day of August, 2010.

Barbara Nichols
Barbara Nichols

On this 16th day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Barbara Nichols**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she 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.

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



Robert C. Huntley ISB#894
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P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

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

Affidavit of Steve Fields

STATE OF IDAHO)
 ss.
County of Ada)

STEVE FIELDS, being first duly sworn, deposes and says:

1. I was employed by the Idaho State Tax Commission for 40 years, serving from March 1969 through March 2009. My entire 40-year career was spent in the Income Tax Audit Bureau.

AFFIDAVIT OF STEVE FIELDS - 1

APPENDIX F

2. I attended the University of Idaho from fall 1964 to January 1969, graduating with the Bachelor of Science degree in Accounting. I received specialized training in multi-state corporation taxation in a course offered by the Multi-State Tax Commission conducted in Montana in the 1990s. My specialty has been taxation of multi-state and international corporations and it is my experience that the quality of the auditors over the years working for the State of Idaho is exceptional, most of them being CPAs, and not only are they knowledgeable in the details of the law and the methodology employed nationwide, but in general they have a balanced view of the "big picture" and the basic principles of providing tax equity consistent with the Idaho Constitution as is possessed by the succession of Commissioners.

3. My first years at the Tax Commission I was assigned to audit Individual, Sub-S Corporations, and Fiduciary Income Tax Returns. During the early to mid-1980's I moved to auditing multi-state, multi-national corporations, among other duties.

4. The last 25+ years of my career I took great pride in the product I produced for the State of Idaho, i.e. audits of multi-state and multi-national corporations. I always did my utmost to protect the interest of the State of Idaho while being fair and equitable to all taxpayers. If the audit produced a refund, they got a refund. If it produced a tax due, the taxpayer got a bill.

5. Let me state that I have worked with both affiants Stan Howland and Robert Chatterton and find them to be honest and principled men. I read their affidavits and agree with the facts presented in them.

6. I recall the Robert Chatterton audit that was cancelled by Commissioner Hammond during the protest and C&C issued to the same taxpayer. I was surprised as were the rest of the audit staff that a scheduled follow-up audit could be compromised before the audit was performed.

7. I attended the same training session described by Robert Chatterton where Attorney General Wasden, then a deputy AG assigned to the Tax Commission, gave his definition of "taxpayer equity". I also did not agree with Mr. Wasden's definition and did not think it represented the Idaho State Tax Commission's mission statement to treat all taxpayers fairly and equitably.

8. When I started working "Corporation Audits", Larry Looney was the commissioner in charge of corporation audits as well as being chairman of the Tax Commission.

9. While Commissioner Looney did on occasion use the "C&C" (compromise and closing agreement), it usually involved a protest issue that concerned a "gray" area of the statute and often where there were significant hazards of litigation. The rest of the time his direction was to issue a decision either upholding or reversing the issue, or if needed, fight the issue in court. We tended to have a lower percentage rate of protests with some court cases over the "Looney Years".

10. In 1993, Dwayne Hammond was appointed to replace Larry Looney as Commissioner in charge of Corporation Income Tax. Commissioner Hammond ushered in the era of "Let's Make A Deal". Before long all corporate income tax protest hearings with the taxpayer's representative started out with the statement made by either the Deputy Attorney General or the Commissioner that we would entertain an offer in compromise if they had one.

"Let's Make A Deal" became pervasive at the Tax Commission at least where protests of individual and corporation income tax audits as well as sales tax audits were concerned.

One instance of an Individual Income Tax audit protest had the auditor coming back from the hearing scratching his head. The auditor stated the then Commissioner in charge of individual income tax had come into the hearing and stated to the taxpayer and his representative that this was their lucky day. It was the Commissioner's birthday and he had cancelled the audit assessment in question.

A corporation with large amounts of investment property that supposedly qualified for the Idaho Investment Tax Credit would not supply identifying documentation to the audit staff as required by the statute passed by the Legislature. This continued over at least 4 sequential audits. The corporation kept getting deals as to the amounts of Investment Tax Credit that could be used, unsupported by documentation. The audit staff was told by the Commissioner that in the next audit the Tax Commission would “hold their feet to the fire” i.e. make sure proper documentation was supplied. This statement was made after at least two of the follow-up audits where the credit was allowed in “C&Cs” without proper (or any) documentation.

In a number of protests where a decision upholding the audit was issued and sent to the taxpayer, it was almost immediately followed by a “C&C” for significantly less than the issued decision said was owed.

11. On numerous occasions, the audit staff had requested advice from “Legal” (Commissioners, Deputy AGs, Tax Policy staff) as to what data should be collected for issues to be upheld in Protests or Administrative appeals. It did not make sense to us to audit these same issues over and over again if they were not going to be upheld. Why waste the expense of an audit for the taxpayer as well as the Commission? The Audit Staff was continually told to just keep doing what we were doing and not to bother them (“Legal”).

12. Repeatedly during conversations with Deputy AGs and Tax Commission Policy Staff, the Auditors were told that the role of Deputy AGs and Policy Staff was to remain neutral in Administrative Appeals, not to advise the auditors on tax issues.

13. I finally decided that my only recourse was to do the best job I could and produce the best audit that I could based on the information provided by the taxpayer during the audit. What happened in “Legal” would eventually have to be justified by their office.

14. After Commissioner Hammond retired, the audit staff hoped that there would be a change. However, the pervasive “Let’s Make a Deal” attitude continued on in “Legal” and the audit staff was even less involved in the protest process than they had been in the “Hammond Years”.

15. The following is typical of some of the events which cause me great concern relative to equal taxation of taxpayers within the same "class" as required by the Idaho Constitution:

(a) There is an incident in which I was involved as an auditor concerning the assessment and imposition of a tax on a public utility. Specifically at issue was the extent to which that utility should receive the "Investment Tax Credit." The tax return filed by the utility claimed certain investment tax credits, and when the audit staff requested documentation to justify the claimed credit, the utility flatly refused to provide the necessary documentation. The ultimate result was that the Commission did not demand the documentation and allowed a major portion of the claim requested without requiring any supporting documentation. That was settled by a Compromise and Closing Agreement which could not have provided any disciplined or rational basis for the allowance of the credit. This example is contrasted with the situation of other utilities which maintain and provide extensive records to justify their claimed credits.

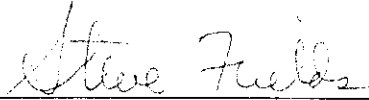
(b) Typically, in a circumstance such as recited in "(a)" above, the auditors were not privy to or invited into the conversations between the Commissioner, legal staff and the taxpayers representative which resulted in the final determination of the assessment. Many times following the Closing Agreement with the taxpayer, the file would be "sent to legal" to be retained in legal's records and although the auditors would eventually be apprised of the amount of the discounted provided, we would not be apprised of the rationale or the methodology or the legal basis of its determination.

(c) During the period when Dwayne Hammond was a Commissioner, there were periods when the auditors were not invited at all to participate in the final decision-making or even apprised of the rationale behind the decisions. Under Commissioner Chigbrow, it was seldom that an auditor was either consulted about or advised of the rationale for C&Cs.

(d) One example of the pressures that auditors are faced with in Idaho is a situation wherein a corporation located in Minnesota had a plant in eastern Idaho. During the course of that audit I received a telephone call from a prominent State Senator, who sought to influence my audit. I advised him that I could not talk with him without a power of attorney from the taxpayer. He proceeded to tell me that the taxpayer might relocate to another state, but I politely declined to be influenced by that legislative pressure.

Further sayeth affiant naught.

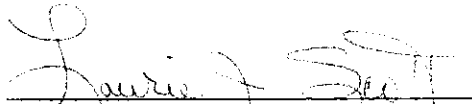
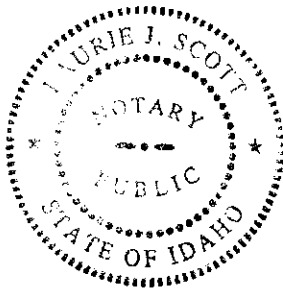
DATED this 16th day of August, 2010.



Steve Fields

On this 16th day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Steve Fields**, 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.



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

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
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Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

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

Affidavit of Paul Chugg

STATE OF IDAHO)
ss.
County of Bonneville)

PAUL CHUGG, being first duly sworn, deposes and says:

1. My job title for the past 28 years is Auditor 3 and I have been an employee of the Commission since June of 1980.
2. I earned a BBA from Idaho State University in 1980 and have maintained a CPA

AFFIDAVIT OF PAUL CHUGG - 1

APPENDIX G

license in the State of Idaho since 1982.

3. I have read much of Stan's Howland's materials which he has presented over the past two years, including the affidavit filed by him as an attachment to the Amended Complaint herein. I stand by him 100% as independent verification that the treatment received by some taxpayer's is inequitable, unethical, and immoral. My sources indicate that this treatment is not limited to the large, multistate taxpayers. However, the Governor, the Attorney General, Senator Hill, Vern Gentry, and apparently many others do not share my views.

4. As a current long-time employee of the Idaho State Tax Commission I feel it is my public duty to be available for testimony relative to very serious problems in the administration of the Idaho State Tax Commission.

5. I have watched with interest the revelations of former auditor Stan Howland over the past two years and I am aware of the above captioned litigation and have read the affidavits filed in connection with this litigation of the following:

Stan Howland, former Level IV Tax Auditor, 28 years of service;
Robert Chatterton, Senior Tax Auditor, 33 years of service;
Gary Mattox, Principle Tax Auditor, 30 years of service; and
Joe Schwartz, 20 years of service with 18 as Manager of the Coeur d'Alene office;
Barbara Nichols, current employee; and
Terry Harvey, current employee

6. I have witnessed some of the same or similar actions as are depicted in one or more of the foregoing affidavits. I support the request in this litigation that an Investigating Panel be established. Such would be in the public interest.

7. Some of the activities set forth in the affidavits continue to this day and other inappropriate actions are being implemented which will result in unequal taxation of taxpayers within various classes in violation of the mandate of the Idaho Constitution that taxes be equally

applied to members of a defined class of taxpayers.

8. I am familiar with the Tax Code of the State of Idaho, Tax Commission Rule 500 as it read two years ago, and the present terms of the Tax Code brought about by Senate Bill 1128 enacted by the 2009 Legislature. That legislation (and the subsequent amendment of Rule 500) failed to address any of the problems and in fact it served to lessen and weaken the controls and oversight over the Commission in the issuance of Compromise & Closing Agreements.

9. I am knowledgeable about numerous inequities in the administration of tax assessment and collection, which violate both the letter and the spirit of the Idaho Constitutional mandate. These violations have been occurring over the past ten or more years and continue to this date. I am willing to provide testimony and suggestions for improvement in the Tax Code and the Rules of the Commission to a proper Investigating Panel if I can be provided with appropriate protection of my continued employment with the Tax Commission in the service of the people of Idaho.

10. Some examples of improper or questionable practices in the administration of the Tax Code which I have personally witnessed include the following:

(a) A taxpayer claimed non-business income. The only documentation provided to the audit staff was a single sheet of paper listing items and amounts. In the prior examination of the same taxpayer similar claims were made but the Commission had issued a decision disallowing the unsubstantiated deductions. However, in my audit the taxpayer was allowed to deduct most of the unsubstantiated items.

(b) A taxpayer protested an audit. During the appeals process the taxpayer was allowed to raise the issue of non-business income even though this was not an audit issue since no deductions for non-business income were claimed on the returns. During the appeal

process the audit staff was not allowed to investigate or question the taxpayer's claims. However, the taxpayer's unsubstantiated claims were generally allowed by the legal staff. Although taxpayers are allowed extreme leeway in raising issues not previously raised during the examination the audit staff is not afforded this same luxury. In addition, the taxpayer's claims are generally accepted at face value.

(c) During the appeal process a taxpayer was allowed over \$50,000 in Idaho investment tax credit on mobile property even though the taxpayer could not specifically show that the property in question was ever used in Idaho, a requirement that the legislature made very clear when it enacted Idaho Code, Section 63-3029B.

(d) I conducted an audit of a taxpayer that claimed over \$5 million in Idaho credit for increasing research and development activities, none of which was allowable and the taxpayer did not protest this or any other issue. In addition, there were 13 other reasons for the assertion of the negligence penalty which amounted to almost \$400,000 for the audit periods. The taxpayer asked for and received the abatement of all penalties even though the taxpayer did not protest a single audit issue. **I objected strongly to the abatement of the penalties but was threatened with disciplinary action if I persisted with my objections.** A few years later I was subpoenaed to testify by the United States Department of Justice at the criminal trial of the taxpayer's former employee who was responsible for the fraudulent claims.

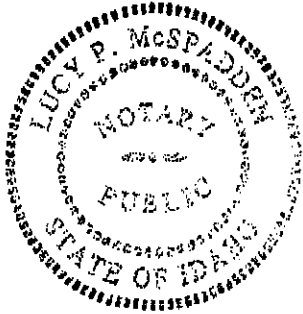
Further sayeth Affiant naught.

DATED this 23 day of August, 2010.

Paul Chugg
Paul Chugg

On this 23 day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul Chugg, 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.



Lucy P. McSpadden
Print Name:
NOTARY PUBLIC for the State of Idaho
Residing at: Bonneville, Idaho
My commission expires: 9-7-10

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

Attorney for Plaintiff

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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

Affidavit of Terry Harvey

STATE OF IDAHO)

ss.

County of Ada)

TERRY HARVEY, being first duly sworn, deposes and says:

1. My most recent job title is Auditor 4 and I have been an employee of the Commission since June of 1979.
2. As a current long-time employee of the Idaho State Tax Commission I feel it is

AFFIDAVIT OF TERRY HARVEY - 1

APPENDIX #

my public duty to be available for testimony relative to very serious problems in the administration of our Department.

3. I have watched with interest the revelations of former auditor Stan Howland over the past two years, I am aware of the above captioned litigation and have read the affidavits filed in connection with this litigation of the following:

Stan Howland, former Level IV Tax Auditor, 28 years of service;
Robert Chatterton, Senior Tax Auditor, 33 years of service;
Gary Mattox, Principle Tax Auditor, 30 years of service; and
Joe Schwartz, 20 years of service with 18 as Manager of the Coeur d'Alene office

4. I have witnessed some of the same or similar actions as are depicted in one or more of the foregoing affidavits. I support the request in this litigation that an Investigating Panel be established. Such would be in the public interest.

5. Some of the activities set forth in the affidavits continue to this day and others are being implemented which will result in unequal taxation of taxpayers within various classes in violation of the mandate of the Idaho Constitution that taxes be equally applied to members of a defined class of taxpayers.

6. I am familiar with the Tax Code of the State of Idaho, Tax Commission Rule 500 as it read two years ago, and the present terms of the Tax Code brought about by Senate Bill 1128 enacted by the 2009 Legislature. That legislation failed to address any of the problems and in fact it served to lessen and weaken the controls and oversight over the Commission in the issuance of Compromise & Closing Agreements.

7. The Affidavit of Stan Howland recounts several examples of inappropriate action by the Commission, one of which is the following in which I was one of the auditors involved with the case. I affirm that former auditor Stan Howland has correctly stated the facts:

A taxpayer claimed nonbusiness income (NBI) treatment on the capital gain received from the sales of a line of business that had been part of its overall unitary business (and therefore treated as business related) for over 10 years. The taxpayer refused to answer the auditor's questions regarding the claimed NBI. The auditor found this NBI treatment to be incorrect which was supported by the Commission in a written decision. The taxpayer then initiated settlement discussions which prompted the Commission to then invalidate its written and published decision by settling this case with a Compromise and Closing agreement (C&C). All discussions and legal analysis related to the C&C were specifically kept secret from the auditors.

The C&C cost the taxpayers in this state approximately \$65,000 in tax, penalty, and interest for the 2002 tax year. The tax was lowered by 33% and total penalty (\$13,255) was abated.

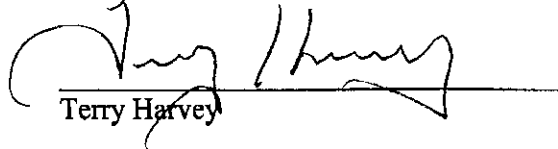
The Commission had no legal authority to follow its written decision with a C&C. The only reasoning offered by the Commission was that it made a "business decision" to try to settle the case in light of the taxpayer's "liquidation exception" argument. This argument was made in private discussion that excluded the audit staff. There is no "liquidation exception" in Idaho law. This has been clearly stated in Commission decisions Docket No. 16707 & Docket No. 18340. "Business decision" is not listed as grounds for a C&C under Rule 500 for good reason. This reasoning is so vague that it is meaningless and would remove all legitimate internal control from the process. The Commission simply cut another "deal" with a large multi-state taxpayer: one that is in direct violation of Idaho Rule 500.

8. I am knowledgeable about numerous inequities in the administration of tax assessment and collection, which violate both the letter and the spirit of the Idaho Constitutional mandate, which have existed over the past ten or more years and continue to this date. I am willing to provide testimony and suggestions for improvement in the Tax Code and the Rules of the Commission to a proper Investigating Panel if I am provided with appropriate protection of my continued employment with the Tax Commission in the service of the people of Idaho.

9. Currently, with rare exceptions, auditors are not permitted to be present when the Commissioner is in negotiation with a taxpayer or his representative about possible compromises of tax assessments. Recently, the only deputy attorney general with comprehensive knowledge of multi-state taxation has been transferred out of our office.

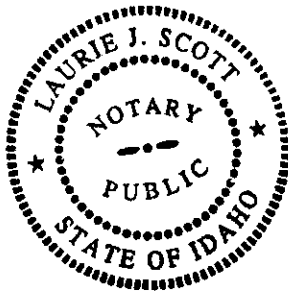
Further sayeth Affiant naught.

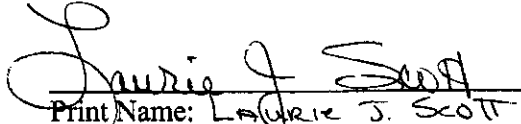
DATED this 19 day of August, 2010.


Terry Harvey

On this 19th day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Terry Harvey**, 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: Mendenhall, Idaho
My commission expires: 3/19/14

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

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 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

Joint Affidavit of:

Barbara Nichols
Terry Harvey
Stan Howland and
Paul Chugg

STATE OF IDAHO)

ss.

County of Ada)

BARBARA NICHOLS, TERRY HARVEY, STAN HOWLAND and PAUL CHUGG,
being first duly sworn, depose and say:

1. We, Barbara Nichols, Terry Harvey, Stan Howland and Paul Chugg, are each
persons who have been or now are auditors for the Idaho State Tax Commission and each of us

**JOINT AFFIDAVIT OF BARBARA NICHOLS, TERRY HARVEY,
STAN HOWLAND AND PAUL CHUGG- 1**

APPENDIX I

have previously provided affidavits in this case. We affirm those affidavits and provide further information. Unless otherwise indicated, the testimony below is within the direct or indirect knowledge of each of us.

2. As current long-time employees of the Idaho State Tax Commission, we feel it is our public duty to be available for testimony relative to very serious problems in the administration of our Department.

3. The Idaho Constitution requires that taxes be assessed and collected equally among taxpayers of the same class. We can document that the practices of the Commission in recent years have utilized the Compromise and Closing Agreements (“C&Cs”) and other methodologies in a manner which improperly favors some taxpayers over others. We can further document that virtually millions of dollars of valid assessments and penalties have, in the past ten years, unjustifiably been forgiven and abated, with not only unfairness as between taxpayers but also great loss of revenues to the State of Idaho. **Currently the audit protests before the Commission involve a potential of more than \$75 million in lost income to the state of Idaho.**

4. We have each witnessed some of the same or similar actions as are depicted in one of more of the earlier affidavits filed herein. We continue to support the request in this litigation that an Investigating Panel be established. Such would be in the public interest.

5. We are willing to provide testimony and suggestions for improvement in the Tax Code and the Rules of the Commission before a proper Investigating Panel if we can be provided with appropriate protection of our continued employment with the Tax Commission in the service of the people of Idaho.

6. Additional examples of statutory violations and unconstitutional activities of the Commissioners and their staff beyond those enumerated in our previous affidavits are as follows:

1. (Barbara, Terry, & Stan) A taxpayer applied its net operating loss on its original tax return according to Idaho law. It later filed amended returns to apply the loss to prior years, which is not allowed as an election to forego this carry-back has been previously made. The audit staff denied the refund claimed on the amended return. The taxpayer called the Commissioner and requested special consideration. The Commissioner ordered the audit staff to void the audit report and issue the taxpayer the refund. This action allowed the taxpayer to violate Idaho Income Tax Code Section 63-3022 and was in direct violation of Idaho Administrative Rule 500. This taxpayer was allowed a different net operating loss treatment than allowed to any other taxpayers.

2. (Barbara and Stan) A taxpayer claimed nonbusiness income treatment on various classifications of income that were received from partnerships and other entities that were an integral part of its business operations. Idaho law does not allow nonbusiness treatment on income of this type. The audit staff disallowed these claims and issued an audit report which was protested by the taxpayer. The Commissioner entered into a secret compromise with the taxpayer and allowed 50% of the nonbusiness income and removed the penalties. This settlement was made in direct violation of the Idaho Administrative Rule 500.

3. (Barbara and Stan) A taxpayer claimed "nonbusiness" income treatment on the gain reported from the sale of a line of business. This line of business had been previously reported as "business" by the taxpayer by including it in its worldwide unitary business, which resulted in a reduction of the taxpayer's Idaho tax liability in prior years. The audit staff issued an audit report disallowing this "nonbusiness" income treatment as it did not qualify as such under Idaho law. The Commissioner resolved the taxpayer's subsequent protest by allowing 50% of the income in question to be treated as nonbusiness income. This compromise was made in direct violation of Idaho law and cost the State approximately **\$680,000**.

4. (Stan) A taxpayer claimed nonbusiness income on the sale of an active part of its business. This business operation had been intentionally transferred to another affiliate with the company to avoid a tax liability in several states. A thorough audit revealed the business relationship of this business and the taxpayer's claims were not allowed. The taxpayer protested the audit. Just a few days before the scheduled conference with the Commission, the taxpayer contacted Larry Allen, the deputy attorney general assigned to the case, and made an offer of settlement. The taxpayer agreed that the income was incorrectly classified as "nonbusiness", and agreed that the business was unitary with the parent. However, the taxpayer wanted the Commission to determine that a subsidiary holding an Idaho partnership lacked Idaho nexus and therefore was not taxable in this state.

This non-taxable treatment is in direct conflict with Idaho law, and was admitted as being so by Mr. Allen. However, Mr. Allen determined to allow this concession to the taxpayer as "it did not

amount to much money.” He later tried to support his illegal actions by obtaining the written opinion of another deputy attorney general. This individual, Chuck Zalesky stated clearly that the Commission could relieve anyone of their tax liability **even if the audit staff had correctly applied the law and the Commission’s position would prevail in a court of law.** The Commission threatened punitive action against the auditor for expressing his belief that this case was compromised illegally.

5. (Stan) A large multistate corporation refused to provide the audit staff with legally required documentation necessary to verify its activities within this state. The audit staff gathered enough information to issue an audit report. After the taxpayer protested the audit, the Commission gathered additional information that further supported the audit position. This case was assigned to Deputy Attorney General, Larry Allen. The Commission issued a written decision upholding the findings of the audit staff. Approximately one month later, a Commissioner, the Deputy AG, the Division Administrator, and the Bureau Chief met and offered the taxpayer a reduction of almost \$70,000. The audit staff was not notified of these “negotiations” until the after the fact. The Commission was in direct violation of Idaho Administrative Rule 500 with this compromise of tax liability.

6. (Stan and Terry) The Tax Commission has a long history with this taxpayer of not filing correct tax returns. In the past the issue was documentation of nonbusiness income. In every prior audit cycle the taxpayer refused to provide documentation but it was always given a deal by the Commission. In the latest audit they did provide documentation and a very good decision was subsequently written by the Commission that upheld the audit in its entirety. After the decision was issued and publically reported on the Commission web site, the taxpayer offered to pay 50% of the tax and interest due, and 0% of the penalty. The Tax Commission counter-offered 80% and the taxpayer accepted. With this 80% settlement, and the removal of the penalty, the State lost just under \$150,000.

7. (Barbara, Stan & Terry) A large multistate taxpayer claimed that several sales affiliates with substantial activity in Idaho did not have nexus in this state and were therefore not taxable. This taxpayer refused to respond to the audit staff’s nexus questions, would not answer questions regarding their employee’s activity in Idaho, and refused to allow the auditors to review corporate minutes. This refusal to provide documentation was consistent with the taxpayer’s behavior on prior audits.

The audit staff was able to gather sufficient information from other sources to clearly show that most of the company’s affiliates were taxable. This finding of taxability was identical to the results reached by the Multistate Tax Commission on the prior audit. The Tax Commission settled this audit protest with a compromise that allowed the taxpayer to treat six (6) affiliates as not taxable in this state. These 6 affiliates had approximately \$8.2 million in Idaho payroll and over \$59 million in Idaho receipts during this audit period.

The auditors were told about the compromise after the fact and they adamantly disagreed with the settlement. The Commission settled this case for approximately 18% of the total deficiency

issued by the audit staff. **This amounts to a write-off of approximately \$1.2 Million.** There is absolutely no legal support for this extremely troubling compromise. The Commission continued its policy of illegally allowing this taxpayer to avoid paying the majority of its Idaho tax liability. This particular taxpayer has received illegal write-offs over a period of approximately six (6) years.

8. (Stan) Although numerous audit adjustments were made to this large corporate taxpayer, the only two adjustments protested by the taxpayer dealt with the investment tax credit (ITC). During the informal conference the taxpayer conceded the "replacement" issue but protested the auditor's method of determining the amount of qualified ITC on moveable property. The auditors were bound by the methodology mandated by the Idaho Supreme Court in the *UNION PACIFIC/BURLINGTON NORTHERN* decision. This audit was eventually settled with a compromise and closing agreement (C&C). The taxpayer was allowed to determine the amount of qualifying ITC moveable property by applying a method not authorized by the Supreme Court, Idaho tax law, or Commission policy. Prior to the C&C being completed, the taxpayer's representative called the deputy attorney general in charge of the case, Bill von Tagen, and reopened the "replacement" issue. Subsequently, Mr. von Tagen persuaded the Commissioner to give the taxpayer an additional \$10,000 "ITC concession". This was a cash deal that was not tied to any claimed or adjusted ITC. His justification was that this would "keep them happy" so that they would not fight a throwback sales adjustment, an adjustment that the taxpayer had agreed to without question during the audit. Mr. von Tagen was fully aware that this adjustment was not, and had never been, an issue with this taxpayer. The Income Tax Bureau Chief was incensed at this suspicious special tax break, but was unable to convince the Commissioner to reject Mr. von Tagen's recommendation.

9. (Barbara) A worldwide high technology company claimed nonbusiness income on the gains resulting from sale of stock in a foreign subsidiary. The stock sale, a public stock offering, reduced the taxpayer's holding in the foreign subsidiary from 100% to an ownership percentage to between 70% and 80%. The taxpayer had originally formed the subsidiary several years prior and had included the foreign subsidiary in its worldwide unitary return for all tax years prior and subsequent to the stock sales.

For state income tax purposes, the taxpayer significantly underreported its Idaho tax liability by claiming the stock gains as nonbusiness income. Upon audit, the gain was appropriately reclassified as business income. The taxpayer protested and a decision was issued upholding the audit with respect to business income on the subsidiary stock sale, in addition to upholding the assessment of the 10% understatement penalty. The taxpayer appealed the decision and a Compensation and Closing Agreement was made to exclude 20% of the gain from Idaho taxation at a cost exceeding \$100,000 to the State. There is no statutory or rational basis for the "gifting" of that 20 percent.

10. (Terry) The auditors issued an audit report which combined the taxpayer's finance company with the parent company. The finance company provided financing for its dealers and for retail customers that purchased products manufactured by the taxpayer. This unitary

relationship was thoroughly established by the auditors **resulting in a mandatory combined filing under Idaho law**. The taxpayer protested the audit and claimed its finance company was not unitary. The total assessment was just over \$39,000. In the Compromise and Closing Agreement the taxpayer agreed to pay \$20,000. The auditors were not part of the negotiations and were not told why the taxpayer was given a \$19,000 discount. When asked in an email from the auditors to explain how the compromise was reached and how to address issues in future audits, Deputy Attorney General, Larry Allen, stated that “no specific issues were conceded in the compromise”. It was never explained to the audit staff how, or why, the Commission would agree with the auditors determinations, but not assess the amount of tax due.

11. (Barbara) A large retail operation offered its customers proprietary and non-proprietary credit cards to finance purchases. Within Idaho, the company operated one of several credit card service centers in addition to the retail stores. During two audit cycles encompassing seven (7) tax years, the taxpayer sold business operations which included the credit card division, along with the credit card receivables and goodwill associated with credit card holders, and a foreign subsidiary operation in the same line of business as the domestic operations.

The taxpayer claimed nonbusiness income on the gains arising from these transactions. On audit, it was clearly established that these gains should have been reported as business income subject to apportionment and taxation by the state. In addition, the taxpayer claimed Idaho investment tax credits (ITC) in all tax years, but would not provide supporting documentation to include identifying the assets for which the ITC was claimed, **as required by Idaho statutes**. Accordingly, the audit staff disallowed the unsubstantiated ITC claimed.

The taxpayer protested and a **Decision** was issued upholding the audit staff on disallowed nonbusiness income claims and Idaho investment tax credits, in addition to upholding the assessed negligence and tax understatement penalties. Subsequently, the commissioner compromised the case **at a cost exceeding \$400,000 to the State**. This taxpayer has a long history of refusing to provide legally required documentation to support their tax returns.

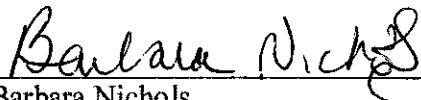
12. (Paul) A taxpayer filed its tax returns on a “water’s edge” basis, but failed to make a valid election. Without making this election, Idaho law requires the taxpayer to file on the “worldwide combined” method. The taxpayer also claimed ITC carry-forward from prior year’s tax returns. However, the taxpayer did not claim any ITC on the prior year’s returns which obviously makes it impossible to have any credit to carry-forward. The taxpayer was extremely negligent in the filing of these returns. We assessed negligence and substantial underpayment penalties for these issues. The substantial underpayment penalty **must** be assessed unless the taxpayer can show reasonable cause for the understatement. There was no reason, other than to reduce its tax liability, for this taxpayer to ignore the water’s edge election requirements and to claim ITC when such did not exist. The taxpayer filed a protest but only requested the abatement of the penalties. The Commission accepted the taxpayer’s offer and settled with a Compromise and Closing Agreement.

13 (Paul) The taxpayer had continuously filed its tax return on an incorrect filing method. This audit, and the two prior audits, placed the taxpayer on a worldwide unitary combined filing. The company's tax manager told the auditors that he had protested the prior audits and received a 5 to 10 percent discount from the Tax Commission each time. Even though he knew that the audit adjustments were correct on the current audit, the tax manager said that he would file a protest again to get the same "discount" from the Commission. Included with this audit report were final federal audit adjustments to federal taxable income for the previous audit cycle. The audit was protested and the Commission followed through with yet another discount, including the IRS audit adjustments that cannot be compromised. Deputy Attorney General, Larry Allen ignored this fact and gave the taxpayer the discount on the IRS adjustments to federal taxable income. **These "discounts" are in direct violation of Idaho law.**

7. We are informed, and allege it to be the fact, that Deputy Attorney General Larry Allen was involved in authoring the Attorney General's Opinion (signed by Chief of Civil Litigation, Steve Olsen) submitted in response to the original allegations of Stan Howland two years ago. As some of the examples above demonstrate, there is substantial doubt as to whether Mr. Allen was or is in a position to provide unbiased advice to either Mr. Olsen or Attorney General Wasden.

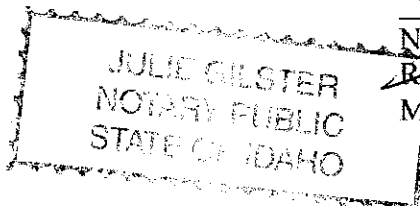
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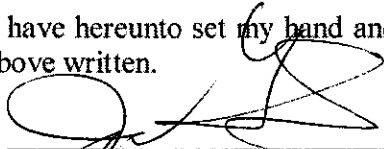
DATED this 31 day of August, 2010.


Barbara Nichols

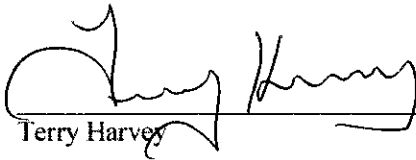
On this 31 day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Barbara Nichols**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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



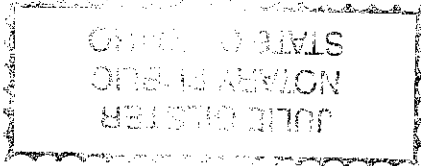

NOTARY PUBLIC for the State of Idaho
Residing at: Kuna, Idaho
My commission expires: 10-11-2011

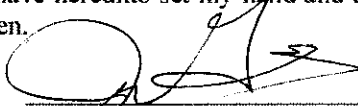
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STAN HOWLAND AND PAUL CHUGG- 7

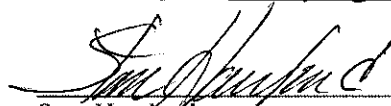

Terry Harvey

On this 31 day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Terry Harvey**, 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.

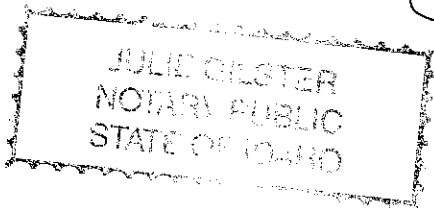


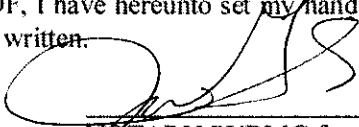

NOTARY PUBLIC for the State of Idaho
Residing at: Rune, Idaho
My commission expires: 10-11-2011


Stan Howland

On this 31 day of August, 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.




NOTARY PUBLIC for the State of Idaho
Residing at: Rune, Idaho
My commission expires: 10-11-2011

Paul Chugg

On this ____ day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Paul Chugg**, 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.

NOTARY PUBLIC for the State of Idaho
Residing at: _____, Idaho
My commission expires: _____

Terry Harvey

On this ____ day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Terry Harvey**, 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.

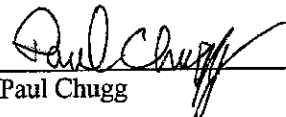
NOTARY PUBLIC for the State of Idaho
Residing at: _____, Idaho
My commission expires: _____

Stan Howland

On this ____ day of August, 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.

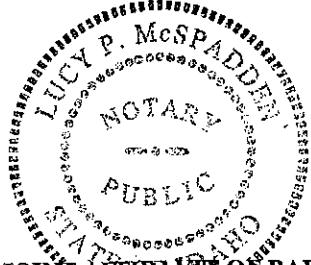
NOTARY PUBLIC for the State of Idaho
Residing at: _____, Idaho
My commission expires: _____

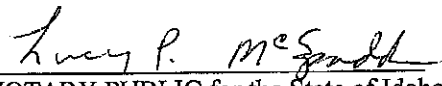


Paul Chugg

On this 31 day of August, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Paul Chugg**, 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.





NOTARY PUBLIC for the State of Idaho
Residing at: Bonanza, Idaho
My commission expires: 9-7-10

**JOINT AFFIDAVIT OF BARBARA NICHOLS, TERRY HARVEY,
STAN HOWLAND AND PAUL CHUGG- 8**