



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 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, House 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 violations 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 \_\_\_ day of May, 2010.

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Stan Howland

On this \_\_\_ day of May, 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.

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