

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](mailto: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.

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

Plaintiff as her claim alleges:

**PARTIES**

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

standing and an interest in requiring the Legislature, the Executive, and the agencies of government to comply with the duties imposed by the Constitution of the State of Idaho in implementing and executing the imposition and collection of taxes in a uniform manner, and in this instance, especially, but not exclusively, income taxes imposed upon multi-state corporations doing business in the State of Idaho.

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

**§ 5. Taxes to be uniform – Exemptions**

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

**STATEMENT OF THE FACTS**

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

4. The Idaho Supreme Court has on several occasions ruled that the Idaho Legislature may not delegate its power to tax to an outside agency, such as the Defendant Idaho State Tax Commission, without “meaningful standards.” For example, in *Sun Valley Company v. The City of Sun Valley*, 109 Idaho 424 at 427 (1985) the Court stated:

The non-delegation doctrine, as it is called, traditionally required that laws delegating legislative authority to either the executive branch or the judiciary [provide] meaningful “standards.” These standards which insure that

decision makers in the other branches, who are not publicly accountable through the election process, would not act arbitrarily, capriciously, or discriminatorily.

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

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

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

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

9. The C&Cs result in a loss of revenue to the State of Idaho in a magnitude of millions of dollars each year, unfairly favoring those taxpayers in the subject classes who happen to know

how to “game the system,” with a resultant shifting of the tax burden to other taxpayers.

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

11. In the years following 1996, the improper C&Cs have been and are increasingly utilized by the Commission to grant illegal reductions in tax payments to taxpayers (including multi-state corporations) who protested their assessments.

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

- The audit staff performs its function and makes a report as to the resulting tax, penalty, and interest deficiency.
- Frequently the audit staff makes a request of the taxpayer for documentation necessary to making a proper determination of the taxpayer’s full liability. Frequently the taxpayers are refusing to provide the properly requested and necessary documentation and the Commissioners refuse to enforce their subpoena power in a very *ad hoc* and infrequent manner, thus favoring some taxpayers over others.
- If a taxpayer objects to the assessment recommended by the auditor, the case next goes to the desk of a single Commissioner (in the case of multi-state corporations, to the desk of Commission Chairman Royce Chigbrow) and then the Commissioner

in secret negotiates with the taxpayer and works out a compromise.

- The Commissioner who is considering the protest (who does not necessarily or usually have special expertise in the multi-state audit arena) does not consult with the auditor.
- The C&Cs are signed and filed in the confidential files of the Commission. The agreements are not available for any third party to examine and make a determination as to whether the agreements are founded upon a lawful premise. The current statutory framework does require that the Commission make a report to the Legislature in March of each year. However, the report by the Commission to the Legislature does not contain any detail by which a C.P.A., a lawyer, or any other expert can determine the basis or legal correctness of the final tax assessment.
- There ostensibly is a procedure where the single Commissioner involved is expected to consult with a second Commissioner in the completion of a C&C over a certain dollar amount. However, each of the four Commissioners preside over different types of taxes, i.e., income, sales, property, etc., with multi-state taxation being one of the more complex fields. Not only is the lead Commissioner lacking in expertise in the field, but no other Commissioner has developed the required expertise to execute a meaningful sign-off.

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

(a) A wealthy Idaho resident, through the C&C procedure, was provided a \$1.6 Million tax break **before** the audit report was issued and the audit in that case was removed from the

professional auditors. In this case the taxpayer claimed that the State had no jurisdiction to levy a tax because of no business presence in the state of Idaho, when in fact that investigating auditor did identify that the taxpayer has substantial business operations in the state. The auditor had determined that the position the taxpayer was taking before the State of Idaho was fraudulent.

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

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

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

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

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

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

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

(i) In one case of which Auditor Stan Howland has knowledge, a taxpayer had been audited seven times over the past twenty years utilizing a tax filing method not authorized by Idaho law. In all but one instance the taxpayer was granted a compromise and one such compromise was the settlement of a \$220,000 tax liability for \$80,000.

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

13. The information provided by Auditor Stan Howland includes the illustrative fact that there is currently pending, in the case of two taxpayers, possible and likely compromise of tax liability of approximately \$50 Million, which will typically result in a compromise that based on the Commission's action over the past several years, will result in a loss to the State tax base of between \$15 Million and \$40 Million.

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

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

**WHEREFORE**, Plaintiff prays judgment as follows:

1. For Declaratory Judgment that the present statutes, regulations and procedures utilized by the Legislature and the Idaho State Tax Commission violate the mandates of the Constitution of the State of Idaho relative to delegation of legislative authority to the unelected Commission;

2. The Court enjoin the Defendant Tax Commission and its Commissioners from entering into further Compromise and Settlement Agreements until such time as a constitutional system is established by the Defendants;

3. For an award of attorney fees to Plaintiff's attorney under the Private Attorney General Doctrine; and

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

DATED this \_\_\_\_ day of May, 2010.

The HUNTLEY LAW FIRM PLLC

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Robert C. Huntley



STATE OF IDAHO )  
                                ss.  
County of Latah     )

**VERIFICATION**

I, SHIRLEY RINGO, hereby certify, under penalty of perjury, that the allegations of the above and foregoing Complaint are true and correct to the best of my knowledge and belief.

Dated this \_\_\_ day of May, 2010.

\_\_\_\_\_  
Shirley Ringo, Plaintiff

On this \_\_\_ day of May, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared **Shirley Ringo**, 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.

\_\_\_\_\_  
Print Name:  
NOTARY PUBLIC for the State of Idaho  
Residing at:  
My commission expires: